

Ngai Tahu (Pounamu Vesting) Act 1997

Section 2. Interpretation states in part: ["Te Runanga o Ngai Tahu" means body corporate known as Te Runanga o Ngai Tahu established by section 6 of Te Runanga o Ngai Tahu Act 1996

Confirms ownership has been vested to a corporate body established in 1996, after my applications were lodged with the Crown. Section 3 Ownership by Ngai Tahu of certain minerals states in part:

"Notwithstanding any other enactment". By including this clause it substantiates that other enactments must be considered when regarding the vesting of the pounamu minerals to which this section pertains.

Section 4. Existing privileges for pounamu states in part:

- (1) Nothing in section 3 affects an existing privilege or the rights or obligations of any holder of an existing privilege and Part II of the Crown Minerals Act 1991 continues to apply in relation to that privilege as if this Act had not been passed

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ML 32 3021 RENEWAL

Confirms the retention of my rights pertaining to ML 32 3021 and its renewal, accorded under Section 43 of the Mining Act 1971, which states fully:

43. Existing mining privileges protected

- (1) No Crown grant or conveyance, nor the grant of any mining privilege, shall have the effect of revoking or injuriously affecting any existing mining privilege acquired and held under this Act or any former Mining Act, whether or not any reservation or exception of the existing mining privilege is contained in the Crown grant or conveyance or the grant of the mining privilege.
- (2) Every such Crown grant or conveyance and every such grant of a mining privilege shall be deemed to contain an express reservation of the rights to which the holder of the existing mining privilege is entitled. This enactment has been considered in the vesting Act by including provision for the "existing privilege". The vesting Act has also considered subsection (2), because this specifically states an express reservation of the rights

These rights are provided for in Section 77 of the Mining Act 1971 and state in part:!

77. Term of license (2) The licensee shall have the right in priority over every other person to have granted to him a new mining license in respect of the land to which the existing license relates, if he applies for a new license not later than 30 days before the expiry of the existing license.

*** Note : I made a request for the application forms in my letter dated [14 August 1997](#)", 21 months prior to the expiry date of my Mining License.**

In Crown Minerals letter of 17 March 1998 setting out their full and final position on matters, they state " section 77 of the MA 1971 only ever conferred on an existing license holder a right in priority over other persons when applying to have granted a new mining license." Irrespective of the Ministry's interpretation two issues remain outstanding;

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- (1) **The rights accorded under both Sections 43 and 77 have been revoked by the vesting of pounamu, which is contrary to the provisions of Section 4 of the Vesting Act.**
- (2) **Accordingly the Crown must be liable for compensation for the interference of a statutory accord.**

These facts must also be taken in consideration with the Transitional Provisions of the Crown Minerals Act 1991, Section 107, 108(Amendment) and 111. Section 111, subsection (2) does not include Section 43 or 77 of the Mining Act 1971, therefore because Section 111, CM Act 1991; states in part: [notwithstanding section 107]; and considering the above, then my rights to have this license renewed should have been retained. The Crown refuse to recognize this.

* Note the reference to this matter in Ref 10 (6) of my Files & Notes extracts. Also Section 108(Amendment 102) CM Act 1991.

Section 5. Applications for mining privileges and permits for pounamu states in full: [Notwithstanding anything in the Crown Minerals Act 1991, the Minister of Energy must not grant any (a) Permit pursuant to an application made under section 23 of that Act before the commencement of this Act; or (b) Mining privilege pursuant to an application to which section 112 of that Act applies in respect of any pounamu to which section 3 applies.

As repeated many times "notwithstanding anything in the Crown Minerals Act 1991" and because Section 3 is also herein included, which states in part; "notwithstanding any other enactment", one must consider the most relevant enactment provided in the Crown Minerals Act 1991 which would substantiate a case for compensation on a general basis, This enactment would have to be Section 3, CM Act 1991; which states fully: 3. Act to bind the Crown. This Act shall bind the Crown.

PLA 31 2583

In consideration to the above paragraph one must have to consider the rights accorded applicants prior to the vesting Act; Section 109. Applications to be disposed of within specified time

- (1) Subject to subsections (2) and (3) of this section, every application for a mining privilege shall be

finally disposed of by being granted or refused within 12 months after the date on which the application was made.

- (2) The Minister may extend the period during which an application for a mining privilege may be dealt with if he considers that an extension is justified because of special circumstances.
- (3) If an objection is made to an application for a mining privilege, or if any objection on a question of law is made in respect of such an application, the period from the date of service of the notice of objection on the Secretary to the date on which the objection is determined, or the period from the date of filing the notice of objection to the date on which the objection is finally determined, as the case may be, shall not be included in the computation of any period of time for the purposes of subsection (1) of this section.

The Minister/Ministry did not dispose of this application within the specified time constraints.

The Minister did not notify or advise of any period of extension.

My letter of 1992 to the Ministry and the response (see Ref 25 Files & Notes, confirms this. Also Ref 3 (F&N) confirms other privileges were granted during the period, see Boustridge and Co and Mawhera including my ML 32 3021.

No objections were lodged on public notices.

No statutory matters prohibited the grant or decline of the application.

Section 104A

MA 1971 states: The Minister may decline application. :The Minister may at any time decline any application for a mining privilege and, notwithstanding anything in this Act, any objections under this Act to the granting of that application shall thereupon lapse and be of no effect.

This section relates only to a discretionary decline at any time.

Section 109, MA 1971 relates to a decision within a period of time from when the application was made.

