

The Treasury

Release of Submissions: Mixed Ownership Model Consultation with Māori

Release Document

March 2012

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HUI NOTES REPORT: Extension of the Mixed Ownership Model

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| 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 | Novotel – Auckland Airport , Auckland | | |
| Date | 10 February 2012 | | |
| Start time | 4.30 | Finish time | 7pm |
| Crown Facilitator | Sir Wira Gardiner Local Co-Chair: Matt Maihi | | |
| Presenter and lead officials | Hon Tony Ryall Chris White – Manager, Commercial Transactions Group (Treasury) Herewini Te Koha – Deputy Chief Executive (Te Puni Kōkiri) | | |
| Minute taker | Kapu Waretini (TPK) Greg Reilly (TPK) | | |
| Attendance | Approx (registered - 108 and public – approx 147 attendees) | | |
| Agenda | <ul style="list-style-type: none"> • Whakatau - • Introductions • Opening Address • Presentation • Q & A – facilitated by Sir Wira Gardiner • Chairs Summary and Close | | |
| Presentation | <p>Sir Wira Gardiner</p> <ul style="list-style-type: none"> • Karakia: • Mihi: • Introduces panel • Reads agenda • Housekeeping • Ground rules for media <p><u>MIXED OWNERSHIP MODEL PRESENTATION</u></p> <p><u>Minister Presentation</u></p> <ul style="list-style-type: none"> • Acknowledged the Māori King, Tainui Waka and Ngāti Whatua waka • this is the fifth of 10 hui around the country • crown recognises and honours its obligations under treaty • recognise s.9 and its historical meaning and not stepping back from the Treaty • today is about how we fulfil our obligations to s.9 of the SOE Act and the Treaty • How do we best recognise treaty obligations in selling down SOEs? • not going to remove s.9 from the proposed new piece of legislation – it | | |

