



15 April 2020

Hon Eugenie Sage, Minister for Conservation
Parliament Buildings
WELLINGTON 6160

cc. Lou Sanson, Director-General of the Department of Conservation

E te Minita, tēnā koe,

Waitaha Hydro Scheme – reconsideration process

We write as the chairs of the two Papatipu Rūnanga of Ngāi Tahu that exercise rangatiratanga over Te Tai o Poutini, the West Coast of the South Island.

The takiwā of Te Rūnaka o Ngāti Waewae is centred on Arahura and Hokitika and extends from the north bank of the Hokitika River to Kahuraki and inland to the Main Divide together with a shared interest with Te Runanga o Makaawhio in the area situated between the north bank of the Pouerua River and the south bank of the Hokitika River. The takiwā of Te Rūnanga o Makaawhio is centred at Makaawhio and extends from the south bank of the Pouerua River to Piopiotahi and inland to the Main Divide together with a shared interest with Te Rūnanga o Ngāti Waewae in the area situated between the north bank of the Pouerua River and the south bank of the Hokitika River.¹

The Rūnanga, collectively referred to as Poutini Ngāi Tahu, are two of the 18 Papatipu Rūnanga that are members of Te Rūnanga o Ngāi Tahu. Each Papatipu Rūnanga is the kaitiaki of the natural and physical resources within their respective takiwā and exercise rangatiratanga over their respective areas in regard to these resources. Water is a taonga over which Ngāi Tahu exercise rangatiratanga and kaitiakitanga.

It is on that basis that we write to you, as Minister of Conservation, to express our very significant concerns around the decision on the concessions for the Waitaha Hydro Scheme and the Department's proposed process for reconsidering that decision. We write to you, and not the Minister for the Environment, as our Treaty Partner in

¹ Te Rūnanga o Ngāi Tahu (Declaration of Membership) Order 2001

conservation matters and as the Minister with control over the Department of Conservation.

Decision on the Waitaha Hydro Scheme Concessions

As part of the commitments that Ngāi Tahu and the Crown have made to each other under Te Tiriti o Waitangi and the Ngāi Tahu Settlement, Poutini Ngāi Tahu have an expectation that the principles of the Treaty will be upheld by the Crown when exercising rights of governance over taonga.

Poutini Ngāi Tahu do not consider that the process and decision to decline the concessions sought by Westpower Limited for the Waitaha hydro scheme complies with Te Tiriti o Waitangi and the Ngāi Tahu settlement arrangements. As we highlighted to you in our letter dated 11 February 2020, we consider the decision is an example where the Crown has completely failed to properly seek our views and involve us in the decision making process – in breach of its obligations.

In this respect, the Minister could not have made a decision that complies with section 4 of the Conservation Act 1987 without meaningful engagement with Poutini Ngāi Tahu. From our perspective, meaningful engagement in that process was absent, and the requirements of section 4 were not properly addressed. Minister Parker's decision letter dated 27 August 2019 suggests that the support of the Rūnanga for granting the decisions and the requirements of section 4 were not an important consideration in his decision.

Poutini Ngāi Tahu consider that this process and ultimately the decision does not reflect the Treaty principles of partnership, good faith or active protection. The decision openly went against wishes of the iwi, and the decision maker failed to have appropriate regard to our rangatiratanga and mana whenua status and role.

Process for Reconsideration

Poutini Ngāi Tahu understand that the Department has communicated a process for reconsidering the decision to Westpower Limited. It is essential that the process for any reconsideration corrects the errors of Minister Parker's decision, both in the process of engaging with Poutini Ngāi Tahu and in considering section 4 matters in the decision-making process.

We therefore formally request that the Department reconsider its approach to the process for reconsideration. In order for that process, and the ultimate decision, to comply with the requirements of section 4 and be consistent with the principles of the Treaty, Poutini Ngāi Tahu must be involved in all stages of the process.

