

The Treasury

Release of Submissions: Mixed Ownership Model Consultation with Māori

Release Document

March 2012

www.treasury.govt.nz/publications/reviews-consultation/mixed-ownership/submissions

Key to sections of the Official Information Act 1982 under which information has been withheld.

Certain information in this document has been withheld under the following section of the Official Information Act, as applicable:

[1] 9(2)(a) - to protect the privacy of natural persons, including deceased people.

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, an [1] appearing where information has been withheld in a release document refers to section 9(2)(a).

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

This file note is a final summary report of the hui. It is not a full transcript or a full record of the hui. Names and personal information of attendees have been removed from the transcript under section 9(2)(a) of the Official Information Act 1982 to protect the privacy of natural persons.

HUI NOTES REPORT: Extension of the Mixed Ownership Model

Kaupapa	A proposal to change legislation in relation to: Genesis Power Ltd, Meridian Energy Ltd, Mighty River Power Ltd and Solid Energy New Zealand Ltd		
Location	Whanganui Racecourse Chairperson – Sam Bishara		
Date	9 February 2012		
Start time	3pm	Finish time	6pm
Crown Facilitator	Sir Wira Gardiner Local Co-Chair: Sam Bishara		
Presenter and lead officials	Hon Bill English Sir Harawira Gardiner Chris White (Treasury) Kim Ngārimu		
Minute taker	Marie McKay (TPK) Toroa Pohatu (TPK) Tom Baragwanath (TPK)		
Attendance	Approx (registered and public)		
Agenda	<ul style="list-style-type: none"> • Whakatau - • Introductions • Opening Address • Presentation • Q & A – facilitated by Sam Bishara • Chairs Summary and Close 		
Presentation	<p>Opening statements: Sam Bishara</p> <ul style="list-style-type: none"> • Introduces panel • Reads agenda • Housekeeping • Ground rules for media <p><u>MINISTERS SPEECH</u></p> <p>Mihi ki nga hau kainga me nga manuhiri</p> <p>Presenting government’s mixed ownership model. Welcoming questions from the audience.</p> <p><u>MIXED OWNERSHIP MODEL PRESENTATION</u></p> <p>Crown is not changing views on Treaty obligations. The Crown accepts that it has Treaty obligations, but is consulting on how these should be fulfilled.</p> <p>Section 9 will stay in the SOE Act. The question is whether the same clause will apply to the energy companies under the new Act.</p>		

This file note is a final summary report of the hui. It is not a full transcript or a full record of the hui. Names and personal information of attendees have been removed from the transcript under section 9(2)(a) of the Official Information Act 1982 to protect the privacy of natural persons.

	<p>This is about crown understanding obligations and consulting Māori on issues, rights and interests of Māori are preserved.</p> <p>The discussion around these SOEs has raised the role of iwi in regards to claims on water. The government has been dealing with issue of water with regard to individual treaty claims – and this is at the core of the treaty claim here in Whanganui. The government will deal with the merits of that claim within the Treaty claims process – and is making progress in Whanganui. Nothing else will change this. That is how issues around the awa will be dealt with.</p> <p>This discussion will not cut across issues of water management – and role of iwi in that management. Other broader issues around water are being dealt with by government and iwi – through hui under auspices of Tūwharetoa – who have been leading iwi involvement.</p> <p>Crown will be in a position to meet its treaty obligations.</p> <p>Context, what is the mixed ownership model</p> <ul style="list-style-type: none">- Crown retain 51% of shares and control- No other shareholder can own more than 10%- NZers are at the front of the queue including Iwi, incorporations etc. <p>Want to sell to use the \$5-7b to invest in high priority assets e.g. schools, ultra fast broadband.</p> <p>Gives NZ (including Māori) the chance to invest in proven companies.</p> <p>MOM company shares will be readily available for settlement redress, but the Government will buy these at the time of settlement and transfer them over.</p> <p>Consultation points:</p> <ul style="list-style-type: none">- There will still be a state owned enterprises act which will still have a S.9. This will continue to cover SOE's e.g. Kiwibank, etc- This is about taking out 4 companies from the SOE Act and put them in the Public Finance Act.- How the Crown can demonstrate its commitment to the TOW in this other Act of Parliament.- Technical changes only to other pieces of legislation. <p>The S.9 argument is all about protecting the Māori rights and interests that might arise from the changes in legislations.</p> <p>Three broad options for expressing the Crown's Treaty obligations in new legislation:</p> <ul style="list-style-type: none">- Transfer section 9 over- Include a more specific clause
--	---