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The Ministry declined this application under section 104A of the MA 1971 pursuant to the vesting Act but Section 240A (amendment) prohibited this delegation of power because PLA 31 258 relates to land under Part III of the Mining Act 1971.

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MINING PERMIT APPLICATION 41 452 - (Crown Minerals Act 1991)

As stated in my letter to you dated 30 July 1998, the Minister of Energy did not comply with Section 117 of the CM Act 1991 which identify minerals for minerals programs.

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MINING LICENSE 32 3021 - (Mining Act 1971)

RENEWAL

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LEGAL NOTES on pending renewal.

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Irrespective of the many statements in letters from the Minister of Energy and the Ministry of Commerce to the contrary:

Section 77(2) of the Mining Act 1971 states: " ***The licensee shall have the right in priority over every other person to have granted to him a new mining license in respect of the land to which the existing license relates, if he applies for a new license not later than 30 day's before the expiry of the existing license.***"

NOTE: The enactment does not mention the right of priority to apply or the word application; It specifically states: "to have granted to him".

The reason logically, is because it is over the same land and licensed area.

It is not a new license as such, just a renewal or extension.

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On page 6 of my Notes and Files, Ref.10, Source No.8 /O.I. Act - Letter Crown Law Office to Ministry of Commerce, it states in part: " ***6. It is interesting to note that Section 111 did not include a reference to Section 77 of the MA 1971.***"

Section 111 states: " ***-- a holder of an existing privilege makes an application in respect of Crown owned minerals to which any of the enactment's specified in subsection (2) would have applied if this Act had not been enacted, then, notwithstanding section 107, --.***"

As a renewal for ML 32 3021 does not apply to any of the enactment's specified in 111(2) and (1) states in part:

" ***notwithstanding Section 107*** "; then a renewal application under Section 111(2) of the CM Act and a new license had to be applied for under Sections 111(1b), 23,32, then pursuant to Section 43 of the MA 1971, the existing rights of the applicant cannot be interfered with by grant or conveyance (i.e. Ngai Tahu (Pounamu Vesting) Act 1997).

Therefore because my rights to apply for a renewal of ML 32 3021 were initially denied by the Crown, but after argument in letters. Later conceded by the Minister on the basis that the application would be approved but the license or permit would not be granted on the grounds that the Ngai Tahu (Pounamu Vesting) Act prohibited any grant of a permit; therefore the Crown have allegedly breached Section 43(2) of the MA 1971 by not providing express reservation of the rights to which the holder of the existing mining privilege is entitled. Furthermore the Ministry have not provided an application form for renewal as requested in my letter of 14 August 1997, prior to the enactment of the Ngai Tahu (Pounamu Vesting) Act 1997. By not adhering to these matters the Crown have allegedly committed an offence under Section 234 of the MA 1971.

Ministry statements and the vesting Act advise that: " ***The rights of existing licensee's will not be affected by the Ngai Tahu (Pounamu Vesting) Act 1997.***"

Section 3 of the Act, states in part: "***--Notwithstanding any other enactment--***"; and Section 4, states: " ***(1) Nothing in Section 3 affects an existing privilege or the right or obligations of any holder of an existing privilege and Part 11 of the Crown Minerals Act 1991 continues to apply in relation to that privilege as if this Act had not been passed***"; Section 5, states in part: " ***Notwithstanding anything in the Crown Minerals Act 1991***"; and: " ***(a) Permit pursuant to an application made under Section 23 of that Act before the commencement of this Act, or (b) Mining privilege pursuant to an application to which Section 112 of that Act applies in respect of any pounamu to which Section 3 applies***". *[Note (b) applies only to existing applications]

Other general matters apply to the pending renewal of this license and have been documented in other papers.

1. Pursuant to the NGAI TAHU (POUNAMU VESTING) ACT 1997;

Section 3, specifically states; [Notwithstanding any other enactment,Section 5, specifically states; ***[Notwithstanding anything in the Crown Minerals Act.1991,].***

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2. Therefore in consideration to the CROWN MINERALS ACT 1991, Section 3: Act shall bind the Crown - [This Act shall bind the Crown];

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3. Section 5 (b): Functions of the Minister of Energy -[The Minister shall have the following functions under this Act:

[(b) The grant of minerals permits:];

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4. Section 22(1b): Exercise of Minister's functions and powers - (11) Subject to subsection (2),

the Minister shall carry out and exercise his or her functions and powers under this Part in respect of permits and applications for permits ;

(b) Where there is no relevant minerals programme, having regard to the importance of -

(i) The efficient allocation of rights in respect of Crown owned minerals;

(ii) The Crown obtaining a fair financial return from its minerals.;

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5. Section 23: Application for permits -

(1) Any person may apply to the Secretary for a permit in respect of a mineral in land, whether or not there is a minerals programme for the mineral;

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6. Section 25: Grant of Permit -

(1) Subject to the provisions of this Act, the Minister may grant to any person a permit in respect of any specified minerals and land, on such conditions as the Minister thinks fit.-

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7. Section 117: Minister's obligations in respect of minerals programs-

The Minister of Energy Shall -

(a) Within 2 months after the date of commencement of this Act, publicly notify a notice identifying minerals for which minerals programmes will be prepared (being minerals which are, or the Minister considers are likely to be, the subject of an application for a minerals permit: and

(b) Ensure that public notice is given under section 16 of the draft minerals programmes for all minerals identified in notice under paragraph (a) not later than 3 years after the date of commencement of this Act.]

