

The Treasury

Mixed Ownership Model for Crown Commercial Entities: Shares Plus Proposal Information Release

21 December 2012

Release Document

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Key to sections of the Official Information Act 1982 under which information has been withheld.

Certain information in this document has been withheld under one or more of the following sections of the Official Information Act, as applicable:

9(2)(a) - to protect the privacy of natural persons, including deceased people

9(2)(b)(i) - to protect trade secrets

9(2)(b)(ii) - to protect the commercial position of the person who supplied the information, or who is the subject of the information

9(2)(f)(ii) - to maintain the current constitutional conventions protecting collective and individual ministerial responsibility

9(2)(f)(iv) - to maintain the current constitutional conventions protecting the confidentiality of advice tendered by ministers and officials

9(2)(g)(i) - to maintain the effective conduct of public affairs through the free and frank expression of opinions

9(2)(h) - to maintain professional legal privilege

9(2)(i) - to enable the Crown to carry out commercial activities without disadvantage or prejudice, or

Not relevant.

Where information has been withheld a reference to the applicable section of the Official Information Act has been made, as listed above.

In preparing this Information Release, the Treasury has considered the public interest considerations in section 9(1) of the Official Information Act.

Reference: T2012/2549

Date: 4 October 2012



To:
Minister of Finance
(Hon Bill English)

Associate Minister of Finance
(Hon Steven Joyce)

Minister for State Owned Enterprises
(Hon Tony Ryall)

Attorney-General
(Hon Christopher Finlayson)

Deadline: 9.30am, Friday 5 October

Aide Memoire: Shares plus consultation: feedback from hui

This note describes the shares plus consultation to date, and summarises the feedback received from the six consultation hui.

Consultation process to date

The process consists of a written submissions process for anyone who considers themselves to be directly affected and, in addition, a series of hui for those with a direct interest in the water and geothermal resources used by one or more of MRP, Genesis and Meridian.

Six hui were held between 18 September and 27 September 2012. The Government was represented at each hui by Hon Bill English.

The number of attendees as recorded by Te Puni Kokiri is set out in the table below. Some attendees spoke on behalf of iwi or affiliated groups, while others spoke as individuals. At the Hamilton hui a number of attendees represented the “Mighty River People’s Power”, a political group opposed to asset sales.

| Hui | Attendees (excl. Government officials) |
|-----------------------------------|---|
| Hamilton, Tuesday 18 September | Approx 15 |
| Taupo, Wednesday 19 September | Approx 90 |
| Whanganui, Wednesday 19 September | Approx 50 |
| Te Kuiti, Wednesday 26 August | Approx 15 |
| Tuai, Thursday 27 August | Approx 46 |
| Christchurch, Thursday 27 August | Approx 30 |

Quality of the consultation process

A number of speakers felt that the consultation process was inadequate, for one or more of the following reasons:

- The Crown had a predetermined view,
- The consultation period was too short,
- The scope of the consultation was too narrow, and disconnected from wider issues,
- The consultation addressed iwi rather than hapu, and
- Individuals did not feel they had the resources to engage (or in some cases wanted to rationalise their resources/time and effort into their engagement with the Crown on other matters such as the historical Treaty settlement process).

Some speakers noted that although they were attending the hui they did not want to engage in the substance or make submissions (or were prevented from doing so) because they were part of or supported the Turangawaewae hui or the agreement to 'boycott' the government's hui.

Many of the issues raised were also raised by the New Zealand Māori Council and have already been considered by Ministers as part of their response to the New Zealand Māori Council's letter [T2012/2533 refers].

The criticism referred to above largely stems from a blurring of the distinction between the broader set of issues concerning water rights and interests and the much more limited "shares plus" issue. The sufficiency of the consultation process should be viewed in light of the limited subject areas for consultation. In addition, the consultation process was designed with a mind to the principles for consultation laid down by the courts, which, in summary are:

- Consultation includes listening to what others have to say and considering the responses.
- The consultative process must be genuine and not a sham.
- Sufficient time for consultation must be allowed.
- The party obliged to consult must provide enough information to enable the person consulted to be adequately informed so as to be able to make intelligent and useful responses.

- The party obliged to consult must keep an open mind, and be ready to change and even start afresh, although that party is entitled to have a work plan already in mind.

The “shares plus” consultation plan is consistent with these principles: the Government has a preliminary view on shares plus and a working plan based on that preliminary view, but has an open mind and is willing to change its mind if the submissions/consultation reveal persuasive arguments.

The Crown has good arguments, if necessary, that the consultation period was reasonable in the circumstances and given the limited nature of the issues, that sufficiently detailed information was provided, and that steps were taken to inform all affected parties of the Government’s views and the opportunity to participate in the consultation.

Crown’s preliminary view

The Crown’s preliminary view was that shares plus should not be progressed for a number of reasons, including that there were other and better ways to provide the same outcomes. This view has been presented in the media, set out in the initial letter seeking written submissions, and set out in the presentation given by Hon Bill English at the hui and provided in hard copy to participants.

The feedback from the consultation hui does not appear to officials to provide any reason to change this view. The written submissions process still has one more day to run, however, and we will provide further advice on Monday 8 October 2012. We note that written submissions are more likely to address the technical aspects of shares plus, so the analysis here is primarily “thematic” and may not be representative of the intricacies of written submissions made as part of the consultation process.

Themes from oral submissions

Comments on shares plus

Broadly for

- Shares plus is one of a range of possible options
- Shares plus recognises and preserves the relationship between iwi and the mixed ownership companies
- We have little confidence that existing processes will assist in progressing our claims

Broadly against

- Shares plus does not address the totality of Maori rights and interests in water
- There is no connection between water rights and shares
- We have little confidence that shares plus will assist in progressing our claims

- We would prefer to focus on our existing engagements with the Crown (for various iwi, these included settlement negotiations, the Freshwater Iwi Leaders Group and/or resource management processes)
- We have no opinion on shares plus
- We do not want to spend our time discussing shares plus
- Shares plus will lower the value of the companies
- Shares plus introduces the risk of conflict between owners

Comments on Maori rights and interests in water and geothermal resources

A large number of the oral submissions focused on wider iwi rights and interests, and how these might be resolved. Some, but not all, speakers felt that their claims needed to be resolved before shares in mixed ownership companies are sold.

The wider issues are not directly relevant to the shares plus consultation. The oral submissions have been formally recorded, however, and will be shared with officials working in the relevant areas as will any relevant written submissions.

Process from here

- A meeting to discuss this aide memoire has been scheduled with Hon Steven Joyce tomorrow (Friday 5 October) at 9:30am, with Hons Ryall and Finlayson joining by phone
- The closing date for written submissions is Friday 5 October
- A full analysis of submissions, both oral and written, will be provided to you on Monday morning, and we understand that a meeting to discuss the report has been scheduled with Hon Tony Ryall for Monday 8 October at 3.30pm
- We are working to prepare a Cabinet paper for discussion at the Cabinet meeting on Monday 15 October. We plan to provide Ministers with a draft for discussion at a meeting scheduled for Thursday 11 October (time tbc).

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