In light of the errors and omissions that we consider Minister Parker made in the original decision, it would be inappropriate for Minister Parker to also make a decision on the reconsideration.

Further, in order for the reconsideration decision to be consistent with section 4, the decision-maker must have appropriate knowledge and appreciation of the principles of the Treaty, Ngāi Tahu tikanga and mātauranga. The decision-maker must be fully informed of our position on the project and reconsideration. Our minimum expectation in this respect is that the decision-maker will meet with us prior to reconsidering the concessions for the Waitaha Hydro-Scheme.

As the Department is aware, our approach to the original concession application was to work directly with Westpower to ensure that the proposal was consistent with our expectations. That is also our approach to the reconsideration application. Westpower, modelling good practice, has been appreciative of the necessity that this process takes some time and is consistent with our tikanga. Our expectation is that the Department, as our Treaty Partner, is similarly supportive of good process being followed. We therefore respectfully request, as your Treaty Partner, that timeframes for the reconsideration application are developed in consultation with us.

We look forward to hearing from you. Our point of contact for organising a hui and liaising with correspondence on behalf of Te Rūnanga o Ngāti Waewae and Te Rūnanga o Makaawhio is Linda Falwasser, linda.falwasser@ngaitahu.iwi.nz 021 311 451.

Na māua noa, nā



Francois Tumahai
Chairman
Te Rūnanga o Ngāti Waewae



Paul Madgwick
Chairman
Te Rūnanga o Makaawhio



15 June 2020

Hon Eugenie Sage, Minister for Conservation
Lou Sanson, Director-General of the Department of Conservation

cc. Mike Slater, Deputy Director-General Operations
Shona Bradley, Legal Services Manager

E ngā rangatira, tēnā kōrua,

Waitaha Hydro Scheme – reconsideration process

1 We write in response to recent correspondence from Deputy Director-General Mike Slater (letter dated 28 May 2020) and the letter subsequent to this from Shona Bradley, Legal Services Manager (dated 29 May 2020).

Request to engage in discussions about partnership

2 We acknowledge the offer from Mr Slater to discuss our understanding of partnership, as well expressing a willingness to hear our thoughts on any reconsideration of the decision for the Waitaha Hydro Scheme.

3 Of course, our 'partnership' with you already exists under the Treaty of Waitangi and this has been explored in multiple contexts to date, including by the Waitangi Tribunal. Our dealings with the Department of Conservation (*Department*), including in respect of the Waitaha Hydro Scheme, suggest that significant changes are still required in order to ensure that the Department is able to uphold its side of this partnership.

4 While we certainly have views regarding how our partnership must work, we do not consider that there is utility in having those discussions until current issues are dealt with. But to be clear we do not think partnership merely constitutes recognising Ngāi Tahu as one submitter among others which the Government may choose to seek views from, on such terms, and according to such processes, and on such timeframes as the Government alone dictates. This consistent Crown centric approach, designed with the primary focus to make the relationship manageable to the Crown and its needs, tramples over our mana, demeans our partnership, and commoditises our views.

5 We seek assurance that these conversations will take place on a mana ki te mana basis. We are particularly concerned that issues that we have raised

about the Treaty of Waitangi and requirements for partnership are being responded to from within the operations and corporate services areas of your Department. We do not see how discussions about our partnership and rangatiratanga can reasonably be advanced through the Department's operations or legal services.

