

The Treasury

Release of Submissions: Mixed Ownership Model Consultation with Māori

Release Document

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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.

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8 MARGUERITA ST
PO BOX 67
ROTORUA

Phone: (07)349-3234

Fax: (07)349-3239

Email: office@tagh.co.nz

Email: mixed-ownership-consultation@treasury.govt.nz

RE: SUBMISSION ON THE EXTENSION OF THE MIXED OWNERSHIP MODEL – A PROPOSAL TO CHANGE THE LEGISLATION IN RELATION TO CERTAIN STATE OWNED ENTERPRISES

Introduction

1. This submission is made on behalf of Te Arawa Group Holdings Limited (**TAGH**) on the Government's proposal with respect to the Mixed Ownership Model (the **MOM**) relating to Mighty River Power Limited, Genesis Power Limited, Meridian Energy Limited and Solid Energy Limited (the **SOEs**).
2. TAGH was incorporated in 2007 and is the commercial arm of Te Pūmāutanga o Te Arawa Trust (**TPT**). TPT is the post-settlement governance entity that received Treaty of Waitangi settlement redress pursuant to a deed of settlement between the Affiliate Te Arawa Iwi and Hapu and the Crown that was signed in June 2008. TAGH is specifically endorsed by TPT to create wealth and opportunity, be commercially focused and successful and strengthen the Affiliate Te Arawa Iwi and Hapu and their entities through robust economic growth.
3. TAGH's vision is to be a leader for the economic advancement of the Affiliate Te Arawa Iwi and Hapu and the associated whānau. The three essential elements underlying our vision are:
 - (a) our natural resources, cultural heritage, associations in the region and with other Iwi, and our contemporary situation (Treaty settlements);
 - (b) our strategic intent to develop collectives and investment clusters and to pool strengths and resources; and
 - (c) our focus on key sectors for investment: geothermal energy, commercial property, forestry, agribusiness and tourism.
4. TAGH is directed by our shareholders and by the nature of our asset base to grow and protect the equity of the company in order to achieve our shareholder's commercial aspirations. TAGH's submission on the MOM is made in light of its commercial purpose.
5. In making this submission, TAGH endorses the submission of Te Arawa River Iwi Trust (**TARIT**). TARIT's interests are linked to TAGH's as both entities act for and represent similar groups.

Summary of submissions

6. Given its commercial focus, TAGH's primary submission is that the Government should provide Māori with a specific opportunity to participate in the MOM and should also offer Māori a right of first refusal over the Crown's remaining 51% shareholding in the SOEs.
7. TAGH also submits that, given the rights and interests that Te Arawa groups have in the resources used by Mighty River Power and Genesis Power Limited, the MOM must not prejudice those interests or the relationships that those Te Arawa groups have fostered with those SOEs.
8. TAGH makes the following general submissions on the MOM:
 - (a) The Government ought to consult directly with TAGH on the MOM.
 - (b) The consultation on the MOM should have been extended to discussions about a broader range of issues, such providing specific opportunity for Māori to participate in the MOM for the benefit of the nation. TAGH would like to enter into formal discussions in that regard.

TAGH's primary submission - Māori participation in the MOM

9. TAGH would like to be given the opportunity to participate directly in the MOM, including by investing in the SOE shares.
10. Māori participation in the MOM as investors is explicitly excluded from the scope of this consultation.¹ This is regrettable. This consultation presented the Crown with an opportunity to engage with Māori on how Māori involvement in the MOM could be of strategic value to the Government. It is an opportunity that should not be missed.
11. At the consultation hui held in Rotorua on 8 February 2012, TAGH asked the Honourable Minister of Finance, Mr Bill English whether the Crown intends to sell down the remaining 51% of the shares in the SOEs at any stage. The Minister of Finance did not respond directly to that question but TAGH understands from public statements that the Government does not intend to sell down the remaining 51% of the SOEs.
12. If the Government has not intention to sell down the Crown's 51% interest in the SOEs, then TAGH requests that the Crown grant to Māori a right of first refusal over those shares. Given the Government's stated intention, the right will never be exercised, meaning that there is no detriment to the Government in granting the right. The right, if granted, will also act as a safeguard against a future sell down of those shares to overseas interests.
13. TAGH therefore submits that:
 - (a) the Government enter into formal discussions with TAGH and other iwi organisations in relation to direct and specific Māori participation in the MOM; and
 - (b) the Government offer rights of first refusal to Māori over the remaining 51% shareholding in the SOEs.

¹ Extension of MOM Consultation Document, p. 12.

Interests of SOEs in the Te Arawa rohe

14. Both Mighty River Power Limited and Genesis Power Limited enjoy the use of Te Arawa resources, particularly water and geothermal resources.
15. TAGH notes the Government's preference to exclude discussions about rights to fresh water and geothermal resources from the MOM consultation process. TAGH considers that it is difficult to exclude discussion on those matters unless the Government provides satisfactory assurances that the MOM will not impact on or adversely prejudice any future discussions on those matters. At this stage, it appears that no such assurances have been formally provided.
16. Further, TAGH currently engages with Mighty River Power Limited and Genesis Power Limited in relation to their use of resources within the Te Arawa rohe. Many other Te Arawa organisations also have strong connections and relationships to those SOEs. There is no certainty that the MOM will preserve and strengthen those existing and potential future relationships. That is a risk to TAGH and, perhaps more pertinently, the SOEs themselves.
17. TAGH therefore submits that:
 - (a) The Government must provide an assurance satisfactory to TAGH that the MOM will not prejudice existing and future discussions regarding Māori rights and interests in relevant natural resources; and
 - (b) The MOM should be implemented in a manner that preserves and enhances existing relationships between Māori and the SOEs.

Further submissions

18. TAGH makes the following further submissions in relation to the MOM:
 - (a) Section 9 of the State Owned Enterprises Act 1986 (the **SOE Act**) must be included in any New Legislation (the **New Legislation**) to give effect to the MOM.
 - (b) TAGH is not supportive of a reformulation of section 9 or a new "more specific"² Treaty clause.
 - (c) The consultation process followed by the Government has been rushed and Māori have had insufficient information on which to make an informed decision.
 - (d) Section 4(1)(c) of the SOE Act must be included in the New Legislation so that it continues to apply to the SOEs that will be subject to the MOM.

² Extension of MOM Consultation Document, p.5.

Conclusion

19. TAGH is committed to the Treaty relationship between Te Arawa and the Crown and looks forward to continued and meaningful discussion about these issues, particularly in relation to Māori participation in the MOM, the retention of section 9 in the New Legislation and an assurance from the Government that Te Arawa's rights and interests in our taonga will continue to be protected.

[1]

ROGER PIKIA
CHIEF EXECUTIVE OFFICER