This file note is a final summary report of the hui. It is not a full transcript or a full record of the hui. Names and personal information of attendees have been removed from the transcript under section 9(2)(a) of the Official Information Act 1982 to protect the privacy of natural persons.

	<ul style="list-style-type: none">- No general Treaty clause <p>The way Crown and Māori see the protection of resources and rights. Strong calls to ensure that those rights and interests aren't lost in the change. Particularly regarding water.</p> <p>There are a number of current protections around water.</p> <ul style="list-style-type: none">- Current arrangements between iwi and companies- Statutory processes- Claims to the Tribunal which have yet to be tested. Crown view is that no one owns the water <p>Following the presentation format....</p> <p><u>Slide 1: Title</u></p> <p><u>Slide 2: Benefits of Mixed Ownership</u></p> <ul style="list-style-type: none">• The Crown is committed to maintaining its obligations under the Treaty• s27 of the SOE Act to be replicated in the new mixed ownership model legislation• Three options for expressing broader Treaty obligations• Include s9 of the SOE Act, in relation to the Crown's shareholding in these companies• Include a new, more specific Treaty clause that clarifies the Crown's obligations• No general Treaty clause• Understand Māori views before making final decisions <p><u>Slide 3: The Mixed Ownership Model</u></p> <ul style="list-style-type: none">• Float up to 49% of four State Owned Enterprises• Genesis Power, Meridian Energy, Mighty River Power, Solid Energy• Government retains control• Minority shareholdings limited to 10%• New Zealanders will be at the front of the queue• List the companies on the stock exchange <p><u>Slide 4: The benefits of mixed ownership</u></p> <ul style="list-style-type: none">• The Government will borrow \$5-7 billion less, reducing its indebtedness to the rest of the world• \$5-7 billion in proceeds will be invested in high priority assets including schools, hospitals and public infrastructure, through the Future Investment Fund• New Zealanders will be able to invest in large and proven companies. This will strengthen the stock market and improve New Zealand's savings culture
--	--

This file note is a final summary report of the hui. It is not a full transcript or a full record of the hui. Names and personal information of attendees have been removed from the transcript under section 9(2)(a) of the Official Information Act 1982 to protect the privacy of natural persons.

	<ul style="list-style-type: none"> • The companies will have sharper incentives to perform well. They will be able to raise capital for growth more easily <p><u>Slide 5: The legislation</u></p> <ul style="list-style-type: none"> • Remove the four companies from the SOE Act • Put them under the Public Finance Act (PFA), with new controls that <ul style="list-style-type: none"> - Require the Crown to retain 51% of the shares - Limit other individual shareholdings to 10% • Replicate s27A-D in the PFA • Consulting on the treatment of s9 in the PFA • s9 will remain in the SOE Act • Technical consequential changes to some settlement acts <p><u>Slide 6: Māori rights and interests</u></p> <ul style="list-style-type: none"> • Māori rights and interests protected in a number of ways • Within the SOE Act <ul style="list-style-type: none"> - s9 provides a general, non-specific protection <p style="margin-left: 40px;"><i>“Nothing in this Act shall permit the Crown to act in a manner that is inconsistent with the principles of the Treaty of Waitangi”</i></p> <ul style="list-style-type: none"> - s9 was the basis for the <i>Lands</i> case, in which the Court of Appeal articulated the principles of the Treaty for the first time - The <i>Lands</i> case also resulted in s27A-D of the SOE Act - s27A-D protect land owned by SOEs that is subject to Treaty claims. The Tribunal can order the Crown to resume (buy back) the land for use in settlements <p><u>Slide 7: Māori rights and interests</u></p> <ul style="list-style-type: none"> • Beyond the SOE Act there are other layers of protection <ul style="list-style-type: none"> - Direct contractual relationships with the companies in respect of commercial arrangements and modes of operating in the community - Statutory processes under the Resource Management Act and other legislation - The Crown and Māori’s collaborative, good faith approach to policy making across a broad range of economic and social fronts – Fresh Start for Fresh Water, emissions trading scheme, local government, Whanau Ora <p><u>Slide 8: Māori rights and interests</u></p> <ul style="list-style-type: none"> • The mixed ownership model will not affect <ul style="list-style-type: none"> - Māori rights and interests in water - The SOEs do not own water, so water is not being sold
--	--

