



## Departmental Memo

DOCCM:7170201

**Date:** 25 October 2022

**To:** Penny Nelson, Director-General of Conservation

**From:** Tinaka Mearns, Hearings Commissioner

**Subject:** **Summary and consideration of submissions pursuant to sections 16 and 26 of the Reserves Act 1977 - Classification of Mercer Domain (Te Paina) as a local purpose (marae) reserve and Vesting in Waikato Raupatu Lands Trust**

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### Executive summary – Whakarāpopoto ā kaiwhakahaere

1. The Minister of Conservation is to make a final decision on the intention to classify the Mercer Domain Recreation Reserve (Te Paina) as a local purpose (marae) reserve and to vesting of the reserve in the Trustees of Waikato Raupatu Lands Trust (Waikato-Tainui).
2. The aspiration for the land ownership to return to Waikato-Tainui acknowledges the historical events of the past and provides for the ongoing desire of the hapū of Ngāti Naho, Ngāti Tamaoho and others to be reconnected with the land to undertake cultural activities on the site.
3. There is a shared desire from the iwi, hapū and community to honour the historical events of the past and to realise and enable Te Puea's aspirations for Te Paina. Te Puea was the granddaughter of the second Māori King, Kīngi Tawhiao; a prominent advocate for her people and recognised as a remarkable leader whose achievements communicated across cultures.
4. This report is provided by me as designated Commissioner, for the purpose of supporting the Minister of Conservation's consideration of submissions and objections received in response to the public notification of the intended classification and vesting, and in a subsequent hearing of submitters and objectors who wished to be heard.
5. Te Paina is located off Kimikimi Road, Mercer; adjacent to the confluence of the Waikato and Mangatāwhiri Rivers, 70 km north of Hamilton.
6. Te Paina has an area of 38.6885 hectares and is currently administered by the Waikato District Council (WDC) as a recreation reserve, but not yet classified for the purposes of the Reserves Act 1977.
7. I seek the Minister of Conservation's approval to proceed with the classification of Te Paina as a local purpose (marae) reserve and to the reserve being vested in the Trustees of Waikato Raupatu Lands Trust, pursuant to sections 16 and 26 of the Reserves Act 1977 in accordance with my recommendation.

### ***Setting the historical context***

8. Te Paina was an important residence of Waikato hapū. It was a strategic location for economic trade and intertrade activities which could be accessed by river or on foot between the Waikato inter lands and Tāmaki Makaurau.
9. Te Paina is situated beside the confluence of the Waikato and Mangatāwhiri rivers, both being sacred to Waikato hapū. The area was culturally significant where pā (fortified villages)<sup>1</sup>, wāhi tapu (sacred places), wāhi pakanga (battle areas), urupā (cemeteries), whare wānanga (place of higher learning), and okiokinga (resting place) were located. Also, Mangatawhiri river being the home of three taniwha, Karu Tahi, Waiwaia and Te la Roa.
10. In July 1863, British Troops crossed the Mangatāwhiri River (Te Paina) on the northern boundary, at its confluence with the Waikato River; signalling the commencement of the Waikato Land Wars. The colonial drew a line from Miranda to Karapiro, across to Pirongia maunga, to Raglan, and north to Tamaki and that became known as the confiscated area or te raupatu. As a consequence, the Crown confiscated over 1.2 million acres of land.
11. By the 1880's many had returned to the area, and particular pieces of land were repatriated including Raungawari and Te Paina.
12. In 1917, the Crown introduced the conscription law for compulsory enlistment of Māori into the military. It was enforced by the Crown and challenged by Te Rata and later Te Puea. Through passive resistance to conscription, Te Puea offered objectors' refuge at Te Paina. It was through the trial and tribulation of Te Puea's position to conscription that the resurrection of the Pai Mārire faith took place.
13. As a result of Te Puea's position on the conscription law, the devastation of the influenza epidemic and in line with Tawhiao's wishes, she relocated her people from Te Paina to Ngāruawāhia and established Tūrangawaewae Marae

### ***Why local purpose marae reserve?***

14. A reserve classification is chosen after considering a wide range of values that may need to be protected or managed in a particular way, and then choosing the classification that best identifies the primary value and purpose for which the reserve is to be managed.

The primary values of Te Paina are highly weighted in favour of its cultural significance and historical associations. We have noted some of these as being that –

- The correlation of whenua (land), awa (river) and tangata (people) are not seen as a separate entity. The land, the river, and people are ultimately important to the survival of the heritage and identity of Te Paina, both pre-European and post-European settlement in Aotearoa.
- The reserve has significant cultural significance to Waikato-Tainui as being the initial site for the unification of the tribe, prior to the move to Tūrangawaewae at Ngāruawāhia.
- The aspiration for reserve to be vested in Waikato-Tainui, acknowledges the historical events of the past and provides for the ongoing desire of the hapū of Ngāti Naho, Ngāti Tamaoho and others to be reconnected with the land to undertake cultural activities on the site.
- Waikato-Tainui, Ngāti Naho and Ngāti Tamaoho also have aspirations of linking culturally significant sites across the landscape.

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<sup>1</sup> Glossary, p 18.

- There is a shared desire from the iwi, hapū and community to honour the historical events of the past and to realise and enable Te Paea's aspirations for Te Paina.
15. A classification as local purpose marae reserve will recognise the historic and cultural values of the land, whilst also allowing for public access to most of the 38.6885 hectare reserve area.