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Although very ambiguous, the Deputy Secretary of Operations and Risk Management's letter of notification received 6 July 1998 could be interpreted as meaning the application was declined for the reason specific to the enactment of the Ngai Tahu (Pounamu Vesting) Act 1997. If so then I allege that the statements; [Notwithstanding anything in the Crown Minerals Act 1991]; and [Notwithstanding any other enactment,--]; as in the above Clause 1, substantiates that due regard must be considered to all provision's within the Crown Mineral's Act 1991. The statement does not add or stipulate any wording such as 'anything to the contrary'.

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This application was lodged on 28 March 1996, prior to the Minerals Programme, 1 October 1996 and Proposed Regulations for Minerals and Coal, July 1997 and the Ngai Tahu (Pounamu Vesting) Act 1997, 1 October 1997. The application and fee's were undertaken in acceptance by Crown Minerals and cleared to proceed for the Chief Surveyors report which in turn was accepted. Therefore the application was fully accepted in accordance with all provisions of the Crown Minerals Act 1991 including Section 4 of the Act [Treaty of Waitangi - All persons exercising functions and powers under this Act shall have regard to the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).]

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In accordance with the principals, provisions and purpose of the Mining Act 1971 and Crown Minerals Act 1991 and Regulations, the Crown provided rights to all persons to discover, evaluate, explore, prospect and mine Crown owned minerals.

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Official advise was received in the latter part of June 1996 (16 June 1996 onwards) by the Secretary of

Commerce stating that existing applications for nephrite jade, bowenite and serpentine would not be granted.

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This advice was received prior to the enactment of the Ngai Tahu (Pounamu Vesting) Act 1997 (1 October). The advice therefore was of a predetermined nature considering the Bill was not even formulated, notwithstanding the fact that Parliament yet had to approve the Bill and the Governor General sign it into law. This did not eventuate until 1 October 1997, nearly 16 months later.

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I allege the Crown promoted and encouraged persons to explore, prospect and mine Crown minerals pursuant to the Act's prior to these events, only to give them 3 to 4 months notice (MPA 41 452) that all statutory mining privilege applications under the Act's would not be granted, irrespective of previous evaluation, geological study and discovery. Including the statutory mining privilege applications subsequently made in accordance with the Act's and the relating business and financial considerations made in anticipation for receipt of such licences and permits. Notwithstanding a 9 year delay for a decision to be made on the application thus not allowing any forward indication for economic or business planning strategies.

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The delineation of the whereabouts of discoveries were made as part of our application, therefore both the Crown and Te Runanga o Ngai Tahu have allegedly been extremely advantaged by obtaining this information, now to our disadvantage.

The Crown has provided a legal covenant to the public of New Zealand by way of the enactment of the Mining Act 1971 and Crown Minerals Act 1991. These Act's were formed to allow all persons their rights to access Crown owned minerals.

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NOTES

1. Prospecting License Application No. 312583 was applied for in 1989 for a period of 3 years, this application was fully processed to the ministerial approval stage, did not have any public objections and the application pertained only to access the land to prospect and include sampling.

The application was subject to the Mining Act 1971 under the transitional provisions of the Crown Minerals Act 1991 which states in Section 112 (1),

(c) The application shall continue to be dealt with in accordance with that Act [Mining Act 1971] and any regulations made under that Act as if this Act had not been enacted.

In the time it took the Crown to decide to vest the minerals with Te Runanga o Ngai Tahu, a private party, I could have finished a prospecting programme and applied for a mining license for a limited period to access at least some of the nephrite I discovered and made legitimate claim to under the Act.

References: [Letter KJL to Hon.R. Prebble - 26 November 1997](#)

In regard to the contents of the above letter, the Minister has made false and unwise statements to the recipient.

In accordance with the principals, provisions and purpose of the Mining Act 1971 and Crown Minerals Act 1991 and Regulations, the Crown provided rights to all persons to discover, evaluate, explore, prospect and mine Crown owned minerals.

In May 1991, the then Prime Minister replied to me, stating provisions that my rights would NOT be adversely affected.

[pm27may91.pdf](#)

Official advise was received in the latter part of June 1996 (16 June 1996 onwards) by the Secretary of Commerce stating that existing applications for nephrite jade, bowenite and serpentine would not be granted.

This advise was received prior to the enactment of the Ngai Tahu (Pounamu Vesting) Act 1997 (1 October). The advise therefore was of a predetermined nature considering the Bill was not even formulated notwithstanding the fact that Parliament yet had to approve the Bill and the Governor General sign it into law. This did not eventuate until 1 October 1997, nearly 16 months later.

I allege the Crown promoted and encouraged persons to explore, prospect and mine Crown minerals pursuant to the Act's prior to these events, only to give them 3 to 4 months notice (MPA 41 452) that all rights accorded under the Act's be revoked after many years of evaluation, geological study and discovery. Including the statutory mining privilege applications subsequently made in accordance with the Act's and the relating business and financial considerations made in anticipation for receipt of such licenses and permits. Notwithstanding a 9 year delay for a decision to be made on the application thus not allowing any forward indication for economic or business planning strategies.

Applications have been declined on the basis that the Crown Mineral pounamu has been vested with other private parties pursuant to the Ngai Tahu (Pounamu Vesting) Act 1997.

Notification has also been given in letters that a renewal application for existing Mining License 32 3021 will not be granted pursuant to the Ngai Tahu (Pounamu Vesting) Act 1997.

