

The Treasury

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

21 December 2012

Release Document

www.treasury.govt.nz/publications/reviews-consultation/sharesplus

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.



Cabinet

CAB Min (12) 31/17

4 SEP 2012

Copy No:

16

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Mighty River Power Initial Public Offering: Waitangi Tribunal's Interim Report (Stage One, Wai 2358)

Portfolios: Finance / State Owned Enterprises

On 3 September 2012, Cabinet:

- 1 **noted** that planning for the Mighty River Power initial public offering (MRP IPO) has been subject to Cabinet's response to the Waitangi Tribunal's (the Tribunal) report on stage one of the National Fresh Water and Geothermal Resources Claim (Wai 2358) [CAB Min (12) 29/8];
- 2 **noted** that the Tribunal provided its interim report on 24 August 2012, and that it found that Maori do have residual proprietary interests in particular water bodies:
 - 2.1 these are localised, not generalised interests (i.e. the rights belong to those particular iwi/hapu who have water bodies in their rohe);
 - 2.1 these interests include commercial/development rights;
 - 2.2 where the recognition of these rights is not possible, or where these rights have been breached in the past, compensation/redress for the loss of those rights including their commercial value is appropriate;
- 3 **noted** that the Tribunal accepted the Crown's arguments and assurances that:
 - 3.1 the sale of shares will not prevent the Crown from providing appropriate rights recognition post-sale or deter the Crown doing so (i.e. there is no "chilling effect" as alleged by the claimants). The Tribunal recorded its view that the honour of the Crown was engaged by the Crown's assurances on these matters;
 - 3.2 the Crown will be able to provide almost all forms of commercial rights remedy/redress after the sale (save for their finding on "shares-plus") whether it be modern water rights (where Maori grant or own water permits for hydro and geothermal power), a royalties regime, joint ventures, or some other form of commercial benefit;
 - 3.3 shares are not a suitable proxy for the recognition of Maori rights and interests in water;

4 **noted**, however, that the Tribunal also found that:

- 4.1 the sale of up to 49 per cent of shares in power generating State Owned Enterprise companies does affect the Crown's ability to recognise these rights and remedy their breach (where such breach is proven) if the Crown fails to first preserve the "shares-plus" remedy proposed by the Tribunal;
- 4.2 the removal of "shares-plus" would be a breach of the Crown's Treaty duty to actively protect Maori rights to the fullest extent reasonably practicable (and its Treaty duty to provide remedy or redress for well-founded Treaty claims);
- 4.3 the recommended Treaty-compliant approach was an urgent national hui where the Treaty partners negotiate a solution with regard to MRP, Meridian Energy and Genesis Energy prior to the sale proceeding;

5

6

7

8

9

10

11

12

13

14


noted that the "shares plus" recommendation is neither unique nor practical as a form of redress and that its benefits can be provided post IPO;

noted that the Crown and the MRP are operationally ready to commence the sale of MRP on 17 September 2012;

noted that undertaking consultation (of a four to six week period) prior to the MRP IPO would preclude an IPO in 2012;

- 15 **noted** that delaying the MRP IPO carries commercial and fiscal consequences including:
- 15.1 a delay of six months to the whole programme with increased risk to the Crown from reducing the available slots from four to three, and delay to the government reaching its debt objectives;
 - 15.2 associated cost to the Crown in the region of an additional seven million dollars in preparation costs;
- 16 **agreed** to proceed with the MRP IPO in March-June 2013, and undertake a consultation with affected parties on “shares plus” concluding on 5 October 2012;
- 17 **authorised** the Minister of Finance, the Minister for State Owned Enterprises, and the Attorney-General to determine the details of the consultation.

[Not relevant to request]



Secretary of the Cabinet

Reference: CAB (12) 470

[Not relevant to request]