***Why vest the reserve in the Trustees of Waikato Raupatu Lands Trust?***

16. Waikato-Tainui is the mandated tribal entity considered to be the most appropriate organisation with the knowledge and resources to manage and develop the reserve for the purposes of the Reserves Act. The proposed vesting also has the support of Te Arawhiti, Ngāti Naho and Ngāti Tamaoho.

***Hearing of submissions and objections***

17. The proposal was publicly notified on 7<sup>th</sup> of July 2022, and 32 written objections and submissions were received. These being 7 objections with 24 submissions in support, and one submission where either support or objection was unclear. 8 submitters indicated they wished to be heard in support of their submission – 3 in objection and 5 in support
18. The hearing of submissions by Tinaka Mearns (Operations Manager, Waikato) as a designated Commissioner under the Reserves Act, and co-chair Te Taute Taiepa (former Director, Strategic Cultural leadership, DOC) took place on 29 September 2022 at Hampton Downs Raceway.
19. Submitters were given the chance to appear in person or via MS Teams in support of their submission. All submitters presented their submission in person; 3 objecting and 5 in support.
20. A full summary and consideration of the submissions and objections is provided in the main body of this report.
21. I am able to conclude that the Department has followed the requirements of the Reserves Act in its consideration of the proposed classification and vesting of the reserve, and in the public notification and hearing processes.
22. I am able to conclude that the proposed classification of what is currently a recreation reserve as a local purpose (marae) reserve, and the vesting of the reserve in the trustees of the Waikato Raupatu Lands Trust, is the best means of recognising and protecting its values for the purposes of the Reserves Act 1977. This will recognise the primary cultural significance and historical association of Te Paina, while providing for public use and enjoyment.

***Recommendation over page -***

**I recommend that you**

	<b>Decision</b>
Endorse my recommendation to proceed with the classification of Te Paina as a local purpose (marae) reserve, and to the reserve being vested in the Trustees of Waikato Raupatu Lands Trust, pursuant to sections 16 and 26 of the Reserves Act 1977.	Yes / <del>No</del>
If you endorse my recommendation, forward this paper to the Minister of Conservation so that she can give full consideration to every objection and submission received in relation to the proposed classification and vesting.	Yes / <del>No</del>



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Penny Nelson  
Director-General of Conservation

## Purpose

1. The Minister of Conservation is to make a final decision on the intention to classify the Mercer Domain Recreation Reserve (Te Paina) as a local purpose (marae) reserve and to vesting of the reserve in the Trustees of Waikato Raupatu Lands Trust (Waikato-Tainui).
2. This report is provided by me as designated Commissioner, for the purpose of supporting the Minister of Conservation's consideration of submissions and objections received in response to the public notification of the intended classification and vesting, and in a subsequent hearing of submitters and objectors who wished to be heard. The report provides a summary and analysis of all submissions and objections, both written and oral.
3. This report includes:
  - Background and context regarding the proposal to classify and vest Te Paina
  - A summary of all objections and submissions/comments received and on matters raised by objectors and submitters relevant to the Minister's decision; and
  - My conclusions and recommendations regarding the proposed classification and vesting.
4. I note that any analysis and recommendations that I make as Commissioner do not fetter the Minister's discretion in considering all relevant issues and giving full consideration to every objection and submission.

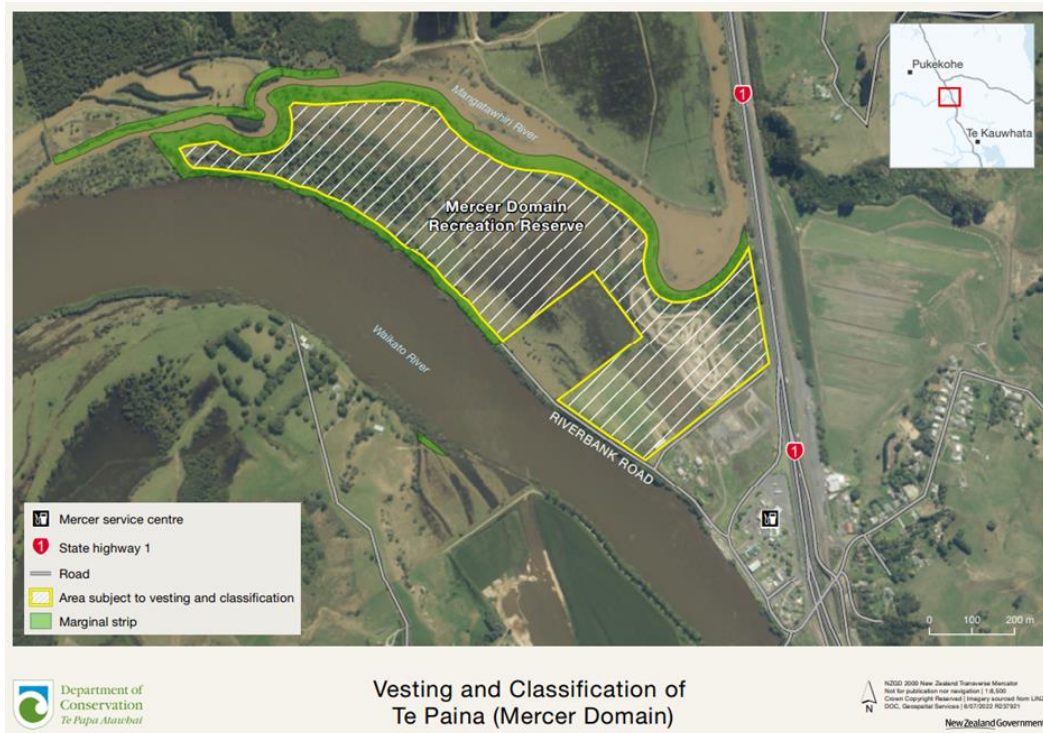
### 1. Background and context – Te horopaki

