

**BEFORE THE WAITANGI TRIBUNAL
WELLINGTON**

**WAI 2357
WAI 2358**

IN THE MATTER OF

The Treaty of Waitangi Act 1975

AND

IN THE MATTER OF

Wai 144; 1092; 1787; 1454; Te
Upokorehe Treaty Claims Trust;
Te Rungana o Ngati Manawa

MEMORANDUM OF COUNSEL

Dated: 25 May 2012

RECEIVED
Waitangi Tribunal
25 May 2012
Ministry of Justice
WELLINGTON

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MAY IT PLEASE THE TRIBUNAL

Introduction

1. This memorandum is filed on behalf of:
 - (a) Ngati Ruapani (Wai 144);
 - (b) Te Rungana o Ngati Manawa;
 - (c) Te Upokorehe Treaty Claims Trust;
 - (d) Wai 1092;
 - (e) Wai 1787; and
 - (f) Te Atiawa Ki Te Tau Ihu Water Rights Claim (Wai 1454)

Decisions about sale of shares

2. From the inception of this claim the Crown has consistently advised the Tribunal that only “high level” decisions have been made on the sale of shares and that it is a “possibility of sale” that is being objected to by the claimants.
3. The claimants represented by this firm wish to draw the Tribunal’s attention to certain announcements in the Budget 2012 and the claim that the Crown has not made a determination to sell 49% of shares in the affected companies and that the Crown is acting in good faith.

Announcements in Budget 2012

4. Yesterday the Crown announced the manner in which it would spend the funds realised from the sale of shares. Clearly, the Crown has made a decision to forge on with sale irrespective of the Select Committee process and any recommendations that may be made by the Tribunal that would affect that planned sale.
5. Attached to this memorandum is the Budget Speech delivered by Hon Bill English, Minister of Finance. The Tribunal’s attention is drawn to pages 6 and 7. The Crown has established the “Future Investment Fund”. This fund will

receive all proceeds from the Government's sale of up to 49 per cent shares in four SOEs and Air New Zealand.”¹

6. The sale proceeds are “expected to be between \$5 billion and \$7 billion.”²
7. The speech then goes on to explain how the first \$559 million of the sale proceeds will be spent. “This includes:
 - The first \$34 million of funding the 21st Century Schools.
 - \$250 million towards KiwiRail's Turnaround Plan.
 - \$88 million for health sector initiatives, in particular hospital redevelopments.
 - \$76 million for the capital costs of the new Advances Technology Institute.”³
8. Finally, the Speech advises: “We expect to make a significantly larger contribution from the fund in Budget 2013, once the share offers are under way.”⁴

Assurance sought from Crown

9. The claimant's represented by this firm are very concerned that the Crown has closed its mind on the decision to sell up to 49% of the shares and the Tribunal's opinion and advice will not be properly considered by the Crown.
10. The claimant's represented by this firm seek a direction from the Tribunal directing the Crown to clarify its position. Has a decision to sell been made irrespective of the extant select committee process, the urgent hearing and other consultation pathways being undertaken?

¹ Budget 2012 Speech Page 6

² Budget 2012 Speech Page 6

³ Budget 2012 Speech Page 7

⁴ Budget 2012 Speech Page 7

Dated at Wellington this 25th day of May 2012.

Kathryn Gabel,

Counsel for the claimants