Poutini Ngāi Tahu expectations around reconsideration process

- 6 One expectation that we have for a reconsideration process that is respectful of our partnership is that timeframes will be developed in consultation with us. This expectation has previously been communicated to you in our letter dated 15 April 2020. Implied in this expectation is that processes and timeframes for our involvement would not be unilaterally dictated to us by the Department. We were therefore disappointed in the Department's instructions for receiving our comments on the draft briefing, which we do not consider appropriate.
- 7 We understand that you are expecting comments from Westpower Limited (*Westpower*) on the drafting briefing today. We also understand that you will then consider Westpower's comments and summarise these in the draft briefing, while also potentially making further changes to the recommendations to reflect any amendments requested by Westpower. We similarly wish to take time to understand and reflect on the comments from Westpower and any changes that you may wish to make to your recommendations before we provide comment.
- 8 We understand that our comments will similarly be summarised by the legal department in the draft briefing. We are particularly concerned about the current section "*Poutini Ngai Tahu's views*" in the draft briefing. The last sentence in paragraph nine states that our "*views have been taken into account in forming this briefing*", however nothing in the rest of the document suggests that our expectations have been incorporated into the briefing, let alone read or understood. We are also concerned about the numerous grammatical and spelling errors associated with the use of te reo Māori in this section of the draft briefing. Out of the utmost respect for our reo, we wish to ensure that documents such as this are accurate. We therefore consider that it will be necessary to review the final draft briefing following the incorporation of our comments and the associated amendments made to the recommendations, to ensure that no such errors are retained and that our comments are accurately represented.
- 9 Consistent with our expectations for the concession decision, we wish to ensure that decisions made in respect of the reconsideration process comply with section 4 of the Conservation Act 1987. Our previously communicated expectation is that such a decision requires meaningful engagement. In order for a process for reconsideration to be developed that meets these requirements, we consider that it would be greatly beneficial to meet to discuss the final briefing with the Deputy-Director General Operations and the Minister prior to the process for reconsideration being confirmed.
- 10 We therefore propose the following framework for our involvement in preparing the briefing, which we consider is more consistent with our partnership:

Action	Date
Westpower's comments on the draft briefing received	15 June 2020
Department provides revised draft briefing amended reflecting the Department's approach to Westpower's comments	23 June 2020
Poutini Ngāi Tahu provide comments on the amended draft briefing	3 July 2020
Department provides final draft briefing to Poutini Ngāi Tahu, for Poutini Ngāi Tahu to confirm its views are properly represented to the Minister or otherwise require changes that accurately reflect its views	17 July 2020
Poutini Ngāi Tahu to confirm its views are properly represented to the Minister or otherwise require changes that accurately reflect its views	24 July 2020
Briefing is finalised and provided to the Deputy Director-General Operations Poutini Ngāi Tahu meet with the Deputy Director-General to discuss process for reconsideration as per para 2.1 of Department of Conservation's letter to Westpower dated 29 May 2020	August 2020
Poutini Ngāi Tahu meet with the Minister prior to Minister's decision.	TBD
Reconsideration process confirmed by the Minister	

Other considerations for Reconsideration

- 11 We are open to discussing this process and our proposed timeline with you.

Na māua noa, nā

Francois Tumahai
Chairman
Te Rūnanga o Ngāti Waewae

Paul Madgwick
Chairman
Te Rūnanga o Makaawhio



12 November 2020

Mike Slater, Deputy Director-General Operations,

cc. **Michelle Hippolite**, Deputy Director-General Kāhui Kaupapa Atawhai

Tēnā koe,

Waitaha Hydro Scheme – reconsideration process

1 We write in response to your recent letter dated 9 October 2020 and further to our telephone meeting with Lou Sanson, Michelle Hippolite and yourself by phone in July 2020.

Issues relating to the Westpower application process

2 In your letter you noted that the main outcome you arrived at following our phone conversation had broader application than the Westpower application, pertaining to engagement expectations between the Department of Conservation (DOC) and Poutini Ngāi Tahu in circumstances where we support an application for a concession generally. You also noted DOC should not assume that Poutini Ngāi Tahu support for the application alleviates the need for DOC to continually engage with Poutini Ngāi Tahu throughout the application process.