#### *History and Current Aspirations*

5. The reserve is part of an area comprising the pre-European Mangatāwhiri Pā site.
6. The correlation of whenua (land), awa (river) and tangata (people) are not seen as a separate entity. The land, the river, and people are ultimately important to the survival of the heritage and identity of Te Paina, both pre-European and post-European settlement in Aotearoa
7. The reserve has significant cultural significance to Waikato-Tainui as being the initial site for the unification of the tribe, prior to the move to Tūrangawaewae at Ngāruawāhia and is where the rebirth of Pai Marire happened.
8. The aspiration for the land ownership to return to Waikato-Tainui acknowledges the historical events of the past and provides for the ongoing desire of the hapū of Ngāti Naho, Ngāti Tamaoho and others to be reconnected with the land to undertake cultural activities on the site.
9. Waikato-Tainui, Ngāti Naho and Ngāti Tamaoho also have aspirations of linking culturally significant sites across the landscape.
10. There is a shared desire from the iwi, hapū and community to honour the historical events of the past and to realise and enable Te Puea's aspirations for Te Paina

#### *Legal Description & Status*

11. The Mercer Domain recreation reserve (Te Paina) has a total area of 38.6885 hectares
  - 25.8999 ha Allotment 136 Parish of Koheroa
  - 7.8742 ha Pt Allotment 139 Parish of Koheroa (Section 1 SO Plan 565866)
  - 4.9144 ha Koheroa 90B Block (All Record of Title NA399/204)All *New Zealand Gazette* 25 September 1958, No.58, page 1284.



*Map of Te Paina (Mercer Domain Recreation Reserve)*

12. The reserve is controlled and managed as a recreation reserve by the Waikato District Council (WDC), as successor to the former Mercer Domain Board and Franklin District Council. Gazettal action to vest the reserve in Waikato-Tainui will include a revocation of the control and manage appointment. The reserve has not yet been classified under section 16 of the Reserves Act 1977; and pending its classification the Act requires that it be held and administered for the purpose of its reservation; i.e. as a recreation reserve.

**Physical Description/Site Values**

13. The reserve is located at the confluence of the Mangatāwhiri and Waikato Rivers, in the township of Mercer. The site is predominantly level and 2-3m above the general water level of the Waikato River. The land is highly modified and largely grazed; with remnants of past land uses, including previous pony and motorcycle club modifications. There are two main structures on Koheroa 90B Block comprising an older, derelict weatherboard, ex- railway building, and a larger concrete ex- Auckland Council building, which is in a reasonable state of repair.
14. A site inspection was undertaken in April 2022, and an ecological report assessed the ecological condition of the site as poor. There is some remnant native vegetation and a few native bird species were observed. It would require considerable effort to address the weed issues to rehabilitate the potential ecological value of site. In its present state the low-lying land is not important for the survival of any threatened indigenous plant or bird species. However, if restored to native vegetation dominance, it could provide valuable habitat for native birds and fish species (tuna, inanga etc) associated with the two rivers.

**Relevant Legislative Provisions**

**Reserves Act 1977 – Classification**

15. Section 16 of the Act provides that, by notice in the *Gazette*, all reserves are to be classified to ensure that they are controlled, managed, maintained, developed, preserved and used according to their principal or primary purpose, as defined in sections 17 to 23 of the Act; and that pending classification, reserves are to be held and administered for the purposes of their existing reservation.

### ***Vesting***

16. Under section 26(1) of the Act, for the better carrying out of the purposes of any reserve vested in the Crown, the Minister may, by notice in the Gazette, vest the reserve in any local authority or in any trustees empowered by or under any Act or any other lawful authority, as the case may be, to hold and administer the land and expend money thereon for the particular purpose for which the reserve is classified.
17. Section 26(2) provides that all land so vested shall be held in trust for the particular purpose for which the reserve is classified, and that the Minister may make the vesting subject to special conditions and restrictions.
18. Section 27 contains provisions whereby the Minister may cancel a vesting.
19. Section 40 outlines the functions of an administering body, which is to administer, manage and control the reserve in accordance with the appropriate provisions of the Act and in terms of its appointment and the means at its disposal, to ensure the use, enjoyment, development, maintenance, protection and preservation, as the case may require, of the reserve for the purpose for which it is classified.
20. Essentially therefore, when a Crown reserve is vested, it is transferred to a local authority or trustees to be held in trust for the purposes of the Reserves Act. It is a limited form of ownership, with the Crown retaining underlying ownership of the land, and with its ongoing administration and management being subject to the provisions of the Reserves Act.

### ***Public notification***

21. Sections 16 and 26 of the Act require that the intention to classify and vest the reserve be publicly notified in accordance with s 119 of the Act, and under s 120 for the Minister to give full consideration to relevant objections and submissions received.
22. The rights of objection and making submissions are set out at s 120, which includes the requirement that submitters and objectors be given a reasonable opportunity of appearing before the Commissioner in support of their objection or submission.