This file note is a final summary report of the hui. It is not a full transcript or a full record of the hui. Names and personal information of attendees have been removed from the transcript under section 9(2)(a) of the Official Information Act 1982 to protect the privacy of natural persons.

	<ul style="list-style-type: none">- Clarification of Māori rights and interests will continue through the water reform process <p>There is a high level discussion that goes on between the Crown and Iwi. There is no legal structure for the ownership of water. There are claims but these will be dealt with in the context of the treaty claims process.</p> <p>The Treaty settlement process, which will continue</p> <p><u>Slide 9: Investment opportunities</u></p> <ul style="list-style-type: none">• Investment opportunities are not affected by the legislation so are not part of the formal consultation• Investment opportunity arises during the marketing of each company in the run up to its float<ul style="list-style-type: none">- Individuals, including Māori, can invest through the public pool or through share brokers- Institutions, including iwi and other Māori entities, can invest through the book build• Mighty River Power to be floated around the third quarter of 2012, subject to market conditions <p>A number of iwi have expressed an interest in buying shares in these companies when they are floated. Iwi are long-term investors – they generally buy and don't sell – and they are not going anywhere.</p> <p><u>Slide 10: Three specific questions</u></p> <p>1 What rights and interests do Māori have in the Mixed Ownership Model Companies that are not protected by the section 27A-D memorials regime, or by other legislation?</p> <p>2 How would any rights and interests identified in question 1 be protected by continued application of section 9 of the State-Owned Enterprises Act 1986?</p> <p>3 Could any rights and interests identified in question 1 be protected by an alternative, more specific, formulation of the Crown's obligations under the Treaty?</p> <p><u>Slide 11: Consultation Process</u></p> <ul style="list-style-type: none">• Written submissions, 1-22 February• Hui, 8-16 February• Consultation with specific groups as necessary• Legislation introduced in March <p><u>Slide 12: Submissions</u></p> <ul style="list-style-type: none">• Deadline 5pm, Wednesday 22 February 2012• Late submissions won't be considered• Send to<ul style="list-style-type: none">- mixed-ownership-consultation@treasury.govt.nz, or- FreePost Authority No. 126395
--	--

This file note is a final summary report of the hui. It is not a full transcript or a full record of the hui. Names and personal information of attendees have been removed from the transcript under section 9(2)(a) of the Official Information Act 1982 to protect the privacy of natural persons.

	<p>Mixed Ownership Model: Consultation with Māori Commercial Transactions Group The Treasury PO Box 3724 Wellington 6140</p> <p>Slide 13: Discussion and questions</p> <p>Discussion and questions</p> <p>Sir Wira Gardiner: I am starting to see familiar faces from other hui. This hui is for the people of this region.</p>
--	---

