



30 May 2022

To: Hon Kiritapu Allan
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Tēnā koe Kiritapu

Letter of support: Waitaha Hydro Scheme Reconsideration

- 1 On behalf of Te Rūnanga o Ngāti Waewae and Te Rūnanga o Makaawhio (*Poutini Ngāi Tahu*) we write in support of Westpower's application to ask that the Minister for Conservation (the *Minister*) reconsider the 27 August 2019 concession decision (made by the Minister for the Environment) relating to the Waitaha hydro scheme (*the decision*).
- 2 Poutini Ngāi Tahu exercise tino rangatiratanga within our respective takiwā and are the kaitiaki of the natural and physical resources on the West Coast.
- 3 Poutini Ngāi Tahu are particularly concerned that the decision:
 - 3.1 was simply wrong and made without any meaningful engagement with Poutini Ngāi Tahu. This failure also raises fundamental issues regarding the fulfilment of the Crown's obligations and the Treaty of Waitangi; and
 - 3.2 deprives Poutini Ngāi Tahu of any ability to recognise its direct interest, noting it is now a partner with Westpower in relation to the project.
- 4 More generally, the failure to consult adequately with Poutini Ngāi Tahu and to refuse the grant the concession without reference to us offends our rangatiratanga rights as mana whenua, which the Crown is under a positive obligation to protect.
- 5 This letter follows our earlier correspondence (including letters sent on 11 February 2020, 15 April 2020, 15 June 2020 and 12 November 2020). We have expanded on some of the matters set out but want to emphasise that our previous concerns remain.

Benefit of the project

- 6 The Waitaha hydro scheme would be of significant benefit to Poutini Ngāi Tahu and the wider West Coast communities.
- 7 Poutini Ngāi Tahu has maintained an interest in the project since it was originally proposed. As noted, since the decision, Poutini Ngāi Tahu and Westpower have reached a partnership agreement in relation to the project. Assuming the project proceeds, Poutini Ngāi Tahu will have a direct financial interest in the project.
- 8 More generally Poutini Ngāi Tahu is keen to ensure security of supply for the West Coast, noting:
 - 8.1 additional power generation will reduce the amount of energy being transmitted to the region, reducing transmission charges; and
 - 8.2 the sharing of the benefits of the hydro scheme with comparatively cheaper power (and line charges) for the West Coast.
- 9 This is important to us as part of our obligation is to provide for our iwi and manaaki visitors and the community well.
- 10 Security of supply is also an important consideration in the Ngāi Tahu Climate Change strategy He Rautaki mō te Huringa o te Āhuarangi. In particular, Poutini Ngāi Tahu see the impact of climate change on it and the conservation of taonga within its takiwā as hugely significant issues. Poutini Ngāi Tahu see renewable energy as part of the solution and therefore strongly support the project.

Consultation and Treaty principles

- 11 Poutini Ngāi Tahu are extremely disappointed that we were not meaningfully consulted throughout the application process and prior to the decision being issued.
- 12 We are strongly of the view that far too much focus has been on natural character and amenity with no consideration of, for example, the interests of Poutini Ngāi Tahu, the Treaty principles or their broader context.
- 13 We are strongly of the view that if the decision making Minister (being the Minister for the Environment) had properly engaged with us a different decision would have been made.
- 14 This failure needs to be seen in light of the Department's wider failure to honour the Treaty. Although recognising that the principles evolve over time and vary depending on the context and issues at play, the following principles are relevant (both procedurally and substantively) and are engaged here:
 - 14.1 ***The Principle of Partnership***. This requires that the Minister (and the Department) to work together with iwi, and within that we owe each other duties of fair conduct and good faith:

- (a) To the extent that the Minister for the Environment may have relied on advice developed by the Conservation Board and the Department then we do not regard that as sufficient. Similarly, the Board cannot rely solely on its representative iwi members.
- (b) In good faith all Ministers must respect and properly represent Poutini Ngāi Tahu concerns and interests. This is **not** consultation but rather 'co-operation' in light of the obligation of good faith and partnership to each other.

14.2 **Rangatiratanga.** This can be referenced directly with Article 2 of the Treaty and includes ideas and values around sovereignty, leadership, autonomy, and self-determination:

- (a) Within the above are concepts around stewardship and looking after others (in this case that includes both members of Poutini Ngāi Tahu and the West Coast) along with ensuring well-being.
- (b) For the Minister for the Environment to make the decision he did without proper reference to us as Treaty Partner, and to impact Poutini Ngāi Tahu and the wider West Coast through declining the concession is an offence to our rangatiratanga.

14.1 **The Principles of Reciprocity and Mutual Benefit.** These reflect the equal status of the Treaty Partners and including an obligation to enable Māori wellbeing:

- (a) This is important as the Waitaha hydro will support Poutini Ngāi Tahu wellbeing and the wider West Coast.
- (b) Poutini Ngāi Tahu are also concerned that their views in relation to the appropriateness of the project, along with now their interest in it have been ignored. The Proposal is consistent with ongoing recognition of natural, cultural and historical values while enabling Poutini Ngāi Tahu, Westpower and the wider West Coast.

14.2 **A duty to make informed decision.** Any Minister, in exercising their statutory functions, is under a duty to make fully informed decisions. In this instance the Minister for the Environment was under an obligation to ensure the concerns of Poutini Ngāi Tahu were properly explored and understood. This simply did not occur.

14.3 **The Principle of active protection.** The principle is a positive obligation on the Crown to protect Māori interests. It includes a duty on the Crown to protect Māori rangatiratanga. We emphasise that:

- (a) Enabling Poutini Ngāi Tahu is central to the principle of active protection;

- (b) Our views should have been sought and carefully considered by the Minister (and to date have not been); and
- (c) This includes ensuring Poutini Ngāi Tahu are not prevented from accessing and potentially using resources.

- 15 The discussion above is not intended to be exhaustive. However, overall the Poutini Ngāi Tahu view is that the decision has been made following breaches of these highly relevant treaty principles by both the Department and the Minister for the Environment in declining to grant the concession.
- 16 Again, we firmly believe that a different decision would have been reached had the interests of Poutini Ngāi Tahu been properly sought and understood. We are very concerned by the decision made and ask that you, as Minister for Conservation, carefully reconsider it.
- 17 In the first instance we ask that you meet with us in our takiwā to talk through our position (and the relevant treaty principles) in more detail.

Na māua noa, nā



Francois Tumahai
Chairman
Te Rūnanga o Ngāti Waewae



Paul Madgwick
Chairman
Te Rūnanga o Makaawhio