### **Conservation Act 1987**

23. Section 4 of the Conservation Act 1987 requires that the Crown and any reserve administering body give effect to the principles of the Treaty of Waitangi in interpreting and administering the Conservation Act 1987, and the Reserves Act 1977 as an Act listed in the First Schedule of the Conservation Act.
24. Section 4 is therefore a relevant and mandatory consideration for the Minister in relation to both the classification and the vesting.
25. Section 4 requires the Minister to properly inform herself of the relevant Treaty interests and to actively protect Treaty interests as is reasonable in the circumstances. However, it does not give rise to a right of veto or unreasonable restraints on the administration of the conservation estate in the public interest.

## **2 Public notification and submissions to the proposed classification and vesting**

26. The proposal was publicly notified on 7<sup>th</sup> of July 2022, and 32 written objections and submissions were received. These being 7 objections with 4 submissions in support, and one submission where either support or objection was unclear - 8 submitters indicated they wished to be heard in support of their submission.
27. Post-closing of submissions, staff engaged directly with submitters who sought to be heard. This included fortnightly check in meetings with iwi, hapū and WDC, an online evening meeting with

Mercer Community Committee (**MCC**) members and a kanohi ki te kanohi hui (a meeting face to face) at the Meremere Hall, which included representation of all the aforementioned parties.

***Topics and concerns raised in submissions***

28. A summary of all submissions received is included as an appendix to this report.
29. **Submissions supporting the proposal raised the following themes:**
- The historical and cultural significance of the site to iwi of Waikato, its hapū and marae.
  - The site is intrinsically entwined in the story of Kīngitanga and Raupatu.
  - The site forms part of a network of whenua, along the awa, it is a central hub for iwi, hapū and marae to this day.
  - The health and wellbeing of the whenua is intrinsically linked to the wellbeing of the people. Its return would restore that health and wellbeing.
  - The return will recognise Te Mana o te Awa (the spiritual authority of the river) and support exercise of Mana Whakahaere (authority and rights of control) of whenua and awa.
  - It supports the crowns obligations under both the Raupatu Settlement and River Settlement, in particular the principle of I riro whenua atu, me hoki whenua mai (as the land was taken, so the land should be returned).
  - It is ancestral land with associated history and strong connections to this day.
  - The site is part of the Ngāti Naho treaty claim and Ngāti Tamaoho treaty settlement (statutory acknowledgement).
  - It will enable whānau of Ngāti Naho and Ngāti Tamaoho to build marae, awakura and exercise mana whakahaere as mana whenua.
  - It will enable hapū to fulfil obligations outlined in whakatauki and korero of King Tāwhiao
30. **Submissions raising concerns/objections to the proposal include the following themes:**
- That Princess Te Puea’s vision around maintaining green space/recreation area for all to enjoy will not be upheld.
  - Concerns that community members will not be heard and continue to be left out of future decisions about the site.
  - Concerns around public access and use of the site
  - Loss of meeting and recreational space for the Mercer community
  - Questions around Raupatu claim settlements with respect to the site
  - Concern local purpose (marae) reserve classification will not provide for recreation.

***Te Paina Site Visit by Hearing Commissioner June 2022***

31. Tinaka Mearns visited the site on the 7<sup>th</sup> of June 2022. Hearing co-chair Te Taute Taiepa did not visit the site but was comfortable he understood its values from prehearing information provided. This included aerial images, map and descriptions of historic, cultural, recreational and ecological values.

**3. Details of Hearings 29 September 2022**

32. The hearing of submissions by Tinaka Mearns, Commissioner, and co-chair Te Taute Taiepa, took place on 29 September 2022 at Hampton Downs Raceway.



33. Submitters were given the chance to appear in person or via MS Teams in support of their submission. All submitters presented their submission in person.
34. In total, 8 submitters indicated they wanted to be heard - 3 objecting and 5 in support. Oral submissions were heard from:
- Rahui Papa on behalf of Te Whakakitenga o Waikato (Waikato-Tainui) (support);
  - Anthony Averill on behalf of WDC (support);
  - Liam McGrath on behalf of MCC (objection);
  - Liam McGrath (submission as an individual) (objection);
  - Ross Mclean (objection);
  - Joanna Katipa (support);
  - Haydn Solomon on behalf of Ngāti Naho (support); and
  - Tori and Ted Ngataki on behalf of Ngāti Tamaoho (support).
35. Hearing notes prepared by DOC staff and approved by me are attached as [Attachment 1](#)

### **3.1 Summary of and comment on objections and submissions**

36. The proposed classification of Mercer Domain (Te Paina) is clearly a matter of great significance to iwi, hapū and the community.
37. 32 written objections and submissions were received following public notification of the proposal. These were made up of 7 objections to the vesting, with 24 submissions in support, and one submission where either support or objection was unclear.
38. All written submissions have been summarised and attached as [Attachment 2](#). Notes of the hearing of oral submissions 29 September are attached as [Attachment 1](#).
39. A full set of complete submissions is available.
40. I have read all submissions and objections received. I consider that all matters raised in written and oral submissions are relevant to the Minister's considerations; the only exception being matters raised in relation to past and future Treaty settlements..
41. To assist the Minister's full consideration of these matters I have grouped these matters into general headings;
- Submissions regarding future decision making for Te Paina. (see 3.2.1)
  - Submissions regarding historical and cultural associations with Te Paina. (see 3.2.2).
  - Submissions regarding recreational use and public access. (see 3.2.3)
  - Submissions regarding obligations under the Treaty of Waitangi and Section 4 of the Conservation Act 1987. (see 3.2.4)
  - Other matters. (see 3.2.5)
42. I provide comment on these matters to assist the Minister's considerations.