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I, Kenneth James Landaus;

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Applicant of Prospecting License Application 31 2583 lodged with the Ministry of Energy in April 1989 pursuant to the Mining Act 1971 and subsequently in accordance with the Transitional Provisions of the Crown Minerals Act 1991; and joint applicant of Mining Permit Application 41 452 with Bernard Joseph Radomski, (Now Deceased), lodged with Crown Minerals, Ministry of Commerce in March 1996 pursuant to the Crown Minerals Act 1991; and joint licensee of current Mining License 32 3021 with Samuel McKay (now deceased), lodged with the Ministry of Energy in June 1988 pursuant to the Mining Act 1971 and subsequently in accordance with the Transitional Provisions of the Crown Minerals Act 1991 being granted on 24 December 1989 and expiring on 24 December 1999;

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I hereby seek Judicial Review of the decisions of decline by the Minister of Energy on the following grounds:

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I allege the Crown:

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1. Have vested the nephrite (pounamu) minerals to other private concerns not formed in incorporation at the time my applications were lodged and accepted pursuant to the Mining Act 1971 and Crown Minerals Act 1991.
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2. Have endeavored to specifically legislate to prevent mining privilege applicants from seeking compensation.
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3. Have vested the pounamu minerals at zero value to prevent breaching the Public Finance Act.
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4. Refuse to recognize my statutory rights and continue to insinuate I have no rights.
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5. Have committed offences in accordance with the provisions of the Mining Act 1971 and have not responded to an official complaint accordingly.
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6. Refused to recognize or accept my claims that the provisions of the Ngai Tahu (Pounamu Vesting) Act 1997 and the Crown Minerals Act 1997 provide exemption from the vesting Act irrespective of statutory statements.
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7. Have refused to acknowledge that in accordance with Sections 3, 22, 23, 25, 26, 27, 30, 31, 35 of the Crown Minerals Act 1991 and Sections 43, 48, 50, 55, 57a, 77, 87 of the Mining Act 1971, that the vesting of the specific minerals has interfered with my priority rights over all other persons for the opportunity to eventually gain legal access and ownership of the minerals applied for while my statutory applications and license remained in force respective to those Act's.
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8. Have not considered the basic principles and purpose of the respective mining Act's.
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9. Have refused liability regarding my claims for compensation, damages and losses resulting from the all these matters.
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10. Have not offered interest on basic cost reimbursements including compounding interest.
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11. Have breached the Official Information Act regarding my requests for information.
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12. Have not considered that the Ministry of Commerce financed part of my business to develop prototype machinery and develop a market for low grade nephrite and associated products.
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13. Have granted other mining privileges for up to 40 years during the same period the Minister neglected to decide with mine in accordance with the Mining Act 1971.
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14. Have neglected to consider in the time it took to decide on my Prospecting License Application I could have completed a prospecting programme and a substantial mining programme thus providing relief for my business.
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15. Continued accepting further applications for pounamu minerals and the fees when other applications continued not to be processed beyond Ministerial decision stage.
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16. All applications have been declined solely on the basis of the Ngai Tahu (Pounamu Vesting) not for any reasons under the provisions of specific Act's they were originally applied for.
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I, KENNETH JAMES LANDAUS, APPLICANT, appeal and contest the decision on my PROSPECTING LICENCE APPLICATION No. 31 2583 on the following grounds:

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1.

My rights protected by the principles and provisions of the Mining Act 1971 have been severely affected by the

Crowns failure to process this application in accordance with the Statutory Regimes.

The Crown has intentionally expropriated my statutory application rights by vesting the minerals specific to this application over to other private parties prior to a decision on the application being made by the Minister of Energy subject to the Mining Act 1971 and relevant statutes.

The Crown has not offered or paid compensation for damages or disadvantage all these matters have caused me personally notwithstanding the devastating affects on my business.

The Mining Act 1997 contains no reference to the Treaty of Waitangi or any obligations there under which could substantiate the proceedings of events that have

affected this application and myself as applicant therefore an irrelevant consideration has been taken into account during the processing of this application by the Crown.

The Minister of Energy has allegedly breached Section 109 of the Mining Act 1991 in that he did not dispose of this application either by approval or decline within the specified period.

I was not advised by the Ministry until April 1994 that the Ministry had agreed not to process applications until the pounamu issues were resolved. No advise was ever received advising that the Minister was withholding a decision pursuant to the statutes.

The Minister granted at least 2 other mining licenses during the period and did not advise of an extension of time because of special circumstances.

In November 1990 did advise Judge McHugh, Waitangi Tribunal that an application for a mining license for pounamu would have to be granted according to the statutes and his responsibilities as Minister of Energy.

Granted at least one other license after April 1990, one year after my application was accepted by the Ministry.

The Crown has allegedly proceeded with the gifting of minerals specific to the application with a very bias and unbalanced sense of justice.

The Crown were advised of all these concerns prior to the enactment of the Ngai Tahu (Pounamu Vesting) Bill by way of submissions presented by myself and the NZ Jade

Industry Association. No considerations were provided for in the Act other than the revoking of existing application rights.

Application for this Prospecting License No.31 2583 was made in April 1989 for a maximum term of 3 years no objections were lodged at the appropriate state of the licensing procedure in accordance with the Act and following statutory public notifications.

Neither Ngai Tahu, Mawhera Incorporation or the Crown objected to the application after public notification in

Otago, Southland and Westland newspapers in July 1990.

My application for a Mining License No. 32 3021 was applied for

in approximately the same period and was granted by the Minister of Energy on 22 December 1989.

Also Mining Licence Application 32 2682, Sweetman & Havill was granted for pounamu one year after the grant of my Mining License No. 32©3021. Both these mining licenses were granted

for a term of 10 years with a statutory right of priority for renewal under Section 77 of the Mining Act 1971.

