

The Treasury

Mighty River Power Share Buyback Information Release

October 2013

Release Document

www.comu.govt.nz/publications/information-releases/mixed-ownership-model

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)(i) - to enable the Crown to carry out commercial activities without disadvantage or prejudice
- [6] 9(2)(j) - to enable the Crown to negotiate without disadvantage or prejudice
- [7] 9(2)(ba)(i) - to protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information would be likely to prejudice the supply of similar information, or information from the same source, and it is in the public interest that such information should continue to be supplied
- [8] 9(2)(h) - to maintain professional legal privilege
- [9] 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.

From: Juston Anderson [TSY]
Sent: Friday, 11 October 2013 11:46 a.m.
To: ^Parliament: Emily Richards; ^MOF: Andrew Craig; ^Parliament: Cameron Burrows;
^AssocMOF: Kathleen Lambert
Cc: John Crawford [TSY]; Adam Wood [TSY]; Aidan Meerman [TSY]
Subject: MRP share buyback

Hi all

There is a report coming across this morning (T2013/2602) with some advice on the buyback. But a question the Minister for SOEs office received from [1] this morning has made me realise there is one thing the report doesn't fully explain.

The question from [1] asked whether the Crown was going to sell some of its shares to MRP as part of the buyback. [1] said "the Govt could [maintain] its 51.75 percent shareholding, as long as it is done pro rata. Alternatively, the Government could stand on the sidelines and see its shareholding increased due to simple arithmetic."

This is not actually correct. As the report says, the Crown could only sell a maximum of just under 1 million shares to MRP in the buyback. This is for two reasons:

Typo - should read: 0.07%

Typo - should read: 51.07%

1. The Crown's current holding of 51.7% of MRP includes the loyalty bonus shares that the Crown has to give to eligible retail investors. These shares can't be sold. Excluding these shares, the Crown owns 51.04% of MRP – the 0.04% that we could in theory sell is just under 1 million shares
2. MRP is holding the shares it purchases as treasury stock, not cancelling them. This means the shares are still "issued shares" for the purposes of the 51% Crown ownership restriction in legislation, and they are shares owned by MRP, not the Crown.

In substance [1] is right – if the Crown doesn't sell shares to MRP, but other shareholders do, then the Crown's effective percentage of MRP increases. The Crown would receive a higher percentage of any dividends paid by MRP (since shares held as treasury stock don't receive dividends) and would have a higher percentage of shareholder votes (shares held as treasury stock don't have voting rights).

But legally, for the purposes of the 51% calculation, the Crown's ownership percentage stays the same.

If the Crown sold some shares to MRP, it would reduce its ownership percentage, regardless of what the other shareholders do. If other shareholders sell their shares to MRP, those shares are still owned by someone other than the Crown. This means the Crown can't do a "pro-rata" sell-down to match what the other shareholders do and maintain the same legal ownership percentage (even though its effective percentage ownership would stay the same).

Aidan has provided the Minister for SOE's office with a response to the [1] question. [9]

Juston Anderson | Senior Analyst, Commercial Transactions Group | **The Treasury**
Tel: +64 4 890 7211 || juston.anderson@treasury.govt.nz

CONFIDENTIALITY NOTICE

The information in this email is confidential to the Treasury, intended only for the addressee(s), and may also be legally privileged. If you are not an intended addressee:

- a. please immediately delete this email and notify the Treasury by return email or telephone (64 4 472 2733);
- b. any use, dissemination or copying of this email is strictly prohibited and may be unlawful.