10 June 2004

Dear Mr Winfield

Prospecting License Application 31 2583 (Mining Act 1971)
K.J. Landaus

Considering that your reply to my letter regarding the above application seemed to follow the same outline as previous letters to me on the issues, I have responded accordingly in order to highlight a few unmentioned issues, which may raise the question why the Crown has never substantiated the legality of its actions.
I would therefore kindly appreciate your views if the Ministry disagree on any matters herein.

Please note that the time-line is very important when considering my views and questions on events relating to this application.

1 Your prospecting licence application was accepted for processing on 18 April 1989.
As the application area included land administered by the Department of Conservation.("DOC"), the consent of the Minister of Conservation was required pursuant to section 26(4) of the Mining Act 1971. DOC advised that as the Waitangi Tribunal was currently deliberating on the Ngai Tahu claim, part of which dealt with the greenstone resource, the department considered that it would be inappropriate to make any decision in respect of this application until the final recommendation of the Tribunal had been made.
The Waitangi Tribunal released its report and recommendations in 1991.
One of the recommendations was that Crown owned pounamu in the Takiwa of Ngai Tahu should be returned to Ngai Tahu.
As a consequence of these developments, and after receiving legal advice, the Crown decided not to issue any further licences or permits for pounamu pending settlement of Ngai Tahu's
Treaty claims.
Your application was therefore unable to be progressed beyond the preliminary stages until the promulgation of the Ngai Tahu (Pounamu Vesting) Act 1997 at which time it was declined.

1. From all records pertaining to the period in question, the Department of Conservation did not have the mandate to withhold the ministerial decisions on this application.
No legislation existed at the time to warrant the Department of Conservation's excuse that it would be inappropriate to make any decision in respect to processing the application, especially when the Waitangi Tribunal did not release its findings until 1991.
This application had completed all its pre-ministerial processing by November 1990, irrespective of the unusual delays within the departments.

I therefore question, if Crown Minerals legal advice was not to issue further licenses after the Waitangi Tribunal report made in 1991, why the Minister of Energy did not adhere to the provisions of Section 109 and/or Section 104A of the MA 1971, at that time, rather than keeping my application waiting for a further six years.

2 Prospecting licence application 31 2583 could not be granted within the terms of section 109(1) because of the matters discussed above.

Other mining privileges applications that were granted during this period were either much further advanced in the processing cycle or involved other minerals that were not subject to the pounamu moratorium.

2. The application should have been granted or declined, as referred in (1.) above.

Because all other mining privilege applications mentioned below, were processed in the same period up until 1991 when you have advised that the Crown decided not to issue any further licences or permits for pounamu,

With regard to other mining privileges processed and granted, please note:

The Minister of Energy granted at least six other licenses after my application was accepted by the Ministry and prior to the Waitangi Tribunal report.

ML 32 02522 (pounamu) by Mawhera Incorporation, was granted by the Minister on 31 October 1989, for a period of 42 years, ML 32 3021 (pounamu) was granted on 21 December 1989, for 10 years, ML 32 2682 (pounamu) was granted in November 1990, for 10 years, ML 32 02903 (pounamu) was granted on 17 August 1989 for 20 years, ML 3202814 (pounamu) was granted for 10 years and ML 32 02964 (pounamu) was granted for 10 years, all with a right in priority over every other person to have granted to him a new mining license in respect to that land, under Section 77 of the Mining Act 1971.

MINING LICENCE APPLICATION 32 2682 - TW SWEETMAN & GA HAVELL;

- - 'No objections to the grant of the application were lodged with the planning tribunal and the applicants have lodged the required bond and survey plan'. —'DOSLI has confirmed that the area is located in the Taramakau catchment rather than the Arahura catchment. It is therefore not within the area covered by your undertaking to the Waitangi Tribunal.'

(a) LEGAL POSITION

"Section 109 of the mining act requires that an application be finally disposed of by being granted or refused within twelve months after the date on which the application was made unless an extension is granted because of special circumstances or an objection is lodged. The Court Of Appeal have stated that the effect of this section is to make time important under the act and to require you, as the Minister Of Energy, to act within a reasonable time in dealing with an application. In the present case it is considered that you would be failing in your statutory responsibilities if you deferred the granting or refusal of this application until the Waitangi Tribunal report on the Ngai Tahu claim was completed and published.
The report of the Waitangi Tribunal is recommendatory only and cannot alter the law under which you are required to act, nor the ownership of minerals.

