



4th Cycle Universal Periodic Review on New Zealand Human Rights Themes: Indigenous Peoples Rights and Justice

About Wairarapa Moana ki Pouākani Incorporation

Wairarapa Moana ki Pouākani Incorporation (WMI) represent the descendants of the original owners of Wairarapa Moana – 4,000 Māori owners, and their whānau (families).

Our people have genealogical links to the wider iwi (tribes) of Ngāti Kahungunu ki Wairarapa and Rangitāne o Wairarapa. WMI is led by the Committee of Management, who are elected by the Māori owners. We are a Māori Land Incorporation, with a large dairy farming and forestry enterprise at Mangakino in the South Waikato of Aotearoa New Zealand.

The Issue

Our journey to have our lands returned dates back to events in the 1850s – 170 years ago.

In 2017 WMI lodged a resumption applicationⁱ with the Waitangi Tribunal under the Treaty of Waitangi Act 1975 for the return of lands, taken under the Public Works Act in the 1940s. Rather than allow this process to reach a conclusion, the New Zealand Parliament passed legislation which brought an abrupt end to our legal proceedings.

The New Zealand Government **stopped** the return of our lands by the Waitangi Tribunal.

This was a breach of our human rights and the Treaty of Waitangi.

What the experts have said about the Wairarapa Moana ki Pouākani Case

Waitangi Tribunal

The Waitangi Tribunal in their 18 November 2021 Reportⁱⁱ, on the WMI resumption application and the Treaty of Waitangi settlement process state:

- ▶ The Crown's Settlement process was unfair, will exacerbate divisions in the claimant community, and will not be durable.
- ▶ That the Settlement Trust (wider tribal grouping) had no mandate to enter into settlement with the Crown concerning the interests of WMI and the Pouākani lands (Wai 85)

On the 12 December 2022, following the decision of the New Zealand Supreme Court, the Waitangi Tribunal issued a memorandum – directionsⁱⁱⁱ observing:

"...if the Ngāti Kahungunu ki Wairarapa Tāmaki nui-ā-Rua Claims Settlement Bill were not passed into law tomorrow, the Tribunal would pursue the path outlined for it in Wairarapa Moana ki Pouākani v Mercury NZ Ltd [2022] NZSC 142. This might have the effect of returning significant hydro assets to the Wairarapa Moana ki Pouākani Incorporation or another appropriate entity. It might also have resolved longstanding raru between tangata whenua at Pouākani and Wairarapa Māori through a tikanga process that was allowed to run its course. However, the government has decided to extinguish those possibilities by passage of law tomorrow."

Independent Monitoring Mechanism for the UN Declaration on the Rights of Indigenous Peoples

The Aotearoa Independent Monitoring Mechanism for the United Nations Declaration on the Rights of Indigenous Peoples in their July 2023 report^{iv} state that the WMI case highlights the complexity of the treaty settlement process, the emphasis on unilateral parliamentary sovereignty above all else, and that in the absence of any constitutional protection, the legislature continues to breach the fundamental civil and Treaty of Waitangi rights of Māori.

Recommendation

Wairarapa Moana ki Pouākani Incorporation **recommend** the New Zealand Government:

► **COMMIT** to returning to WMI the lands which were the subject of our resumption application to the Waitangi Tribunal.

or

► **UNDERTAKE** to meet its obligations under Article 28(2) of the United Nations Declaration on the Rights of Indigenous Peoples to provide compensation that is ‘equal in quality, size, and legal status or of monetary compensation or other appropriate redress.’

Timeline of Wairarapa Moana ki Pouākani Incorporation Wai 85 Treaty of Waitangi Claim