This Prospecting License application would have only applied to a 3 year term.

The Guide to the Mining Act 1971, P17,4.6.1, states **"License applications without objections: The Minister will grant the license."**

"Section 109 of the Mining Act 1971 requires that an application be finally disposed of by being granted or refused within 12 months after the date on which the application was made unless an extension is granted because of special circumstances or an objection is lodged."

None of these matters were exercised or notified.

The Ngai Tahu (Pounamu Vesting) Act 1997 did not become law until 1 October 1998, 9 years after my application was placed with the Ministry.

The decision to decline the application also cited the Waitangi Tribunals recommendations of 1991 and the Crown

decision as consequence of these developments by not issuing any further licences for pounamu in the claim area of Ngai

Tahu, pending settlement of the Ngai Tahu treaty claims.

Documented evidence substantiates that this claim area only related to the pounamu within the Arahura Valley.

Irrespective of this recommendation the Ministry still accepted further applications and fee's for pounamu mining privileges

as per my Mining Permit Application 41©452 lodged in 1996. Allegedly being an indication that lawfully they were obligated to so.

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It has been stated in a letter dated 29 July 1994, M. of Commerce to Minister of Energy that: **"If the Minister of**

Conservation should decide to give his approval to these applications as required under the Mining Act, then the final decision to grant the application would fall to you as Minister of Energy. Should you grant these applications we understand legal action from Ngai Tahu is likely."

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In a letter received from the Minister of Conservation dated 27 April 1998, he states;' the Minister of Energy suspended the granting of pounamu licenses in 1989 because of Ngai Tahu's claim to the mineral.

' As is clearly evidenced this statement is incorrect, yet a Minister of the Crown is still stating this in 1998.

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The moratorium or undertaking filed in the High Court in or about August 1996, although not superseding or affecting the statutes, specified only licenses and permits for Mining, not Prospecting.

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A letter also confirms all processing of applications should cease. However as mentioned above applications were continued to be accepted. Furthermore a recommendation was made to the Minister of Energy by the Ministry of Commerce: **" Our legal advise is that notwithstanding the Ngai Tahu (Pounamu Vesting) Bill prevents the granting of any licenses/permits in respect of pounamu, it would not be appropriate to decline the existing applications in advance of the Bill being passed."**

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This statement is indicative that the Minister could use the Ngai Tahu (Pounamu Vesting) Act 1997 as a substantiating reason or excuse to decline this Prospecting Application because it is alleged he did not have the legislative mandate to substantiate a decline prior to the Act becoming law, regardless of the two moratoriums, the Waitangi Tribunal's recommendations and the 1996 Deed of "On Account" Settlement.

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It is alleged this action also proves that the Crown has intentionally set out to vest the minerals already incumbent to mining privilege applications in other private parties (Te Runanga o Ngai Tahu) while I hold statutory application rights over those minerals as specified in the application until such a time the Minister of Energy declines the application pursuant to the Mining Act 1971.

Te Runanga o Ngai Tahu did not exist in incorporation within the three year period after the application was made. [refer to the Te Runanga o Ngai Tahu Act 1996.]

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In July 1994, it is alleged Ministry of Commerce advised Minister's that ***"it will be necessary for Minister's to agree that they are willing to vest the Crown's pounamu (as defined in paragraph 21) in Ngai Tahu using specific legislation.***

Ministers will also need to be willing to specifically legislate to prevent holders of existing licences and existing applicants for new licences from seeking compensation."

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They also advised minister's ***"that legal and practical issues exist with the treatment of outstanding applications for greenstone licences in the event of a settlement."*** These reports were also requested to be referred to the Minister of Justice, the Honourable Douglas Graham.

Notwithstanding all other matters this application was declined pursuant to Section 104A of the Mining Act 1971, but was not subject to all the transitional provisions included in the Crown Minerals Act 1991, Section 112, because I choose to have this application continue under it's current status at the appropriate stage of the licensing procedure in conjunction with advice received by the Ministry at the time.

This application therefore assumes the status as is described in Section 112, sub©section 1.

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The Ministry of Commerce have cited the Ngai Tahu (Pounamu Vesting) Act 1997 as the reason the Minister of Energy shall

not grant applications for mining privileges under the Mining Act 1971 or permits under the Crown Minerals Act 1991 in respect to pounamu in the Takiwa of Ngai Tahu.

In particular Section 2 and Section 5 of that Act. Section 2 relates to the definition of the specific land area

established in the Te Runanga o Ngai Tahu Act 1996.

Section 5 relates to Applications for Mining Privileges and Permits for pounamu, and states ;

"Notwithstanding anything in the Crown Minerals Act 1991, the Minister of Energy must not grant any ©©©

(a) Permit pursuant to an application made under section 23 of that Act before the commencement of this Act; or

(b) Mining Privilege pursuant to an application which Section 112 of that Act applies. © in respect of any pounamu to which section 3 applies.