<p>Questions / Comments</p>	<ul style="list-style-type: none"> • [Speaker]: Point regarding fracking, environmental pollution, water pollution. Minister English: Offered to take documents and have a look. • [Speaker]: How will the Govt maintain 51% ownership if the companies seek to raise capital by issuing more shares? Minister English: The law will state that the Govt's share shall not decrease below 51% of the value of the companies, this may require additional future funding from the Govt. • [Speaker]: Not enough time to give feedback. Māori interests in water will be adversely affected by the policy. Minister English: Other reforms currently underway will makes things better for Māori in the area of water E.g. Ngai Tahu involvement in the management of Lake Ellsmere, Waikato-Tainui involvement in the management of the Waikato river MOM policy won't affect these developments. • [Speaker]: We don't have any dams. You haven't given us enough time to consult fully with our people so we can come back with a more knowledgeable response to your paper. We are opposed to the changes because we don't trust you. Why are you changing? We don't need it. Māori have suffered enough. Minister English: We have a different view here. This is not going to harm Māori in general or your interests. What is happening around treaty settlements and water management in general is going to improve water quality. That is why a number of iwi are turning up and contributing to that process. Tainui are heavily involved in the management of the Waikato River – their focus is on how to restore the river. Forestry and iwi interests are now working on a plan to improve water quality. Ngāi Tahu are heavily involved in two projects – Lake Ellesmere and in the setting of policy and implementation of the plans. We have got a long way to go. These asset sales make no difference to these. • [Speaker]: Govt should set itself a 75% majority for progressing the MOM policy.
------------------------------------	--

This file note is a final summary report of the hui. It is not a full transcript or a full record of the hui. Names and personal information of attendees have been removed from the transcript under section 9(2)(a) of the Official Information Act 1982 to protect the privacy of natural persons.

	<p>Minister English: No. The election demonstrated public support for the MOM policy to progress.</p> <p>This consultation is not on asset sales overall, but on how to protect Māori rights within this process.</p> <ul style="list-style-type: none">• [Speaker]: Govt owes Taranaki iwi \$400 million, is still taking money from Taranaki iwi. Selling Genesis energy is the alienation of more Māori assets. <p>Would the Govt accept a Court challenge over the sale of these assets?</p> <p>Minister English: The Crown understands the depth of grievance in Taranaki. Settling Taranaki claims is progressing, the Govt takes this very seriously</p> <p>We acknowledge that the settlement process will never fully address these grievances. If you take the Crown to Court the Crown will turn up.</p> <ul style="list-style-type: none">• [Speaker]: How can we be sure that this isn't the start of throwing the Treaty out? <p>Why is the Govt granting mining rights to TAG Oil? Why are you letting TAG Oil release polluted water into our rivers?</p> <p>Minister English: The Govt has agreed to establish a constitutional review panel, this has been set up jointly between National and the Māori Party.</p> <p>This will allow NZers to have a say regarding our constitution.</p> <p>Regarding TAG Oil, there are a number of safeguards in place around mining, but the National Party is seeking to improve these.</p> <p>Our children need a future of jobs and incomes. NZ has resources, and we want to see these resources used to build a future.</p> <ul style="list-style-type: none">• [Speaker]: Concerns re: Genesis, ownership of petroleum-yielding assets. <p>How will Ngāti Hine interests be protected here? By reserving shares in Genesis? Or perhaps something like the Crown Forestry Rental Trust?</p> <p>Minister English: Any claims iwi wish to lodge will be dealt with as part of the settlement process.</p> <p>The Crown wants to preserve its capacity to settle these claims. This isn't a guarantee that any specific claims will be met or satisfied.</p> <ul style="list-style-type: none">• [Speaker]: At this time, Treaty issues in this region are very unsettled. We're worried that we're talking about major issues when the Treaty issues have not yet been settled. This policy is moving very rapidly. <p>What is the process to engage with Māori around the acquisition of shares? Could there be access to a preferential share base, a percentage for Māori that guarantees a shareholding? There are creative ways of doing this. If this is the next phase, please invite us.</p>
--	--

This file note is a final summary report of the hui. It is not a full transcript or a full record of the hui. Names and personal information of attendees have been removed from the transcript under section 9(2)(a) of the Official Information Act 1982 to protect the privacy of natural persons.