- 1853 - 1896**
Wairarapa Māori successfully resisted strong pressure from the Crown to relinquish control of Wairarapa Moana.
- 1896**
Wairarapa Moana and surrounding lands, gifted to the Crown by Wairarapa Māori, with Crown agreeing to provide other land in the Wairarapa in return.
- 1916**
Crown refused to provide lands in the Wairarapa, and instead 30,486 acres of the Pouākani block in the South Waikato, was vested in Wairarapa Moana owners.
The land at Pouākani was inaccessible by road or rail. Promises were made about access that was not provided until the 1940's hydro scheme development.
- 1940s**
The construction of the town and the dam occurred before notice was given to the Wairarapa Māori owners or the process to acquire the land had begun.
- 1949**
787 acres taken under the Public Works Act for the development of hydro power.
- 1987**
Some of the lands taken for hydro-development was transferred to the Electricity Corporation of New Zealand, a State-Owned Enterprise.
- 1989**
WMI lodges a claim with the Waitangi Tribunal (Wai 85) claim in relation the Crown taking their land which breached the Treaty of Waitangi.
- 2011**
Wairarapa Moana owners mandate the Committee of Management to settle Wai 85 on their behalf. Mandating and negotiations begin with the wider Tribal group (Wairarapa Tamaki nui a Rua).
- February 2017**
WMI lodge application with Waitangi Tribunal for the return of some of the Pouākani lands under the Treaty of Waitangi Act 1975.
- March 2020**
Waitangi Tribunal issues “Preliminary Determination” indicating support for return of the Pouākani lands to an entity representing all of Ngāti Kahungunu ki Wairarapa Tāmaki nui-ā-Rua. Decision appealed by various parties to the New Zealand High Court.
- March 2021**
High Court decision that section 8A of the Treaty of Waitangi Act 1975 that land can only be returned to *mana whenua* (those with customary interests). Decision appealed to the Supreme Court.
- November 2021**
Waitangi Tribunal releases report which concludes that only WMI have the mandate to settle Wai 85, and the Crown should “pause” the settlement process.
- 4 February 2022**
Crown introduces Ngāti Kahungunu ki Wairarapa Tāmaki nui-ā-rua Claims Settlement Bill, that extinguishes Wai 85 claim.
- 7 December 2022**
Supreme Court upholds WMI appeal and confirms eligible for return of lands. Case referred back to the Waitangi Tribunal.
- 13 December 2022**
Third Reading of Settlement Legislation Bill passed through New Zealand Parliament, followed by Royal Assent.

Settlement of Wai 85 forced on WMI, and Waitangi Tribunal jurisdiction to continue consideration of resumption application for return of lands extinguished by New Zealand Parliament.

Questions

When the New Zealand Government decided to pass settlement legislation and extinguish WMI Wai 85 active legal proceedings what consideration was given to compliance with international human rights mechanisms, such as the International Covenant on Civil and Political Rights and the United Nations Declaration on the Rights of Indigenous Peoples?

Why did the New Zealand Government decide to ignore the recommendations of the Waitangi Tribunal (an expert body on the Treaty of Waitangi), and extinguish Wairarapa Moana ki Pouākani Incorporation Treaty of Waitangi claim, and bring an end to active legal proceedings?

The New Zealand Government's Treaty Settlement policy^v is that settlements are to be durable, fair, achievable, and remove the sense of grievance. How did the New Zealand Government achieve this, in the case of the Ngāti Kahungunu ki Wairarapa Tāmaki Nui-ā-Rua settlement?

Why has the New Zealand Government ignored the rule of law and the Constitutional rights of the people?

GLOSSARY

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| Wairarapa Moana | Lakes Wairarapa and Ōnoke and contributing waterways. |
| Māori Land Incorporation | Māori Land Incorporations are set up under Te Ture Whenua Māori Act 1993 (Māori Land Act). |
| Waitangi Tribunal | The Waitangi Tribunal is an expert body set up to make recommendations on claims brought by Māori relating to Crown actions which breach the Treaty of Waitangi. |
| Treaty of Waitangi | The Treaty of Waitangi is New Zealand's founding document signed in 1840 which formed the basis of the British annexation of New Zealand. Te Tiriti o Waitangi – known in English as the Treaty of Waitangi is a written agreement made between tangata whenua (the first peoples of Aotearoa) and the British Crown. The Treaty of Waitangi is a relationship between the indigenous peoples of Aotearoa – Māori and Crown. |
| Aotearoa Independent Monitoring Mechanism | Independent Māori working group created in 2015. Members have been selected by their iwi (tribal nation) and endorsed by the National Iwi Chairs Forum to act as independent experts. |
| Iwi | Tribe |
| Crown | The expression the Crown refers to the executive branch of government (which is the branch that carries out the administration of government) and stands for the historical authority of the sovereign (the King) as head of State. Executive government is made up of the Government-General (the King's representative), Ministers who are Members of Parliament (the legislative or law-making arms of the government) and their departments. |
| raru | conflict |
| Tangata whenua | The first peoples of Aotearoa New Zealand |
| mana whenua | The mana held by local people who have authority over land or territory in a particular area, derived from whakapapa(genealogy) links to that area. |

REFERENCES

- i Resumption applications are made under s 8A of the Treaty of Waitangi Act 1975 for memorialised former State-Owned Enterprise land. [Treaty of Waitangi Act 1975 No 114 \(as at 17 December 2022\)](#), Public Act 8A Recommendations in respect of land transferred to or vested in State enterprise – [New Zealand Legislation](#)
- ii Waitangi Tribunal Decision, 18 November 2021 [Tribunal Decision.pdf \(justice.govt.nz\)](#)
- iii Waitangi Tribunal Memorandum following Supreme Court decision, 12 December 2022.
- iv Aotearoa Independent Monitoring Mechanism for the United Nations Declaration on the Rights of Indigenous Peoples, July 2023 Report, pages 12 -13.
- v [Te Arawhiti – The Red Book](#)

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