### **3.2 Consideration of Submissions and Objections**

#### ***3.2.1 Submissions regarding future decision making for Te Paina***

43. The site is of historical significance and importance to Waikato-Tainui and its hapū Ngāti Naho and Ngāti Tamaoho. The historical events of Mercer Domain (Te Paina) were summarised in the hearing on 29 September;
- 1. From the Waikato River inland they [Ngāti Tamaoho] were living there from ancient times. It was their papatupu [customary] land. They were cultivating on their land. They had*

*kainga's and they left when the war broke out.*

- II. *As such, the site became one of national significance to Te Kīngitanga, Waikato, and its hapū Ngāti Naho and Ngāti Tamaoho.*
  - III. *On July 9, 1863, Governor Grey issued a proclamation ordering allegiance to Her Majesty the Queen, and to give up their arms to an officer appointed by Government for that purpose. Natives refusing to do so were warned to leave the district and retire to Waikato beyond Mangatāwhiri. In case of their not complying with this order they will be ejected.*
  - IV. *On July 12, 1863, British Troops under the command of General Cameron crossed the Mangatāwhiri River (Te Paina) at Te Pou o Mangatāwhiri (the aukati line) and waged war on Waikato iwi. Post the invasion, in 1865 the Crown confiscated over 1.2 million acres of land.*
44. Submissions in support state the consequences of Raupatu of the land were vast and devastating with the loss of lives, lands, and resources for Waikato-Tainui, and its hapū Ngāti Tamaoho and Ngāti Naho.
  45. Submissions in support state Waikato-Tainui, Ngāti Naho and Ngāti Tamaoho all have interests in the site. Waikato-Tainui, Ngāti Naho and Ngāti Tamaoho have indicated preference for the site to be classified and then vested with the Waikato Raupatu Lands Trust and accordingly are working with Ngāti Naho and Ngāti Tamaoho. A number of submissions support the vesting of the land to mana whenua, given the significance of the site. The returning of the land to mana whenua will recognise Te Mana o te Awa and support the exercise of Mana Whakahaere and Kaitiakitanga of the whenua and awa.
  46. Submissions of hapū state that the aspirations of Waikato-Tainui, Ngāti Naho and Ngāti Tamaoho are first and foremost to uphold the mana motuhake (autonomy) and rangatiratanga (right to exercise authority) of Te Paina. Submissions highlighted the significance of mana whenua, however, emphasised that iwi, hapū and the community do not sit divided and can co-exist and work together. This statement was reflected in Waikato-Tainui's submission, quoting a famous proverb by the first Māori King, Potatau Te Wherowhero who said, "Kotahi te kōwhao o te ngira e kuhuna ai te miro mā, te miro pango, me te miro whero – But there is one eye of the needle that all threads must pass."
  47. Submissions in objection seek regular engagement and consultation with community and mana whenua on any decisions and outcomes that affect the site as well as the impact on the wider community. It is requested that a representative from MCC and mana whenua of both Ngāti Naho and Ngāti Tamaoho, to be included in the decision making with Waikato-Tainui.

#### **Comment**

48. I acknowledge that Waikato-Tainui, Ngāti Naho and Ngāti Tamaoho are mana whenua and hold a significant historic and cultural connection to the site. Both iwi and hapū acknowledge the concerns of MCC's engagement for future decision making for the site and outline that they are open to on-going consultation with the community. I consider that it is a matter for the future administering body to outline the decision-making process for the site at Te Paina.

#### **3.2.2 Submissions regarding cultural and historic associations to Te Paina**

49. Submissions supporting the vesting of Mercer Domain (Te Paina) point out that the health and wellbeing of the whenua and awa is intrinsically linked to the health and wellbeing of the people. Te Paina is part of an integral network of whenua along the tupuna awa. It remains a central hub for iwi, hapū and marae to this day.