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As has been expressed in a letter of 2 December 1997 to the Crown Minerals, this Prospecting Licence Application is not affected by Section 5 of the Ngai Tahu (Pounamu Vesting) Act 1997, as is substantiated in that letter. [see letter attached]

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[Because the Ngai Tahu (Pounamu Vesting) Act, Section 3:

'Ä

Ownership by Ngai Tahu of certain mineralsÄ

;' states

'Ä

Notwithstanding any other enactmentÄ

;' then in consideration

to Section 5 of that Act; 'Ä

Applications for mining privileges

and permits for pounamuÄ

;' which states 'Ä

Notwithstanding

anything in the Crown Minerals Act 1991Ä

,' Section 5 (b)'Ä

mining

privilege pursuant to an application to which Section 112 of that ActÄ

[Crown Minerals Act 1991] Ä

appliesÄ

; is exempt from the

Ngai Tahu (Pounamu Vesting) Act 1997 because Section 112 of the

Crown Minerals Act specifically states subject to the provisions in (a) and (b) 'Ã
The application shall continue to be dealt with in accordance with that ActÃ
[Mining Act 1971] Ã
and
any regulations made under that Act as if this ActÃ
[Crown Minerals Act 1991] Ã
had not been enacted.Ã
,

As mentioned above, the Ngai Tahu (Pounamu Vesting) Act 1997 substantiates this exemption because it states;'Ã

Notwithstanding any other enactmentÃ
'.]

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As the leading statement of; 'Ã

Notwithstanding anything in the Crown Minerals Act 1991Ã

'; [Ngai Tahu (Pounamu Vesting) Act 1997] also precedes the statement of; 'Ã

The Minister of Energy must not grant any ©Ã

'. Then it is clearly understood the

Minister of Energy also Ã

is not subject to this clauseÃ

in

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outstandingÃ

decision specific to this

application. Thus his responsibilities have the same applications under the Mining Act 1971 as they did during the period when this application should have been initially dealt with by the Minister instead of waiting 9 years.Ô

During this period of time I have been extremely disadvantaged by the delays which eventually ruined my previously viable business.

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If a decision was made on this application within the normal time frame I could have planned ahead to accommodate the need for nephrite to sustain my business demand.

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The Crown have not offered compensation for this delay nor have they offered compensation for transferring the mineral rights to other private parties.

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The mineral reserves I discovered within this application area are estimated to be in excess of \$15,000,000 and the location of this area was made available under the statutory regulations specific to the application requirements.

The Crown has since included this area and any pounamu mineral within, subject to the Ngai Tahu (Pounamu Vesting) Act 1997.

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I have been severely disadvantaged after disclosing the location of the area I considered of value relevant to my claim, as a statutory requirement in the application.

I was subsequently advised in 1991, via my local Member of Parliament, by the Minister of Conservation that one of the Waitangi Tribunals recommendations was that the rights to control and ownership of the greenstone in the area of my application be vested in Ngai Tahu

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It is only through a lifetimes study and work in geology and mining that led me to this discovery being the entire source of the south western jade fields. This discovery did not involve illegal exploration or prospecting as has been incorrectly stated in writing by the present Minister of Energy.

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KENNETH JAMES LANDAUS

<![if !supportEmptyParas]> <![endif]>

K J Landaus

PO Box 56

COLLINGWOOD

<![if !supportEmptyParas]> <![endif]>

4 August 1998

<![if !supportEmptyParas]> <![endif]>

Sir Brian Elwood
Chief Ombudsman
Office of the Ombudsmen
PO Box 10152
WELLINGTON

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Dear Sir

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POUNAMU LICENCING MATTERS

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I refer to your letter of 29 July 1998.

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Requests for Information.

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Your summary expressed in the last paragraphs of page 2 and paragraph 1 of page 3 is correct in that I allege the information I requested has not adequately been provided or not provided at all in respect to my specific requests.

The majority of these requests to the Minister of Energy and/or the Ministry of Commerce all related to withheld processing of applications by the Minister of Energy or the Minister of Conservation.

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Moratorium.

As you have noted various letters of advise from Ministry of Commerce and the Minister of Energy cite a moratorium as the reason for withholding processing and decisions prior to the inception of the Ngai Tahu (Pounamu Vesting) Act 1997. As section 109 of the Mining Act 1991 [Transitional Provisions - Crown Minerals Act 1991] provides for certain time constraints on the Minister to make decisions on an application, my purpose of requesting information was to have clarified the statutory authority the Minister or Ministry had to over-rule this legislation or indeed comply with the other sub-sections of the enactment, given that no provision was made for objections or advise contrary to the statutory procedure.

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The Minister's reply was considered inadequate because he stated that no legislation was used but remained firm that the moratorium was the reason.

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Information was provided within documentation by the Minister, requested by Susan Yorke, Solicitor, that provided evidence of a moratorium but did not provide evidence that this moratorium or any other, had the legislative status to over-rule any enactment.

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The Minister of Energy did provide information however this information did not clarify my legitimate concerns as mining privilege applicant.

I allege the Minister had an obligation to provide this information.

Request for withheld information.

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I confirm that the specific information required is contained in documentation supplied under the Official Information Act by the Minister of Energy in response to the request by S. Yorke, Solicitor. Only two separate enclosures from this documentation was sent to your office, these were numbered 5 and 20; referenced as Ref 6 and Ref 11 in my 14 page Files and Notes document also sent to you. My letter of 22 July pertained to number 20.

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I enclose a copy of the Minister's letter to which you refer.

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General Complaint

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I fully understand your much appreciated explanation regarding the mandate of your office and accordingly advise that any actions or conduct of the Minister's of the Crown pertaining to alleged breaches of any enactments will be dealt with by the courts in due course.

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My concerns at this stage however are primarily directed at the manner in which the Crown have endeavoured to withhold the statutory procedure of processing licence applications since 1988; giving preferential treatment to other applications; advised licences would not be granted prior to the inception of the Ngai Tahu (Pounamu Vesting) Act 1997 and not considering adequate compensation in the process of revoking all existing applications under the respective Act's.