	<p>Minister English: We need to engage with iwi on this issue. Access to shares will be dealt with in the commercial phase of the policy, we need to get the legislative framework in place first.</p> <p>The Crown wants iwi/Māori to hold shares, this suits the partnership with the Crown.</p> <p>We're not there yet, we need to engage on this during the commercial stages.</p> <ul style="list-style-type: none">• [Speaker]: If Māori become shareholders, they should be given the opportunity to put Treaty protections in place. <p>The philosophy behind section 9 is to protect iwi rights. SOEs have become surplus to the Crown. Why don't locals get first right of refusal on these shares?</p> <p>The 51% public ownership of these SOEs would be enhanced through iwi participation and ownership.</p> <p>Minister English: The 51% Crown ownership is not up for consideration. Within the 49% there are plenty of opportunities for ownership.</p> <ul style="list-style-type: none">• [Speaker]: Voters don't just vote on one policy, this needs to be taken into account. Just because National got voted in doesn't mean everyone agrees with the mixed ownership model. <p>How will the Govt use shares for settlement if they are all sold? Iwi should be able to purchase shares.</p> <p>Minister English: Govt will pay for shares then transfer them over to iwi. There is always going to be a market willing to sell.</p> <p>Iwi settling with cash could buy shares at any point.</p> <p>Iwi should be treated differently from individual purchasers. We'll have to deal with this separately.</p> <p>The Govt's general approach is to favour NZ investors.</p> <p>There will be more than one opportunity to buy shares.</p> <ul style="list-style-type: none">• [Speaker]: Question re: MMP, why are there 121 seats instead of 120? <p>Minister English: Because of the overhang in the Māori seats.</p> <ul style="list-style-type: none">• [Speaker]: What is the Crown's understanding of Māori rights and issues? <p>How will the Crown ensure that the shares will remain in NZ hands?</p> <p>How do we begin to decide upon the format of the alternative clause?</p> <p>Minister English: Where Māori rights and interests exist, these are protected. These rights and interests are different for different iwi, e.g. Waikato-Tainui have interests in Waikato river basin assets.</p> <p>Settlements must take account of these different interests. The Govt is very careful about stating what these different Māori rights and interests are.</p>
--	--

This file note is a final summary report of the hui. It is not a full transcript or a full record of the hui. Names and personal information of attendees have been removed from the transcript under section 9(2)(a) of the Official Information Act 1982 to protect the privacy of natural persons.

	<p>Statutory processes exist to guarantee shares are sold to NZers. Māori have the ability to take part in these processes. When the Govt allocates 49%, the majority of these will be in NZ hands. Between 85 – 90% will remain in NZ ownership.</p> <p>After the initial share allocation, shareholders are free to buy and sell.</p> <p>This hui is designed to examine the content of section 9 or an alternative clause. We still have to look at alternative clauses.</p> <ul style="list-style-type: none"> • [Speaker]: What about the processes that have been established for settled iwi? Will the relativity clause be brought back? <p>Minister English: No.</p> <ul style="list-style-type: none"> • [Speaker]: Crafar farms sale – why didn't the Govt do anything about the farms being sold off in one big block? <p>Minister English: The Govt doesn't own these properties, so the Govt doesn't interfere here. The banks took the land, so the banks can decide what to do. That's the price and the risk of owning properties.</p> <p>Corporate farming will never work in NZ.</p> <ul style="list-style-type: none"> • [Speaker]: Claims customary, proprietary interest in NZ rivers. The Manawatu river is one of the worst polluted rivers in the western world. <p>Supports actions taken by the NZMC.</p> <p>The SOE shares should not be sold until the NZMC's claims have been heard. The sale of SOE shares without hearing this claim is a breach of the Treaty and of section 9. The nature of Māori interests in water needs settling first.</p> <p>Water rights are proprietary rights. The sale of shares without determining this issue is an affront to Māori and a fraud to investors.</p> <p>The PM's statements, such as "you can't own water", are misleading. Statements in the media are racist, Māori are not looking for ownership of water.</p> <p>9 or 10 consultation hui are not enough for this issue.</p> <p>The question is not should section 9 carry over, but how should you give effect to section 9? The sale of shares without resolving these claims is contrary to section 9.</p> <ul style="list-style-type: none"> • [Speaker]: Issues need to be clarified before the SOE sale can progress. No one may own water, but mana tangata whenua incorporates legal principles of stewardship and protection. <p>Māori are not ordinary people, they are tangata whenua.</p> <p>Supports NZMC claim, maintenance of section 9.</p> <ul style="list-style-type: none"> • [Speaker]: Yes, Māori have rights regarding SOEs. Section 9 needs to be retained with its exact wording. This will ensure the Crown's obligations to Māori continue to apply. <p>Section 9 states the importance of the Treaty relationship. As a settled iwi, we would find it disturbing to have section 9 changed now. Section</p>
--	--