50. Submissions in support states that whakapapa to Te Paina is that of Waikato and its associated hapū such as Ngāti Mahuta, Ngāti Naho and Ngāti Tamaoho and from uri (descendants) that reside in Te Puaha o Waikato and Te Kei o te Waka. Te Paina is situated beside the confluence of the Waikato and Mangatāwhiri rivers, both being sacred to Waikato with the former being the home of three taniwha, Karu Tahi, Waiwaia and Te Ia Roa.
51. To the east of Te Paina lies the Koheroa ridge. This area is of great traditional significance to Ngāti Tamaoho, including areas where pā (fortified villages), wāhi tapu (sacred places), wāhi pakanga (battle areas), urupā (cemeteries), whare wānanga (place of higher learning), and okiokinga (resting place) were located.
52. The submissions in support state historic associations and events that took place in Mercer Domain (Te Paina):
  - I. The establishment of the Kīngitanga in 1858 was a direct response to concerns of the lack of respect for Māori rights and a safeguard for Waikato-Tainui and Māori generally to ensure Māori autonomy was recognised and maintained.
  - II. After the arrival of large-scale European settlement on the Tāmaki isthmus Te Paina remained under Māori control. With rising tensions between Waikato Iwi and the Crown the Mangatāwhiri River, became the northern aukati (known as Te Pou o Mangatāwhiri) or boundary of lands loyal to the Kīngitanga which sought to retain Māori autonomy.
  - III. In 1863, Governor Grey's threats came into a head.
  - IV. On 9 July, Grey issued a proclamation ordering allegiance to Her Majesty the Queen.
  - V. On 12 July military forces of the Crown crossed the Mangatāwhiri river at Te Pou o Mangatāwhiri (the boundary of lands) and unjustly invaded the Waikato, initiating hostilities against the Kīngitanga and its people.
  - VI. The large-scale loss to Waikato at the hands of an unjust war became an inevitability which saw the confiscation of places such as Te Paina and the exile of Waikato from its land for an entire generation. In 1865, following the invasion of Waikato, the Crown confiscated over 1.2 million acres of land.
  - VII. Ngāti Tamaoho re-established themselves along the northern banks of the Waikato, around the township of Mercer and on small pieces of land on the south-bank of the river near Raungawari (opposite Te Paina).
  - VIII. In the 1880s, many whānau were living around Mercer, which included whānau and hapū from throughout the rohe who had their lands confiscated.
  - IX. In 1910, Kīngi Tāwhiao's niece, Princess Te Puea Herangi moved back to Te Paina.
  - X. In 1916, World War I brought military conscription to New Zealand. In 1917, Government agreed that conscription was applied to Māori, though only those living in the Waikato-Maniapoto land district.
  - XI. Passive resistance of conscription by Princess Te Puea and the Kīngitanga offered objectors' refuge at Te Paina.
  - XII. In 1918, Government sent Police to Te Paina to make arrests, as the Crown saw the resistance as a challenge to their authority by iwi.
  - XIII. By 1919 only 74 Māori conscripts had gone to camp out of a total of 552 men called up. As soldiers returned from their overseas service, they brought with them a devastating influenza epidemic that swept the country from 1918-1919.
  - XIV. The outbreak hit Ngāti Tamaoho particularly hard, especially at Te Paina where Princess Te Puea established a makeshift hospital to treat the sick.

- XV. From 1920 Te Puea made plans to move from Te Paina to Ngāruawāhia, along with whānau from Mangatāwhiri, many of which were Ngāti Tamaoho whānau.
  - XVI. Upon reaching Ngāruawāhia, Princess Te Puea and her followers began clearing the land and began the slow process of building the Tūrangawaewae marae.
  - XVII. In 1922, Princess Te Puea organised to have the old whareniui at Mangatāwhiri dismantled and brought up the river to Ngāruawāhia, which was named Kimikimi and used as the wharekai and whareniui in the early days of the Tūrangawaewae marae.
53. A submission in objection to the vesting states the land was subdivided from Lot 90 to Lot 90A and 90B. Lot 90B was settled as part of the Raupatu Claim Settlement in 1881. Both Lot 90A and 90B were purchased by Princess Te Puea and in 1941, Lot 90B was sold to the then Mercer Town Board (WDC in today's terms). The submission sought a review of the Raupatu Claim Settlement in 1881 of Lot 90 and the applicability in the current claim of Lot 90B, if a claim can be settled twice for the same lot of land.

**Comment**

- 54. The hearings panel is unable to review a treaty claim settlement and it is outside of the scope of this hearings process. This is a matter for Te Arawhiti.
- 55. I consider that Waikato-Tainui, Ngāti Naho and Ngāti Tamaoho have clearly demonstrated the historical and cultural associations of Te Paina. I acknowledge the historical events that occurred, the whakapapa of Te Paina and its significant links to the Waikato Land Wars, the crossing of the Mangatāwhiri River, at its confluence with the Waikato River, signalling the beginning of the Waikato invasion.
- 56. I acknowledge the significance of the history of Te Paina to the Kīngitanga, being the initial site of unification of the iwi, through passive resistance by Te Puea in objection to the conscription and preparing to move from Te Paina to Ngāruawāhia to establish Tūrangawaewae marae. It was at Te Paina where the rebirth of Pai Mārire happened.
- 57. Ngāti Tamaoho submission also focuses on their traditional significant places amongst the site. I acknowledge that such places are of historic value and of cultural importance.
- 58. Questions were raised in regard to whether or not the parcel of land could be subject to multiple treaty claim and settlement processes. MCC provided documentation that it had been subject to claim on more than one occasion.
- 59. We have heard from iwi and hapū submitters that the site remains subject to treaty claims and settlement. Those claims will be dealt with in accordance with treaty settlement legislation, as per all treaty claims and is separate to this process. In terms of my considerations, in accordance with the Reserves Act, they are covered in section 3.2.4 below.

**3.2.3 Submissions regarding recreational use and public access**

- 60. MCC and other local community members raised concerns regarding continued public access and recreational (including meetings rooms) use of the reserve. Historically the reserve had been used for active recreation, by a pony club, motorcycle club and there is an unmaintained sports field at the southern end of the site. A local community group, The Royal Order of the Buffaloes had a lease arrangement for use of part of the ex ARA building onsite, and the Waikato District Council managed the exit of that group once that lease expired.
- 61. Submitters noted use by the pony and motorcycle clubs was by people from outside of the Mercer community. However, they were concerned that loss of the sports field and use of the wider site for passive recreation would be net loss for the Mercer community, as they do not have alternative options.

62. The submitters therefore request that the recreation reserve status be retained over at least the Lot 90B site, so that the wider community could continue to use it in that manner.
63. Another concern raised in the submissions was that of continued public access. Concern that once the reserve status was changed by the intended classification as local purpose marae reserve it could be closed to the public. Some submitters also raised concerns that the public were presently being excluded from the site, and that this might continue.

