

The Treasury

Mixed Ownership Model for Crown Commercial Entities: Treasury Advice Information Release

4 September 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:

- [1] 9(2)(a) - to protect the privacy of natural persons, including deceased people
- [2] 9(2)(b)(ii) - to protect the commercial position of the person who supplied the information, or who is the subject of the information
- [3] 9(2)(f)(iv) - to maintain the current constitutional conventions protecting the confidentiality of advice tendered by ministers and officials
- [4] 9(2)(g)(i) - to maintain the effective conduct of public affairs through the free and frank expression of opinions
- [5] 9(2)(h) - to maintain professional legal privilege
- [6] 9(2)(i) - to enable the Crown to carry out commercial activities without disadvantage or prejudice, or
- [7] Information is out of scope or not relevant.

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

Date: 3 February 2012

To: Minister of Finance
Associate Minister of Finance (Hon Steven Joyce)
Minister for State Owned Enterprises

Aide Memoire: Background Note on s27B Memorials

Section 27 of the State-Owned Enterprises Act 1986 is structured as follows:

- S27A requires that any land transferred to a SOE under the SOE Act carry the following note on the certificate of title: *“Subject to section 27B State-Owned Enterprises Act 1986 (which provides for the resumption of land on the recommendation of the Waitangi Tribunal and which does not provide for third parties, such as the owner of the land, to be heard in relation to the making of any such recommendation).”*
- S27B states that, where the Waitangi Tribunal recommends that land transferred to a SOE under the SOE Act return to Maori ownership, the Crown must “resume” the land and return it to Maori ownership.
- S27C states that land resumed by the Crown under s27B will be acquired under Part 2 of the Public Works Act.
- S27D gives the Governor-General the power to order resumption of land transferred to an SOE under the SOE Act, if it has special spiritual, cultural, or historical tribal significance.

Note that the provisions relate to land (or interest in land) only, and do not apply to assets on the land.

Background

When the SOE Act was passed in 1986, Maori were concerned that the land transferred to SOEs would no longer be available to settle Treaty claims. They argued in Court that the transfer of land to SOEs, without ensuring that that land remained available for future Treaty settlements, was inconsistent with the principles of the Treaty, and therefore breached section 9 of the SOE Act.

In what is commonly known as the Lands case, the Court of Appeal agreed and held that the Crown was obliged to administer the Act so that Maori Treaty claims to land transferred to SOEs were protected.

The Crown and Maori then agreed to a mechanism that would ensure land remained available for future settlements. Any land transferred to SOEs would have a “memorial”

placed on the certificate of title, stating that it could be compulsorily repurchased by the Crown if the Waitangi Tribunal recommended its return to Maori.

Section 27A of the State Owned Enterprises Act 1986 requires a memorial (a formal notation or record) be placed on all titles to Crown land transferred to any state-owned enterprises under that Act. The effect of such a memorial is that under s27B, the Waitangi Tribunal can in specified circumstances order the Crown to take back or 'resume' a property to be used in settling a Treaty claim, unless the Crown and claimant groups first agree on a settlement. If resumption occurs, compensation is paid as if the property were being acquired under the Public Works Act 1981.

There is provision for similar memorials to be noted on the titles of former Crown railway land, and land transferred by the Crown to tertiary educational institutions.

What Happens to Memorials on Private Titles?

These memorials remain on the titles if they are sold to third parties, and are not removed until claims over the area concerned have been settled, or affected Maori groups agree to their removal. The memorial warns third parties that the property may be used for settling Treaty claims through resumption by the Crown.

What Happens After a Treaty Settlement?

As part of a settlement, claimant groups are typically required to relinquish their right to use s27B. See for example below an extract from the government's press release on the Port Nicholson Block Claim settlement:

Settlement legislation, once passed, will remove the ability of Taranaki Whanui ki Te Upoko o Te Ika to seek the resumption of properties with s27B memorials on the titles. The memorials will be removed when all other groups with interests in the Wellington area have settled their claims.

Has Land Ever Been Resumed Under s27B?

Yes and no.

The Waitangi Tribunal ordered a resumption in the *Turangi Township Remedies Report*, released in 1998. However, the Crown and the claimants agreed a negotiated settlement before the Tribunal's interim findings became binding. This settlement included the return of some memorialised properties.

The Tribunal is currently considering an application from Ngati Kahu which includes a request for resumptions.

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