Given that no objections have been lodged to this application, that the application area is outside the Arahura catchment (being the area you have undertaken to give special consideration, that the minerals sought are crown owned, and the nature of reports by the Waitangi Tribunal, it is considered that there is no justification for deferring your final decision on this application.
Accordingly, it is recommended that you proceed immediately with granting the Mining Licence."

RECOMMENDATIONS

(b) MINISTER'S LETTER TO WAITANGI TRIBUNAL

'-- In this present case, I consider that I would be failing in my statutory responsibilities if I deferred the granting or refusal of this application until the Waitangi Tribunal report on the Ngai

Tahu claim was completed and published. I am required to act in accordance with the law as it presently exists and on the basis of the existing ownership status of minerals. -- on the information before me, I am of the view that the Mining License sought should be granted and I have accordingly given the necessary approval.' -- JOHN LUXTON

3 You were never notified regarding a section 109 extension because there is no record that an extension was ever granted.

You were however notified on a number of occasions of the reasons for the delay in processing.

I note that you question why DOC did not lodge an objection.

This reasons for this was because your application never reached the stage where it was advertised for objections and DOC never made a decision regarding consent prior to the Crown's decision to no longer grant mining privileges for pounamu.

3. The Ministers obligations as defined in Section 109 are clearly and adequately defined in the exerts (2), as above.

Please note however, that I was not informed of any decision on my application until April 1994, 40 months after my application had reached the ministerial stage.

I once again question why there were delays in processing my application, when other applications as in (2) above, did not experience such delays during the specified timeframe.

I have raised the point on objections in my point (5) below.

4 The Ngai Tahu (Pounamu Vesting) Act 1997 section 5 expressly states that notwithstanding anything in the Crown Minerals Act the Minister of Energy must not grant any permit under the Crown Minerals Act irrespective of whether an application was lodged prior to the enactment of the 1997 Act and any mining privilege pursuant to an application to which section 112 of the Crown Minerals Act relates.

You will be aware that section 1 12 relates to existing applications under the Mining Act 1971.

Your application was lodged under the Mining Act 1971 and subsequent declined under section 104A of that Act.

4. I do not disagree with your response to this question, but the specific wording of "Notwithstanding anything in the Crown Minerals Act 1991", makes my point that it allegedly refers to all matters in respect to existing applications, including this PLA.

If an application under the Mining Act 1971 was previously not dealt with according to the law or was shown disadvantage to the applicant, according to the principles and provisions of the mining Acts or any other Act, then surely this provision will cause reason for the PLA to be lawfully unresolved, in respect to the Ngai Tahu (Pounamu Vesting) Act 1997.

Especially as this PLA, seeking a maximum term of 3 years, was declined on the basis of mineral ownership, 8 years after its receipt. Notwithstanding all other factors.

This query raises essentially the same as points addressed earlier in this letter.
1 refer you to my response to points 1 and 3 above.

5.With respect, I think you have missed my point here.
If the Minister or Secretary considered that my application could not be granted because of the ownership of the specified mineral then why was my application not approved or declined prior to the vesting of the mineral, based on the Ministers view that it was inappropriate for him, and the Minister of the land specified in the application, to issue a license.
By not doing this, the Minister has allegedly contravened not only his legal responsibilities, but has expropriated my rights to hear and appeal any objections which concern the reasons which you have referred to in your reply to my points 1 and 3.

These matters should have been considered at the time my application had reached the ministerial stage of the application process.
Considering that no other application for “pounamu minerals” were officially objected to by the Waitangi Tribunal or Te Rununga o Ngai Tahu at the time.

6.Section 240A of the Mining Act does not apply to section 104A of the Act.
The Secretary of Commerce declined your prospecting licence pursuant to section 104A of the Act under delegated authority from the Minister of Energy.

6.With all due respect, I allege Section 240A of the Mining Act 1971 relates directly to decisions pertaining to the particular designation of the land in this application.
For example, Section 26 subsection 6, and therefore should relate specifically to decisions by the Minister. A prospecting application is an application to enter the specific land.

Yours faithfully

Kenn Landaus