**Comment**

64. I wish to acknowledge the Mercer community members for their submissions, attendance, and presentations at hearing. The information shared was useful, it provided an overview of site use in recent times, as well as the wider community aspirations for the future use.
65. In terms of reserve classification, local purpose marae reserve would not preclude recreation, as raised above, as the purpose is broad and encompassing. In the oral submission from Hayden Solomon for Ngāti Naho, we also heard that recreational activities form part of the activities commonly associated with marae.
66. In terms of opportunities for recreation space, the Waikato District Council spoke to their commitment to support the community to find building space for meetings and an area for sports activities, be that at Te Paina or alternative locations.
67. I have considered the concerns raised by the MCC. I have heard Waikato-Tainui and hapū commit to continued dialogue with the community regarding recreational use of the site.
68. I am of the view the primary values of this site are its cultural significance and historic associations. I therefore do not believe it is appropriate to fetter future decisions of the administering body regarding appropriate site use and am comfortable recreational activities are enabled by the proposed classification.
69. Regarding future public access restrictions; we heard from submitters that tikanga associated with marae-based activity may require this to a limited degree, such as for tangihanga (funerals) and kawemate (mourning ceremony at another marae), but that the public would otherwise have free access to the reserve. Under section 23 of the Reserves Act the Minister may formally prohibit public access to a local purpose reserve. However, this would be exceptional and only after careful consideration of the public interest.
70. Regarding concerns that the public are presently being excluded from the site; this is a matter for the WDC (as the current administering body) to resolve.
71. I consider given the size of the reserve, access to the area as a whole for passive recreation uses would not be impeded by the proposed classification. In addition, the river and stream margins are marginal strip, so access to and along those areas remain available.

**3.2.4 Submissions regarding obligations under the Treaty of Waitangi and Section 4 of the Conservation Act 1987**

72. Of the submissions received nearly all supported the vesting with Waikato-Tainui and hapū; with general agreement the site should return to iwi management.
73. We heard detailed accounts from iwi and hapū regarding the significance of Te Paina and the impacts of land confiscation on its people and culture.
74. Under the deed of settlement and the Ngāti Tamaoho Claims Settlement Act 2018 there is a statutory acknowledgement over the site. This acknowledges the hapū association with the land, and in particular enhances their ability to participate in specified Resource Management Act processes.
75. Documentation in the deed of settlement states:

*“Te Pou o Mangatāwhiri (Mercer domain) on the south bank of the Mangatāwhiri Stream, at its confluence with Waikato, is a site of regional and national significance. It is symbolic as a marker post of Tainui/Kīngitanga mana and of Māori authority more generally. Ngāti Tamaoho’s relationship with Te Pou o Mangatāwhiri and the surrounding area is nuanced and involves many of the important events in Tamaoho history. Its location at the confluence of the Mangatāwhiri stream and Waikato River made it strategically important as did its proximity to settlements such as Pōkeno and Mangatāwhiri and the Te Ia Roa landing site. Ngāti Tamaoho has a special relationship with Te Pou o Mangatāwhiri and the surrounding area. It has been home to them in times of need and a place for them to come together in times of hardship.”*

76. It is understood that Te Arawhiti is currently in negotiations with Ngāti Naho, as part of the proposed Waikato-Tainui Residual Claim Settlement, and that the settlement is to provide underlying ownership of Te Paina to re-vest in iwi when that settlement passes into law.
77. Communication with Te Arawhiti confirms they support the current proposed vesting with Waikato Raupatu Lands Trust and classification of the site.
78. Section 4 of the Conservation Act requires you as decision maker to give effect to the principles of the Treaty of Waitangi.

#### **Comment**

79. The application of s 4 to statutory decision making was considered in *Ngāi Tahu Maori Trust Board v Director-General of Conservation* [1995] 3 NZLR 553 (CA) (the *Whales case*), and more recently in the 2019 Supreme Court Judgment in *Ngāi Tai Ki Tāmaki Tribal Trust v Minister of Conservation* [2019] 1 NZLR 368 (SC) (*Ngāi Tai*).
80. While those cases considered the granting of permits and concessions under the conservation legislation, the findings and comments of the courts do have application in terms of the application of s 4 in statutory decision making more generally.
81. The recent *Ngāi Tai* decision confirmed s 4 is a powerful Treaty clause, not to be narrowly construed; and that Treaty principles, properly considered, allow for an accommodation of interests between the Crown’s Article I functions – which include steps for the protection and management of the public conservation land in the interests of all New Zealanders – and the protection of Article II interests. Further, in taking steps to protect Article II interests the Crown is not required to go beyond what is reasonable in the circumstances and an unreasonable restraint on the exercise of legitimate Article I functions is, in itself, not consistent with Treaty principles.
82. In applying the relevant statutory and other legal considerations, the Minister (in this case) must apply these considerations in a manner that “so far as possible” gives effect to the principles of the Treaty - as per paragraph [53] of the *Ngāi Tai* Judgment:

*To this can be added the general requirement that, in applying s 4 to a decision relating to a concession application, the Department must, so far as is possible, apply the relevant statutory and other legal considerations in a manner that gives effect to the relevant principles of the Treaty.*
83. Although the Court’s statement above was made in relation to concessions, the language of s 4 necessarily points to an exercise in reconciliation as being required, where possible, across the conservation legislation.
84. In considering whether it is reasonable to vest the site in the trustees of the Waikato Raupatu Lands Trust, the associations of Waikato-Tainui, Ngāti Naho and Ngāti Tamaoho with Te Paina are relevant.
85. I have heard compelling evidence outlining the connections and history of the site for iwi and hapū. Their intent to have the area returned to their management so they can exercise mana

whakahaere, to restore the whenua for the overall improvement to the health and wellbeing of their people.