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| | <p>will still apply to Kiwibank, Post Office and Trans Power.</p> <ul style="list-style-type: none"> • Also acknowledged issues surrounding water rights that are being covered through iwi settlements and the Land and Water forum. • Please submit your written submissions. • Section 9 lead to section 27 which concerns memorials. There will be no changed to section 27 or memorials regime. • This consultation is because we want to find out the nature of any other treaty clauses that need to be in the legislation. • Crown has identified three options for moving forward: Include s.9 – which is what we have been told is the most preferred, include a new more specific treaty clause that clarifies the crown’s obligations or no treaty clause • The third option is not to have a general treaty clause but rely on the memorials regime. • What is the best option? Do we go for more a more specific treaty reference similar to what we have had in the last 15-20 years. • The general preference at all of the hui is keep section 9. • This is all about a campaign promise as part of the last election – floating up to 49% of the four SOEs with 51% remaining in crown control • There will be a limit of 10% on all other national/ international investors. <p>Why the Mixed Owed Membership Model?</p> <ul style="list-style-type: none"> • when a country’s debt gets out of control you lose your sovereignty – contrasted issues in Europe with mass layoffs and sell downs so this initiative is about maintaining our sovereignty • Britain has twice the debt as New Zealand and public servants are being laid off. • Greece is in rack and ruin and in Portugal the foreign banks are require the Government to sell its businesses. • the govt has to find more money to keep building the schools and hospitals being called for, the best way govt feels to do this is through floating the SOEs • main reason for doing this is to keep our debt under control – layoffs etc • This is an opportunity for New Zealand – there is a lot of money in the banks as investors have been burnt previously. • Iwi/ kiwisaver – would like to invest in MOM companies. • Need to change the current legislation as the current SOE Act 1986 says govt can’t sell State assets so changing the law under to incorporate this under the Public Finance Act 1989 (PFA). • We are going to put the MOM companies in the PFA – this is important because of the mana of PFA, the Bill will include any rights that the new company have, 51% ownership by Government, limit of 10% ownership of investors and memorials sections. • People saying in consultation – carry over a modified section 9. • Māori rights and interests are protected in a number of ways. • Government believes Māori rights and interests are being maintained – by retaining s.9 in SOE Act and by encouraging use of the Waitangi |
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| | <p>Tribunal which can order resumption if necessary.</p> <ul style="list-style-type: none"> • There are a number of Māori interests: • 1. Direct relationships that companies have with iwi i.e. MOUs. • 2. Statutory processes under the RMA will preserve Māori interests e.g. Māori consultation on development • 3. Strong relationship between govt and Iwi (Maintaining Māori interests) e.g. Fresh start, ETS, local Government, and Whānau Ora. • there will be investment opportunities arising from this for individuals and collectives • We are looking to float Might River Power in the third quarter, unless there is a recession. Our expectation is that the timing will be right. • we want to know from you what additional clauses may be needed for maintaining Māori interests through this process • What additional clauses are needed – we are asking 3 questions. • 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? • 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? • 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>Discussion and questions</p> |
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| <p>Questions / Comments</p> | <p><u>Forum Discussion</u></p> <ul style="list-style-type: none"> • [Speaker] – asked that the presentation refer to the legislation slide. Concern around developed legislation and if a treaty clause is included in the PFA what impact will that have on PFA. <p>Minister - If we go with the general treaty clause it will only apply to the MOM part of the legislation and not the whole of the PFA.</p> <ul style="list-style-type: none"> • [Speaker] - So what difficulties currently arise with PFA? <p>Minister – the messages we are getting is that s.9 should be put in the PFA with MOM part. What clause do we want in PFA?</p> <ul style="list-style-type: none"> • [Speaker] - Difficult – section 27A-D will be in the legislation but not treaty clause reference. • [Speaker] - Waikato have shares and Directors in Mighty River, if s.9 omitted how would this affect Waikato? <p>Minister – it makes absolute commercial sense for Mighty River Power to retain its relationship with Waikato/Tainui and should be maintained as it makes good sense to have good relations with people – there are already 2 Māori on the MRP board appointed by Crown. They make a good</p> |