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Pursuant to the Crown Minerals Act 1991, I allege that these applications were binding to the Crown and the applications and fees payable were accepted by the Crown therefore it was obligated to provide the services it undertook.

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Accordingly I hope your office may examine the matters and give your opinion as to the Crowns obligations and handling of the entire matter.

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Yours sincerely

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Kenn J Landaus

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I, KENNETH JAMES LANDAUS, APPLICANT, appeal and contest the decision on my PROSPECTING LICENSE APPLICATION No. 31 2583 on the following grounds:

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1. My rights protected by the principles and provisions of the Mining Act 1971 have allegedly been severely affected by the Crown's failure to process this application in accordance with the Statutory Regimes.

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2. I allege the Crown has intentionally expropriated my statutory application rights by vesting the minerals specific to this application over to other private parties prior to a decision on the application being made by the Minister of Energy subject to the Mining Act 1971 and relevant statutes.

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3. The Crown has not offered or paid compensation for damages or disadvantage all these matters have caused me personally notwithstanding the devastating effects on my business.

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4. The Mining Act 1997 contains no reference to the Treaty of Waitangi or any obligations thereunder which could substantiate the proceedings of events that have affected this application and myself as applicant therefore an irrelevant consideration has been taken into account during the processing of this application by the Crown.

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5. The Minister of Energy has allegedly breached Section 109 of the Mining Act 1991 in that he did not dispose of this application either by approval or decline within the specified period. I was not advised by the Ministry until April 1994 that the Ministry had agreed not to process applications until the pounamu issues were resolved. No advice was ever received advising that the Minister was withholding a decision pursuant to the Statutes.

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The Minister :

(a) Granted at least 2 other mining licenses during the period.

(b) Did not advise of an extension of time because of special circumstances.

(c) In November 1990, did advise Judge McHugh, Waitangi Tribunal that an application for a mining licence for pounamu would have to be granted according to the statutes and his responsibilities as Minister of Energy.

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(d) granted at least one other license after April 1990, one year after my application was accepted by the Ministry.

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6. The Crown has allegedly proceeded with the gifting of minerals specific to the application with a very bias and unbalanced sense of justice.

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7. The Crown were advised of all these concerns prior to the enactment of the Ngai Tahu (Pounamu Vesting) Bill by way of submissions presented by myself and the NZ Jade Industry Association. No considerations were provided for in the Act other than the revoking of existing application rights.

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Application for this Prospecting License No.31 2583 was made in April 1989 for a maximum term of 3 years, no objections were lodged at the appropriate state of the licencing procedure in accordance with the Act and following statutory public notifications. Neither Ngai Tahu, Mawhera Incorporation or the Crown objected to the application after public notification in Otago, Southland and Westland newspapers in July 1990.

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My application for a Mining License No. 32 3021 was applied for in approximately the same period and was granted by the Minister of Energy on 22 December 1989.

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Also Mining License Application 32 2682, Sweetman & Havill was granted for pounamu one year after the grant of my Mining License No. 32-3021. Both these mining licenses were granted for a term of 10 years with a statutory right of priority for renewal under Section 77 of the Mining Act 1971.

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This Prospecting License application would have only applied to a 3 year term.

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The Guide to the Mining Act 1971, P17,4.6.1, states "License applications without objections - The Minister will grant the license."

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"Section 109 of the Mining Act 1971 requires that an application be finally disposed of by being granted or refused within 12 months after the date on which the application was made unless an extension is granted because of special circumstances or an objection is lodged." None of these matters were exercised or notified.

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The Ngai Tahu (Pounamu Vesting) Act 1997 did not become law until 1 October 1997, 9 years after my application was placed with the Ministry.

The decision to decline the application also cited the Waitangi Tribunals recommendations of 1991 and the Crown decision as consequence of these developments by not issuing any further licenses for pounamu in the claim area of Ngai Tahu, pending settlement of the Ngai Tahu treaty claims. Documented evidence substantiates that this claim area only related to the pounamu within the Arahura Valley.

Irrespective of this recommendation the Ministry still accepted further applications and fee's for pounamu mining privileges as per my Mining Permit Application 41-452 lodged in 1996. Allegedly being an indication that lawfully they were obligated to do so.

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It has been stated in a letter dated 29 July 1994, M. of Commerce to Minister of Energy that: "If the Minister of Conservation should decide to give his approval to these applications as required under the Mining Act, then the final decision to grant the application would fall to you as Minister of Energy. Should you grant these applications we understand legal action from Ngai Tahu is likely."

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In a letter received from the Minister of Conservation dated 27 April 1998, he states;' the Minister of Energy suspended the granting of pounamu licences in 1989 because of Ngai Tahu's claim to the mineral.' As is clearly evidenced this statement is incorrect, yet a Minister of the Crown is still stating this in 1998.

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The moratorium or undertaking filed in the High Court in or about August 1996, although not superseding or affecting the statutes, specified only licences and permits for Mining, not Prospecting.

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A letter also confirms all processing of applications should cease. However as mentioned above applications were continued to be accepted. Furthermore a recommendation was made to the Minister of Energy by the Ministry of Commerce: " Our legal advise is that notwithstanding the Ngai Tahu (Pounamu Vesting) Bill prevents the granting of any licences/permits in respect of pounamu, it would not be appropriate to decline the existing applications in advance of the Bill being passed."