86. The statutory acknowledgement of Ngāti Tamaoho and the active Treaty claims further point to cultural significance of the site and intent of iwi for it to be returned to their management and ownership.
87. The proposed vesting and classification will provide Waikato-Tainui and hapū the opportunity to manage the site, ensuring their rights and interests will be more actively protected compared to the current arrangements for the site.
88. I see the proposed vesting as an opportunity for the Department to demonstrate the Treaty principle of partnership, to collaborate and partner with Waikato-Tainui and hapū in restoring the mana of the site.
89. Informed decision making is key to this proposal, as outlined above iwi/hapū rights and interests are well understood, and iwi and hapū have been integral to the process from the outset, working closely with WDC and the Department as we have navigated issues and understood desired outcomes.
90. On the matter of outstanding Treaty claims; the classification and vesting proposal has the support of Te Arawhiti, and will not hinder the settlement process. I believe the proposal on its own merit is the better outcome in terms of land administration and management for the purposes of the Reserves Act. Waikato-Tainui and hapū have the vision and resources to improve the site and re-establish it as a site of significance for the people of Waikato and the wider Mercer community.
91. In terms of wider interests and management of the site, the vesting with Waikato-Tainui requires the land to be managed in accordance with the Reserves Act thereby meeting the Department's underlying requirements as the Crown agency responsible for the land.

### **2.3.5 Other matters**

#### **Site condition**

92. There are some issues with the site as it has not been under active management for a number of years. Fencing is poor, the area utilised by the Motorcycle Club requires remediation and the two on-site buildings require maintenance or demolition.
93. Waikato-Tainui and WDC have been working through these issues and a draft MOU has been prepared outlining agreements around remedial works. At the time of writing discussions between the parties continues. Waikato-Tainui are aware that if approved and the vesting is confirmed, responsibility and liability for the site will fall to them. Waikato-Tainui have provided assurance they intend to work collaboratively with WDC, in accordance with their Joint Management Agreement, to ensure aspects of site remediation are equitably undertaken.

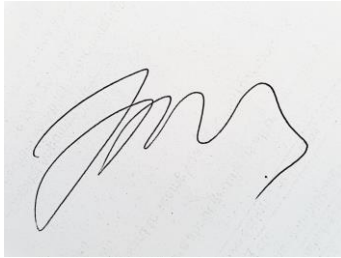
## **4. Conclusions and recommendations regarding the classification and vesting**

94. I conclude that the Department has followed the requirements of the Reserves Act in its consideration of the proposed classification and vesting of the reserve, and in the public notification and hearing processes.
95. I am able to conclude that the proposed classification of what is currently a recreation reserve as a local purpose (marae) reserve, and the vesting of the reserve in the trustees of the Waikato Raupatu Lands Trust, is the best means of recognising and protecting its values for the purposes of the Reserves Act 1977. This will recognise the cultural significance and historical association of Te Paina, while providing for public use and enjoyment.

96. In accordance with my recommendation, and pursuant to sections 16 and 26 of the Reserves Act 1977, I seek the Minister of Conservation's approval to proceed with the classification of Te Paina as a local purpose (marae) reserve and to the reserve being vested in the Trustees of Waikato Raupatu Lands Trust.

**5. Risk assessment – Aronga tūraru**

97. I have assessed the risks associated with the proposed classification and vesting, and in particular the concerns of objectors, and consider the risks to be low.

A handwritten signature in black ink on a light grey background. The signature is stylized and appears to be 'Tinaka Mearns'.

**Tinaka Mearns**  
**COMMISSIONER**

26 October 2022



## **Glossary**

**aukati (line)** – boundary (line)

**awakura** – school/classroom that will be based near the river

**awa** - river

**hapū** – kinship group, sub-tribe

**hui** - meeting

**iwi** – extended kinship group, tribe

**I riro whenua atu, me hoki whenua mai** – as land was taken, so the land should be returned

**inanga** – whitebait

**kāinga** - home

**Kaitiakitanga** – guardianship

**kanohi ki te kanohi** – face to face

**kawe mate** – mourning ceremony at another marae

**Kīngitanga** – King Movement

**mana motuhake** – autonomy, self-determination, sovereignty

**mana whakahaere** – authority and rights of control

**mana whenua** – authority over land or territory

**marae** – courtyard – the open area in front of the whareniui

**okiokinga** – resting place

**pā (site)** – fortified village

**raupatu** – confiscation

**rangatiratanga** – right to exercise authority, chiefly autonomy

**rohe** – district, region

**Tāmaki (Tāmaki Makaurau)** – Auckland

**taniwha** – water spirit, powerful creature

**tangihanga** – funeral

**taonga** – treasure

**Te Kei o te Waka** – the stern of the canoe (in reference to the northern places of Waikato)

**Te mana o te awa** - the spiritual authority, protective power, and prestige of the river

**Te Puaha o Waikato** – Port Waikato

**tupuna awa** – ancestral river

**uri** – descendants

**urupā** – cemetery

**whanau** – extended family

**wāhi tapu** – sacred place

**wāhi pakanga** – place of battle

**whakapapa** - genealogy

**whakataukī** – proverb

**wharekai** – dining hall

**whareniui** – meeting house

**whare wānanga** – place of higher learning

**whenua** – land