SUBMISSION TO THE NGAI TAHU (POUNAMU VESTING) BILL

ON BEHALF OF

THE NEW ZEALAND JADE INDUSTRY ASSOCIATION

AND

THE JADE MINERS AND MANUFACTURERS AFFILIATION

REPRESENTING THE ATTACHED SIGNATORIES

Prepared by
K. J. Landaus
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(i) GENERAL STATEMENT

1. We, the Executives and Representatives of the said organisations, wish it known that our members and many other citizen's, are concerned that certain policies of this Bill do not address the particular issues which have previously been brought to the attention of both the Minister of Energy, Minister of Treaty of Waitangi Negotiations and Ministry of Commerce before the introduction of the said Bill.

2. It is considered that the Crowns vesting of the Crown owned minerals defined as Pounamu, into the rohe of Ngai Tahu is historically unique.

   Never before has a Government proposed to transfer an entire national resource over a to a specific Iwi, basing their actions on the principles of the Treaty of Waitangi.

   We have been continually advised by Ministers that our Rights will not be adversely affected by this decision.

   We disagree with these statements and to date have made our best endeavours both individually and collectively to inform Government that our Rights have been severely affected and in many cases have damaged the livelihoods of our members.

   If the Crown had liaised with our organisations when formulating policy, we doubt that it would have been necessary to contest the policies of the Bill now.

3. The majority of our members recognise that the Crown has formally offered Te Rununga O Ngai Tahu the ownership of Pounamu, as a "as a sign of good faith and a demonstration of goodwill" rather than an obligation under the terms and conditions of the Treaty of Waitangi.

   We do not however contest the general concept of the 'Pounamu Vesting Bill', but do object strongly to some of the Policies supporting the Bill and the ill informed nature in which they were formulated.

   In our opinion these policies lack recognition of our organisations and our concerns as legitimate claimants to the resource.

4. The principle reason we OPPOSE the Bill in it's present form is that such an Act would allow the transfer of ownership of the Crown minerals defined as Pounamu to Te Runanga O Ngai Tahu. This transition would automatically REVOKE the present Rights of existing mining privilege applicants and licensees.

5. The other major concern is we feel the Crown in the first instance must rectify their policy of compensation in order that present applicants and licensee are adequately compensated for their losses.

6. Current applications and mining privileges relating to the Pounamu minerals, defined as Serpentine, Bowenite and Nephrite (Greenstone or Jade), pertain to the Mining Act 1971 and the Crown Minerals Act 1991. These Acts provide the legislation that directly or indirectly protect our Rights to apply for or be granted a mining privilege over our discoveries. They do not concern or guarantee us the Right to a specific mineral if that mineral is no longer Crown owned.

   If the Bill is passed and is enacted then the existing applicants, licensees and general public will LOSE all claim to the massive resource regardless of our Rights pursuant to the Mining Act's. Any claims against the Crown would also be more difficult to pursue once the transfer of ownership is complete.

7. At present we are unaware of any existing applicants or licensees specifically being advised that their applications have not been granted and we have to presume that these are still retained as legitimate claims to our discoveries. We have been informed that these claims will not be granted after the passing of the Bill.

8. We consider the concept of the Bill in it's present form as an easy way out for the Crown to avoid having to decline applications under the particular Mining Acts.

9. It is considered that the Crown has a moral, if not a legal obligation in the very least to adequately compensate those in the mining fraternity who had discovered the majority of the resource and subsequently have made legitimate claims to their finds under both the Mining Act 1971 and The Crown Minerals Act 1991. Already some of our members have had to tolerate eight years of indecision on the issue of Mining Privileges. This in itself has created damage to their livelihoods and the Industry.

If the Government were to pass this Bill in it's present form, we would have to argue that it be considered as a very prejudicial enactment and modern injustice to all New Zealander's other than Te Runanga O Ngai Tahu.

10. With regard to the Pounamu Vesting Bill, it's Policy and attached Schedules we have to conclude that the Crown and Ngai Tahu would stand to reap the benefit of our discoveries and lifetimes work in developing the resource and the associated industries.

11. The Schedules (Location Maps) in particular, encompass within their boundaries the specific locations originally plotted by mining privilege applicants.

We consider that both Ngai Tahu and the Crown have benefited from the information supplied by the applicants to help delineate the particular locations and to gain privileged information pertaining to the resource.

In view of evidence gathered on this matter, we can only construe that either the Crown or Ngai Tahu has advantageously used our discoveries and expertise without offering any benefit to those who founded these informations.

We consider these actions as seriously unethical and an affront to the applicants and their Rights.

12. Many thousands of New Zealander's enjoy the recreational gathering and fashioning of the specific 'Pounamu' minerals. No allowance has been made for their continued access to the minerals except to state 'in policy' that "any person wishing to extract Pounamu in future will need to deal directly with Ngai Tahu'.