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| | <p>contribution and we would be keen for them to carry on.</p> <ul style="list-style-type: none"> • [Speaker] – what if Government needed to go through a process to identify Māori interests, what process would you follow? <p>Minister – this forum process is primarily where we will find out what are your specific interests concerning s.9 etc? Detail what it is apart from Memorials, ETS, and Local Government. Anything specific apart from memorials?</p> <ul style="list-style-type: none"> • [Speaker] – a number of iwi have settled – we want an assurance that those iwi yet to be settled be protected from these legislation changes <p>Minister – don't think your settlement process will be affected however we'd like to know of any specific issues you may have for us to consider notwithstanding your current rights i.e. RMA</p> <ul style="list-style-type: none"> • [Speaker] – what is the valuation methodology? <p>Minister – the Market</p> <ul style="list-style-type: none"> • [Speaker] – has the Crown taken advice on MOM model – where the minority rights take action against the majority? <p>Minister – company will be listed on stock exchange, transparency.</p> <ul style="list-style-type: none"> • [Speaker] – tabled a point – when will iwi leaders focus on helping Māori and not making dollars? Post settlement entities have a duty to consider the needs of members across all community settings, especially where whānau are struggling and are disconnected from their home territories. • [Speaker] - why are you selling assets? Comparing problems in EU is false you're artificially engineering a situation to justify selling SOEs. We represent many of the workers in Airport/ hotel – these people are on poverty wages can afford to buy back what they owe (warned three times by chair to ask a question or sit down) • [Speaker] – would you minister come and speak to the Aotearoa Movement? <p>Minister - no.</p> <p>Minister – On the point of low income workers – saving through Kiwisaver. This is a way that everyone can participate.</p> <ul style="list-style-type: none"> • [Speaker] - Very worried – don't want to follow Europe into debt. Who creates this money? <p>Minister - Government didn't create the debt, money is created by a combination of the reserve bank and govt</p> |
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| | <ul style="list-style-type: none">• [Speaker] - what guarantees will the Government give that the Government won't sell anything? Minister – Prime Minister has been clear through the past election – we were upfront about what the Government would do if it was returned to power. At that election that was the mandate that was given. I was elected in 1990 and there was privatisation of these companies electricity companies and there may have been more of a question at that time whether we had the mandate. (interjection around state housing) Minister – no one can say that we weren't up front about this.• [Speaker] – What about overseas investors? How will you cap the astronomic amounts that we will have to pay? Minister – 85% - 95% will be New Zealand investors when floated – Mums and Dads, Kiwisaver, ACC, Iwi, etc. There will be overseas investors. Port of Tauranga – MOM – 45% on the share market. Because this is a good company New Zealanders are buying out the international investors. The bulk of the funds will be owned by you the taxpayer and this means that we limit foreign interest and in regard to electric bills – govt's made changes to electricity regulation allowing for greater transfer between power companies, under labour prices went up 72% under National 17%. Consumer NZ has said that changes to the shareholding of these companies will not have any impact on prices under this mixed ownership model.• [Speaker] – if we wanted to stop you from doing this, how could we do that? Minister – There was an election – this is the Government.• [Speaker] - of the 49% how much are you going to allow for Treaty settlements? Minister - not proposing anything at this stage however we are encouraging iwi to invest as shareholders. Māori have every opportunity to be investors.• [Speaker] – is there anything to preclude Māori from buying 49%? Minister - nothing other than no one individual or group can own more than 10%.• [Speaker] – equal opportunity for Māori to invest, has there been any situational analysis done in determining Māori ability to invest realistically and how will you make sure its proportional for individual vs. large iwi groups? Minister - no particular analysis –it is up to Māori to decide, to make the call |
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| | <p>to invest. However those iwi who have yet to settle we want to give them the ability to invest through redress taking into account their settlement has yet to materialise.</p> <ul style="list-style-type: none"> • [Speaker] – in the Wai 262 claim it said Māori had interests and what I've heard here today doesn't match up with your rights and interests presented here today <p>Minister - that's why we're here today – to hear what you think those rights and interests are that need to be maintained, as far as the principles of the treaty are concerned – partnership is through consultation etc</p> <ul style="list-style-type: none"> • [Speaker] – how do we know that what you're continuing to do will give us our rights as treaty partners? <p>Minister - we know we have obligations and we want to honour those obligations which is why we are having these consolation hui with you.</p> <ul style="list-style-type: none"> • [Speaker] – Does a tuatara have a genome or right to its genome? <p>Minister – I understand the point that you are making.</p> <ul style="list-style-type: none"> • [Speaker] – s.9 SOE – concerns around it – people below the poverty line won't be able to invest under this model so they will forever be below that poverty line – how does one protect Māori with disabilities far below the poverty line who suffer the most? Reference made to the UN Convention on People with Disabilities and UN Convention on Indigenous Rights. <p>Minister – the Minister of Disabilities, Minister Turia, has \$140 million budget. The protections are unchanged but the best thing we can do is to ensure we have a strong economic development and growth plan so if our debt gets out of control those depending on state financially will suffer the most as the Government looks to reduce benefits, health benefits cut, public servants slashed and we want to avoid that</p> <ul style="list-style-type: none"> • [Speaker] – there is no protection for us disabled so what guarantee do we have? <p>Minister - take your point and think that under programmes such as Whanau Ora will open up the services peoples of society don't know exist such as access to wheelchairs.</p> <ul style="list-style-type: none"> • [Speaker] – Mihi – I haven't come to disturb the kaupapa however I have come to understand why we are here and what this is about. Mihi to Wira, Tainui, Ngāti Whatua, MPs. • [Speaker] – New Zealand Māori Council (NZMC) advisor on 1986 SOE bill enactment and the thinking at that time that was about operating the NZMC and the reason we have brought forward this claim is because as our thinking was then and it is now, we are here to protect the rights and interests of all Māori. |
