The Treasury

Release of Submissions:
Mixed Ownership Model Consultation with Māori

Release Document

March 2012

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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.

Te Rūnanganui o Ngāti Hikairo

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22 February 2012

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Submission on The Mixed Ownership Model

Introduction

This submission is from Te Rūnanganui o Ngāti Hikairo. The contact person is:

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Background

Ngāti Hikairo is one of the five Iwi of the Rohe Pōtae (described in the Rohe Pōtae Land Claim of 1886). These King Country Pact tribes are:

Ngāti Hikairo *Ngāti Maniapoto* *Ngāti Raukawa*
Ngāti Tūwharetoa *Whanganui*

Ngāti Hikairo is a confederation of the following hapū:

Te Whānau Pani, Ngāti Ngāti, Ngā Uri o Te Makaho, Te Whānau o Te Ake, Ngāti Te Mihinga, Ngāti Horotakere, Ngāti Wai, Te Matewai, Ngāti Pare, Ngāti Purapura, Ngāti Te Uru, Ngāti Taiuru, Ngāti Huritake, Ngāti Waikaha, Ngāti Pōkaia, Ngāti Rāhui, Ngāti Puhiawe, Ngāti Hineue, Ngāti Parehinga, Ngāti Whatitiri, Ngāti Paretaikō and Ngāti Te Rahopupūwai.

Ngāti Hikairo occupy the lands and harbour of Kāwhia from Kārewa Island to Pirongia Mountain including the settlements of Kāwhia, Mōkai Kāinga and Ōpārau, Pirongia Mountain and beyond, to include the Waipā River and tributaries and the peat lakes. Our rohe includes the settlements of Harapepe, Te Rore, Ōhaupō, Pāterangi, Ngā Roto, Te Rahu, Mangapiko, Pirongia and Te Tahi.

Half of the tribal rohe, including the harbour and Pirongia Mountain, is in the Rohe Pōtae and the other half of the rohe is in the Waikato Deed of Settlement area. Te Rūnanganui o Ngāti Hikairo asserts that the responsibility for this entire area resides with Ngāti Hikairo and its hapū.

Te Rūnanganui o Ngāti Hikairo

On 13 February 1995, Te Rūnanganui o Ngāti Hikairo was incorporated under the Incorporated Societies Act 1908. The Rūnanganui was intended to provide the Iwi with an umbrella organisation through which decisions could be made on matters of interest and concern to Ngāti Hikairo and its people. These include issues relating to land, sea and natural resources. The need for a Rūnanganui was occasioned by the number of past and current issues, that have arisen over the lands, sea, the natural resources and the question of the mana whenua and mana moana over this area of the Rohe Pōtae. The Rūnanganui provides a voice for the Tangata Whenua of this rohe so that any confusion over questions of responsibility and direction concerning these matters can be resolved.

Summary of Position of Ngāti Hikairo on the Issue of the Mixed Ownership Model

Government proposes 3 options:

1 Include section 9 of the SOE Act in the new legislation in relation to the Crown's shareholding in these companies
2 Include a more specific Treaty clause describing how the Crown will meet its obligations
3 No general Treaty clause.

Currently Section 9 of the SOE Act provides that "nothing in this Act shall permit the Crown to act in a manner that is inconsistent with the principles of the Treaty of Waitangi".

Option 1

Te Rūnanganui o Ngāti Hikairo submits that the inclusion or otherwise of s. 9 in the new legislation turns on the question of whether community governance responsibilities relate just to the Crown. We submit that it does not.

If the Crown sold a strategic asset outright, one that is intimately connected to its governance responsibilities to communities, the argument can be made that those responsibilities do not cease, they simply transfer to whomever comes to own such an asset.

The argument that Crown obligations (as distinct from Crown responsibilities) in this area cease when the Crown is no longer an owner of such assets is also rejected but for different reasons. If the Crown absolves itself from governance obligations, then it damages its capacity to carry out government functions. In terms of the governance relationship with Mana/Tangata Whenua on these issues, it also damages that relationship and the ability of Mana/Tangata Whenua to exercise authority under Articles 1 and 2 of the Tiriti/Treaty of

Waitangi. We submit that this position involves the Government in a breach of its fiduciary obligation to us as Tiriti/Treaty Partner. This is clearly unacceptable to us and undesirable for government's ongoing credibility.

