

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.

Where information has been withheld, a numbered reference to the applicable section of the Official Information Act has been made, as listed above. For example, a [3] appearing where information has been withheld in a release document refers to section 9(2)(f)(iv).

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

Date: 16 March 2012

To: Minister of Finance
Minister for State Owned Enterprises

Aide Memoire: Protections for Maori under sections 27A-D of the SOE Act 1986

The office of the Minister for State Owned Enterprises asked for a written brief regarding the obligations to Māori that can affect the Mixed Ownership Model companies under sections 22 to 30(1) of the State Owned Enterprises Act 1986, and a comparison of these with those owed to Maori by Air New Zealand Ltd and Contact Energy Ltd. This information was requested by the Hon John Banks.

The sections that impose obligations to Maori are sections 27A-D of the State Owned Enterprises Act. These provide a regime for memorials to be placed on the titles of land that is transferred by the Crown to SOEs. A memorial is a note on the title inserted by the Registrar of Lands, indicating that this land must be resumed by the Crown if the Waitangi Tribunal makes a recommendation for its return to Maori ownership, or if the Governor-General, by order in council, requires the Crown to resume ownership of land that is wahi tapu. The land can be resumed by the Crown even if it is sold by an SOE. Any resumption of land is subject to the provisions of Public Works Act 1981 as if it were land or an interest in land required for both government work and a public work. In essence, the Public Works Act provides that the owner of the land is entitled to "full compensation" from the Crown, i.e. current market value.

Memorials stay on the titles until they are extinguished by a Claims Settlement Act. They can also be lifted by the Waitangi Tribunal under s.8D of the Treaty of Waitangi Act 1975 on application by a State enterprise or other owner of any land or interest in land.

There is no legislation that imposes any obligations to Maori on Air New Zealand Ltd.

The obligations under sections 27A-D of the SOE Act were imposed on Contact Energy Ltd by the State-Owned Enterprises (Contact Energy Limited) Amendment Act 1998.

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