This statement does not guarantee anyone the right to any stone nor does it place any onus on Te Runanga O Ngai Tahu to allow access or extraction. We understand that already negotiations are underway to place the resource with parties other than Te Runanga Ngai Tahu.

Given the vast quantity and area included in the Schedules, special gathering sites should be made available for the particular purpose of recreational gathering to the public.

Our concern is that if this policy is not adopted then we can only envisage conflict of interests in certain locations throughout the region.

13. Commercial interests seem content to negotiate with Ngai Tahu to procure future supplies of stone if they can receive an assurance before the enactment of this Bill, that they have a Right to apply as such and they are adequately compensated for the revokement of their existing Rights to the resource.

We must bear in mind that the Crown Minerals Act 1991 specifies that '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.' (Section 23)

If the Crown no longer is the mineral owner of serpentine, bowenite, and nephrite, then our Rights to the mineral are considered to be revoked.

14. The definition of Pounamu, it's associated minerals and the extent of the resource has not been adequately addressed in the Bill.

We seriously question why a Geological/Minerals Report or a Resource Assessment including the proven and unproven reserves has not been prepared in conjunction with this Bill. Considering the specific minerals involve a vast reserve of considerable value to the nation of which the majority lies within State Forest Reserves, National Parks, Wilderness Areas, Special Historical Area's, World Heritage Park and the adjacent Marine.

In contrast to the original definitions of Pounamu specified in the Draft Minerals Programme 1995 and other documentation, it is considered that previous to the introduction of the Bill, Serpentine was defined as only that serpentine which was associated with the Bowenite or Nephrite. The

definition now includes, both in the later Minerals Programme 1996 and the Ngai Tahu (Pounamu Vesting) Bill, all Serpentine within the area's specified in the Schedules.

We respectively must conclude therefore that the Crown now include the entire Serpentine resource within the schedules irrespective of it's individuality from the other Pounamu minerals and it's many other associated economic minerals such as platinum, awaruite, copper etc., not withstanding the rock as a future source of building stone.

It is considered inconceivable that Ngai Tahu consider that the general mineral Serpentine and all it's many more specific associated minerals be included in their claims.

The Crown Minerals Group of The Ministry of Commerce must be aware that the Serpentine group of minerals include a diverse range of more specific minerals, including Bowenite. Nephrite falls into a similar category in that other associated rocks can have a nephritic structure but not classified as a true Nephrite or Jade. The two minerals which form Nephrite Jade are also found as entirely different rocks thus creating much confusion when persons apply for a permit for these other more specific minerals in their rock form.

We plead that Government address these matters before proceeding with the enactment of the Bill and that they consider the many other issues to which we have referred.

(ii) CLAUSE ANALYSIS

Clause 4. RIGHT OF PRIORITY TO APPLY FOR A RENEWAL OF AN EXISTING LICENCE GRANTED UNDER THE MINING ACT 1971.

The Minister of Energy has stated that this Right has not been preserved under the Crown Minerals Act 1991. Contrary to the Minister's opinion, the Mining Act 1971, Section 77 does specify that under the Act 1971, the application for a new licence shall have priority. Pursuant to the Crown Minerals Act 1991, Section 107 including subsection (2) and not withstanding Section 111, subsections (1&2) of that Act 1991. The enactments for the purpose of subsection (1) DO NOT include Section 77 of the Mining Act 1971. This then must substantiate that any existing mining licence under the Act 1971 be considered as CONTINUING to have a Right of Priority for a new licence consistent with Sections 23, 25 & 107 of the Crown Minerals Act 1991 and Section 77 of the Mining Act 1971.

Pursuant to Clause 4 of the Ngai Tahu (Pounamu Vesting) Bill, nothing should prevent the applicant to apply for a further mining licence.

Clause 5 EXISTING APPLICATIONS FOR MINING PRIVILEGES UNDER THE MINING ACT 1971 – SUBJECT TO SECTION 112(1) OF THE CROWN MINERALS ACT 1991.

Where an application for a prospecting or mining licence has been accorded priority rights, public notice has been given and no objections have been lodged then these applications, pursuant to the said Acts 1971 and 1991 should remain unaffected. Given that these Acts in their present form are the only legitimate means by which applicants can secure their Rights to their discoveries in accordance with the efficient allocation of Rights in respect of Crown owned minerals, the revokement of these Rights and transfer of ownership of the specific minerals is considered unacceptable. The policies and in particular Clause 5 of The Bill specifically endeavour to revoke these Rights.

It is considered therefore that under the above mentioned Act's and their relevant sections that any existing applications for mining privileges must remain as such until the applicants are officially advised by the Ministry that they have been declined, including the reasons for this decision.

Applicants have requested access to the minerals and land. The majority of the existing applications were made in the late 1980's. To have them wait so long only to advise them that their applications will not be granted because the mineral ownership has been changed

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