Te Rūnanganui o Ngāti Hikairo therefore submits that from a Tiriti/Treaty of Waitangi perspective, community governance responsibilities, particularly for strategic functions or strategic assets, should not be privatised.

We also believe that public good/common good or collective interests need to remain within a collective management and accountability regime. If this does not continue to be understood within a Crown:Māori framework, which we hope can be recovered through the constitutional reform process we are about to embark on, we submit that Crown obligations and Māori rights need to continue to be handled together and not split up through a segmented application of the law.

Te Rūnanganui o Ngāti Hikairo accordingly submits that section 9 needs to be clarified and amended to read "nothing in this Act shall permit the CROWN AND/OR OWNERS to act in a manner that is inconsistent with the principles of the Treaty of Waitangi". Notwithstanding the objections that we and others have with the Principles of the Treaty of Waitangi, at least it provides coverage to anyone who considers themselves to have ownership or governance interests in these strategic resources.

Option 2

The Crown states it is committed to the Treaty relationship through ongoing interaction with iwi and relevant Māori entities across the whole range of policy, well beyond the scope of section 9. Recent discussions on rights and interests in foreshore and seabed, water policy and radio spectrum rights with Māori have been dealt within this broader framework of cooperation and do not rely on section 9. In addition, any future Treaty claims fall as an obligation on the Crown not the company.

Te Rūnanganui o Ngāti Hikairo submits that while this may be the Crown's stated position, the operating effect of it, is to segment and divide these responsibilities. What is needed, we submit, is a shared understanding and commitment to action on these matters proceeding in an integrated manner, so that the holistic operation of Te Ao Māori finds its correct place at the centre of a philosophical and operating infrastructure that is agreed between the Crown and Mana/Tangata Whenua.

The Crown has said that certainty in expressing the Crown's Treaty obligations will help ensure the value of the taxpayers' investment and assist the sales process.

Te Rūnanganui o Ngāti Hikairo submits that the Crown's Treaty obligations need to be understood relationally and not simply legally. We believe that the effect of past and current application of the law compromises the practice of our tikanga, particularly in relation to those taonga referred to in Article 2. This is largely because the constricting nature of the legal process which cuts across our ability to practise our tikanga with respect to Articles 2 and 3. If the Crown continues to use the law in this way to assist a sales process, it will, necessarily, involve the Crown in a breach of Te Tiriti and the Treaty of Waitangi.

The Crown has the ability and the opportunity to work with Te Rūnanganui o Ngāti Hikairo and Iwi, as Treaty Partners, to provide certainty under a Tiriti/Treaty framework that is core to the foundations of New Zealand's constitution. This will more positively address the Crown's Tiriti/Treaty obligations as well as its good governance responsibilities.

Option 3

The Crown is engaging with Iwi to get a better understanding of what section 9 means in practice. Before coming to a firm view, the Government wants to ensure that it understands the views of Māori on these issues.

In relation to the notion that all Tiriti/Treaty clauses and/or references are removed from ensuing legislation, Te Rūnanganui o Ngāti Hikairo submits that this is an untenable position for the Crown as a Tiriti/Treaty partner in dealing with a publicly owned asset.

Any parties that become owners of public assets must be subject to Treaty obligations in relation to these assets. By contending that removal of Tiriti/Treaty clauses (and therefore the ensuing obligations) from legislation to control these assets, creates certainty for potential owners, is an abrogation of the Crown's role in government and is unacceptable to Te Rūnanganui o Ngāti Hikairo.

Te Rūnanganui o Ngāti Hikairo submits that if Crown action on the issue of a mixed ownership model results in a course of action that breaches Te Tiriti/Treaty, the Crown will demonstrate shamefully poor judgement and a lack of credibility as a Tiriti/Treaty partner.

Te Rūnanganui o Ngāti Hikairo submits that the Government needs to move to a more relational view of its practice of the kawanatanga function and needs to integrate and apply key Māori values to the thinking and practice of governance at all levels.

It is only when the kawanatanga function can embrace Mana/Tangata Whenua requirements for the care and protection of all the people of this country and the environment in all its forms, that we will approach workable solutions to questions such as arrangements for the future governance of our collective strategic resources.

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Kīngi Pōrima
Chairperson
Te Rūnanganui o Ngāti Hikairo