3 Our expectation throughout a concession process, and particularly concessions such as the Westpower application, which are contentious but supported by Poutini Ngāi Tahu, is not just that DOC talks to us throughout the process. Poutini Ngāi Tahu expects its engagement with DOC to extend beyond mere 'consultation', rather that DOC acts in 'co-operation' with Poutini Ngāi Tahu, consistent with Treaty partnership and the Crown's legal undertaking to enter into an 'age of co-operation' with Ngāi Tahu.¹

4 While the statements in your 9 October letter are not necessarily incorrect, we wish to make very clear our position and specific concerns with the process and decision-making for the Westpower application, including that:

- (a) the Minister could not have made a decision that complies with section 4 of the Conservation Act 1987 without meaningful engagement with Poutini Ngāi Tahu and acknowledgement of Poutini Ngāi Tahu support for granting the concession;

¹ Under section 6(7)-(8) of the Ngāi Tahu Claims Settlement Act 1998, the Crown recognised that Ngāi Tahu holds rangatiratanga within their takiwā and undertook 'to enter a new age of co-operation with Ngāi Tahu'.

- (b) the decision-making process and ultimately the decision fails to reflect Te Tiriti o Waitangi guarantee of rangatiratanga or the principles of partnership, good faith and active protection; and
- (c) Minister Parker failed to have appropriate regard to or sufficiently acknowledge Poutini Ngāi Tahu rangatiratanga and our mana whenua status and role in the decision.

5 In summary, Poutini Ngāi Tahu consider that there are significant issues with the process and decision regarding the Westpower application, which need to be acknowledged and addressed.

Poutini Ngāi Tahu involvement in the reconsideration process

6 In our letter dated 16 June 2020 we set out our expectations around the reconsideration process, including how we are involved and timeframes for our involvement could not be unilaterally dictated by DOC.

7 In that letter we proposed a framework for our involvement in preparing the briefing, which we considered to be more consistent with our Treaty partnership, and invited discussion on the process and proposed timeline with you. We were disappointed that you chose not to engage with us on a suitable framework for both of us, rather you determined by letter a process that you assessed was “fair and proportionate” in the circumstances.

8 We do not agree that your proposed process is fair and proportionate, noting in particular that the process for reconsideration will significantly influence our level of involvement going forward, and that the desire to provide Westpower with a process as soon as possible appears to be driven by DOC, without sufficient regard to section 4 of the Conservation Act 1987.

9 Notwithstanding, we are prepared to act in good faith and provide our comments on the briefing process but only on the basis we are provided an opportunity to confirm that our views are properly represented, consistent with the framework set out in our June letter, before the briefing is finalised. We have therefore **attached** with this letter a copy of the draft briefing on the reconsideration process, marked up with our amendments.

10 Our primary concern is that this document lacks recognition of the significance of section 4 of the Conservation Act for the reconsideration process. In particular, there appears to be a continuing chasm of difference between, on the one hand, how Poutini Ngāi Tahu view section 4 and the implications of the *Ngāi Tai* decision, and on the other, the DOC position evidenced by the lack of reference to these important and guiding directions for all decisions made under the Act in the briefing document.

11 We have set out our views in this respect at paragraph 18 of the **attached** document, and respectfully request that these comments remain unaltered in the final briefing document.

12 Poutini Ngāi Tahu are deeply concerned that the DOC response to its position in respect of the relevance of the Tiriti Principles for this reconsideration process may breach our rights and interests under the Ngāi Tahu Claims Settlement Act and Te Tiriti o Waitangi, which we consider would constitute a clear breach of section 4. We therefore consider it essential that we meet to discuss the final briefing prior to the process for reconsideration being confirmed.

Next steps

13 We are open to discussing the reconsideration process further with you, including providing greater detail in respect of our comments on the updated draft briefing document.

- 14 Our point of contact for liaising with correspondence on behalf of Te Rūnanga o Ngāti Waewae and Te Rūnanga o Makaawhio is Rachael Evans, rachael.evans@ngaitahu.iwi.nz, 027 5066 989.

Na māua noa, nā



Francois Tumahai
Chairman
Te Rūnanga o Ngāti Waewae



Paul Madgwick
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