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| | <ul style="list-style-type: none"> • [Speaker] – there are 11 claims for water and all of those are from hapū, not iwi! It was hapū and not iwi leaders who got off the waka. • [Speaker] – the NZ Māori Council wants to protect s.9 and encourages all Māori to attend the hui, as Māori, as one, to speak up. • [Speaker] – the model that we are looking for water is the fisheries settlement model. This is an excellent model. • [Speaker] – feel we will regret this in 10 years time as this sell down is a sign of more sell downs to come – if company a and b were to buy 10% and a year later an Australian owned company was to purchase a) and b) would that company get both sets of shares? <p>Minister - no. The proposed legislation says no. It is clear 10% is the max anyone entity can own. If inadvertently you own 20% you will be required to sell down.</p> <ul style="list-style-type: none"> • [Speaker] – will these new companies drive for profit or rights as being a good employer? <p>Minister – well under both Labour and National these SOEs have been driving for profit however I don't believe this will be the case as you see with Trust Power the satisfaction results are high and that won't change given that the Government will retain 51%.</p> <ul style="list-style-type: none"> • [Speaker] – if you move the SOE obligation to be a good employer out then the company will have no compulsion to do this. <p>Minister – I am sure they will be.</p> <ul style="list-style-type: none"> • [Speaker] - are there any hidden agendas or as a human being with my rights under the human rights act that I won't be lied to. <p>Minister – Very clearly and precisely the Minister and Government have an open mind on this issue.</p> <ul style="list-style-type: none"> • [Speaker] – when you deliver a message in a forum like this what else have you got in store for us? Are you saying you're going to privatise everything else and then say well we through these consultation hui well we consulted you? <p>Minister - no. And there is a separate forum for Māori to discuss their water rights issues which is quite separate from this today.</p> <ul style="list-style-type: none"> • [Speaker] – I'm a share holder in vector will we get a higher stake? <p>Minister – I can't speak for Vector I'm afraid.</p> <ul style="list-style-type: none"> • [Speaker] – if nobody owns water why are they taking water? <p>Minister - Government believes no one owns water however they have right</p> |
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| | <p>to take water.</p> <ul style="list-style-type: none"> • [Speaker] – how can you say that this is a done deal and this consultation Hui relates only to the 51%? <p>Minister - we realise our obligation which is why we're here</p> <ul style="list-style-type: none"> • [Speaker] – you are not consulting on the 49% but the 51% and you're in breach of the Treaty. • [Speaker] – how great a protection do Māori actually have under this because I do not believe that there were any memorial lands resumed back following the Lands Case and I believe that there is a lot of work to amend s.9 however I'm concerned that you're asking Māori to identify their rights and interests when through this process there are myriad and also is difficult as we do not know what the Government's intentions are explicitly <p>Minister - the reason we're having this hui is because over the past 20 years we've recognised this and this is why we have included option 2 – an amended s.9 and asking people genuinely what they think, on the initial point I disagree and think that Māori were protected by those memorials and think that it is a protection for those iwi yet to settle.</p> <ul style="list-style-type: none"> • Chair – declaring the forum closed – interjection from the floor: <p>[Speaker] - has the crown considered or is there a process for determining control by Government for scaling of those companies/collectives/individuals will be able to raise capital for future growth as opposed to relying on Government support as mum and Dad's won't be able to do this however companies will which is a concern to all NZ .</p> <p>Minister - Government does control that process and the Government has been upfront about who can control what and when. The Government doe retain the right to allocate to groups of shareholders – 85% - 95% New Zealand shareholders. There will be an element of foreign ownership that will help us to get a good price.</p> <ul style="list-style-type: none"> • Minister – summary – pretty clear preference for one of these three options everywhere as there has been in Hui lately. Where to from here? Six more Hui and then the Government will determine where to from here. Please submit one if you have one so that we can be sure we get the right option/preference. <p><u>Final proceedings</u></p> <ul style="list-style-type: none"> • Kaumātua – acknowledgements of the chair, those who have arranged and organised this today • Closing karakia |
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