This file note is a final summary report of the hui. It is not a full transcript or a full record of the hui. Names and personal information of attendees have been removed from the transcript under section 9(2)(a) of the Official Information Act 1982 to protect the privacy of natural persons.

	<p>9 is broad and overarching, not specific.</p> <p>Any attempt to redefine section 9 is unacceptable. An indication that Treaty principles should not apply to new legislation is a diminution of Treaty principles.</p> <p>Section 9 only applies to the Crown, it doesn't apply to private sector shareholding. Section 9 gives clear legal status to the Treaty.</p> <p>There is a risk that a new clause will reduce protection of Māori rights under the Treaty.</p> <p>The consultation timeframe is unacceptable, doesn't give Māori enough time to have any meaningful input.</p> <p>Any new clause needs to avoid backroom deals. There should not be changes in legislation in exchange for preferential investments. The sale of the 49% is a diminution of the Crown's Treaty responsibilities.</p> <ul style="list-style-type: none"> • [Speaker]: There are a range of engagements regarding water reform. Our river claim is limping along, and is clearly not as important as rushing through with asset sales. <p>None of these discussions should be separated, the issues are interlinked and should not be treated separately.</p> <p>The Whanganui MTB opposed the removal of Genesis and Mighty River Power from the SOE Act, because claims are yet to be heard. Negotiations have to be concluded first. How can Māori agree to partial privatisation when these are not yet resolved?</p> <p>There are many disastrous third party relationships between local or regional authorities and Māori.</p> <p>The discussion should be about how to boost share value through promoting a bicultural nation, not worrying about Treaty obligations.</p> <p>Outstanding claims relating to the rivers need to be settled first. There is a tribunal report confirming our relationship with the river.</p> <ul style="list-style-type: none"> • [Speaker]: Supports Whanganui and iwi leaders forum, is opposed to the removal of section 9. Section 9 should be strengthened and enhanced. Dialogue on this issue should be meaningful. • [Speaker]: Sale of SOEs would breach sovereignty of Māori and peoples of the Pacific, would also breach laws relating to property rights. Sale also breaches kawanatanga. Māori rights are not the Crown's to sell, they are not for sale or negotiation. The Crown is plundering the resource base and is selling a resource based on race. • [Speaker]: Section 9 has not benefitted us, and needs to be strengthened. There are some advantages to this proposal, some iwi may be able to take advantage of this investment opportunity. <p>Summary by Minister English</p> <ul style="list-style-type: none"> • Thanks to everyone for coming along to participate. • There is clear support for retaining section 9. People know what
--	--

This file note is a final summary report of the hui. It is not a full transcript or a full record of the hui. Names and personal information of attendees have been removed from the transcript under section 9(2)(a) of the Official Information Act 1982 to protect the privacy of natural persons.

	<p>section 9 means.</p> <ul style="list-style-type: none">• I will talk to Minister Finlayson about the status of Whanganui settlements. Ministers find delays frustrating too.• The Crown wants to make sure it doesn't take action which may jeopardise its ability to settle claims later.• The Crown needs to ensure that progressing the MOM policy doesn't interfere with any other issues.• There is a process in place to resolve water policy – if this was easy, we'd have done it by now. The SOE sell down doesn't interfere with the resolution of water claims. This process will not be interfered with. <p>Closing mihi – Hemana</p>
--	---