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This statement is indicative that the Minister could use the Ngai Tahu (Pounamu Vesting) Act 1997 as a substantiating reason or excuse to decline this Prospecting Application because it is alleged he did not have the legislative mandate to substantiate a decline prior to the Act becoming law, regardless of the two moratoriums, the Waitangi Tribunal's recommendations and the 1996 Deed of "On Account" Settlement.

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It is alleged this action also proves that the Crown has intentionally set out to vest the minerals already incumbent to mining privilege applications in other private parties (Te Runanga o Ngai Tahu) while I hold statutory application rights over those minerals as specified in the application until such a time the Minister of Energy declines the application pursuant to the Mining Act 1971.

Te Runanga o Ngai Tahu did not exist in incorporation within the three year period after the application was made. [refer to the Te Runanga o Ngai Tahu Act 1996.]

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In July 1994, it is alleged Ministry of Commerce advised Minister's that "it will be necessary for Minister's to agree that they are willing to vest the Crown's pounamu (as defined in paragraph 21) in Ngai Tahu using specific legislation. Ministers will also need to be willing to specifically legislate to prevent holders of existing licences and existing applicants for new licences from seeking compensation."

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They also advised minister's "that legal and practical issues exist with the treatment of outstanding applications for greenstone licenses in the event of a settlement."

These reports were also requested to be referred to the Minister of Justice, Honorable Douglas Graham.

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Notwithstanding all other matters this application was declined pursuant to Section 104A of the Mining Act 1971, but was not subject to all the transitional provisions included in the Crown Minerals Act 1991, Section 112, because I choose to have this application continue under it's current status at the appropriate stage of the licensing procedure in conjunction with advice received by the Ministry at the time.

This application therefore assumes the status as is described in Section 112, sub-section 1.

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The Ministry of Commerce have cited the Ngai Tahu (Pounamu Vesting) Act 1997 as the reason the Minister of Energy shall not grant applications for mining privileges under the Mining Act 1971 or permits under the Crown Minerals Act 1991 in respect to pounamu in the Takiwa of Ngai Tahu.

In particular Section 2 and Section 5 of that Act. Section 2 relates to the definition of the specific land area established in the Te Runanga o Ngai Tahu Act 1996.

Section 5 relates to Applications for Mining Privileges and Permits for pounamu, and states ;
"Notwithstanding anything in the Crown Minerals Act 1991, the Minister of Energy must not grant any ---

(a) Permit pursuant to an application made under section 23 of that Act before the commencement of this Act; or

(b) Mining Privilege pursuant to an application which Section 112 of that Act applies. in respect of any pounamu to which section 3 applies.

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As has been expressed in a letter of 2 December 1997 to the Crown Minerals, this Prospecting Licence Application is not affected by Section 5 of the Ngai Tahu (Pounamu Vesting) Act 1997, as is substantiated in that letter. [see letter attached]

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Because the Ngai Tahu (Pounamu Vesting) Act, Section 3: 'Ownership by Ngai Tahu of certain minerals; states 'Notwithstanding any other enactment'; then in consideration to Section 5 of that Act; 'Applications for mining privileges and permits for pounamu'; which states 'Notwithstanding anything in the Crown Minerals Act 1991', Section 5 (b)'mining privilege pursuant to an application to which Section 112 of that Act [Crown Minerals Act 1991] applies; is exempt from the Ngai Tahu (Pounamu Vesting) Act 1997 because Section 112 of the Crown Minerals Act specifically states subject to the provisions in (a) and (b) 'The application shall continue to be dealt with in accordance with that Act [Mining Act 1971] and any regulations made under that Act as if this Act [Crown Minerals Act 1991] had not been enacted.'

As mentioned above, the Ngai Tahu (Pounamu Vesting) Act 1997 substantiates this exemption because it states; "Notwithstanding any other enactment".

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As the leading statement of; 'Notwithstanding anything in the Crown Minerals Act 1991'; [Ngai Tahu (Pounamu Vesting) Act 1997] also precedes the statement of; 'The Minister of Energy must not grant any --'. Then it is clearly understood the Minister of Energy also is not subject to this clause in consideration to his outstanding decision specific to this application. Thus his responsibilities have the same applications under the Mining Act 1971 as they did during the period when this application should have been initially dealt with by the Minister instead of waiting 9 years.

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KENNETH JAMES LANDAUS

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APPLICANT

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K J Landaus

FILE COPY

PO Box 56

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COLLINGWOOD

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8 May 1998

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Secretary of Commerce

Ministry of Commerce

PO Box 1473

WELLINGTON

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Dear Sir

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PROSPECTING LICENSE APPLICATION 312583

Notwithstanding all notice and information sent to your office and Crown Minerals to date, I herein summarise the principle reasons why I as applicant cannot legitimately accept your decision on this application:

1.

Pursuant to Section 240A of the Mining Act 1971, the Minister of Energy cannot delegate this decision because the application pertains to Part III of the Act and in particular relates to Crown land including National Park and State Forest Reserves.

Pursuant to the Act, I was not advised within 20 working days of the public notices for objections at the appropriate stage of the licensing procedure, therefore the Minister has denied me my rights to object to any conditions attached to the application.

Pursuant to the Act, the Minister of Energy did not deliberate on this application within the specified time.

The application according to its status is exempt from the Ngai Tahu (Pounamu Vesting) Act 1997 as has been evidenced.

With due regard to all evidence and irregularities as listed in my Files and Notes 14 page Annexure and my Appeal and Objection 6 page Annexure including the provisions subject to Section 233(ba) of the Mining Act 1971.

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Yours sincerely

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Kenneth James Landaus