

STRATEGIC ISSUES ARISING

This composite paper was prepared by a number of authors. The paper on Māori Television was prepared by Jim Mather.

Paper Overview

This paper identifies a range of issues that are of potential significance to Iwi katoa, including;

- Māori Television – which is of significance because prospective changes to spectrum allocation which potentially affects the rights of Iwi katoa and also the business arrangements for Māori Television. This issue has arisen due to the combination of historical allocation arrangements, the governance arrangements for management of the spectrum, related policy reform by the Ministry of Economic Development and a review of the Māori Television Act. This paper was prepared by the CEO of Māori Television for the purpose of informing Iwi Chairs of developments concerning Māori Television;
- Mining on the Conservation Estate – which is potentially of significance to Iwi katoa as it reflects an overarching policy direction of this government to reconciling economic and environmental interests. The paper recommends that Iwi Chairs consider this issue for its potential precedent value; and
- Foreseeable Political Issues – which identifies the political and policy issues that may arise over the next six months.

Recommendations to Iwi Chairs Forum

The paper recommends that the Iwi Chairs Forum consider the following;

- Any further issues of strategic relevance to Iwi katoa that should be discussed during the hui;
- Consider the precedent value of various political and policy related issues that are known and foreseeable; and
- Consider any structured responses the Iwi Chairs Forum wishes to undertake in response to the known and foreseeable issues.

Section A: MAORI TELEVISION-- UHF SPECTRUM STATUS

Background

This section of the paper provides an overview of some key recent developments in the proposed reallocation of spectrum that has prompted the Board of Māori Television to seek the views of the Iwi Leaders Group.

Initial Allocation of UHF Spectrum

- The Māori Television Service (Te Aratuku Whakaata Irirangi Māori) Act 2003, assigned Māori Television a UHF Management Right over 4 x UHF frequencies, channels 35 to 38, sufficient for one nationwide analogue terrestrial TV service
- This equates to a 32 MHz range of frequencies (within the limits of 494 and 806 MHz.)
- The Management Right was issued for a period of 10 years, therefore expiring in 2013.
- Under the current Māori Television Act, the Maori Electoral College, Te Pūtahi Paoho (“TPP”), has a statutory role to play in the current UHF Management Right, but this is only if Māori Television no longer requires the spectrum. Only if this occurs does it revert to TPP to hold it in trust for alternative Māori broadcasting.

Current use of UHF Spectrum

- In 2003 there were (and remain) concerns about the frequencies allocated to Māori Television in 2003. Any use of these frequencies had the potential to cause interference with other television equipment, notably Sky set-top boxes.
- Sky were so concerned that they proposed a deal with Māori Television that saw Māori Television take-over one of the Sky frequencies currently used at the time by their CNN terrestrial channel, in return for Māori Television agreeing not using the frequencies it was allocated under the Māori Television Act.
- As well as avoiding the interference issue, this also provided significant advantages to Māori Television in terms of cost savings, increased coverage and earlier broadcast commencement.
- The arrangement with Sky expired in 2010, but has recently been extended through until Digital Switch Over (“DSO”) somewhere between 2013 and 2016, although Sky has the option to terminate the agreement earlier, any time after 2011.
- Should the Sky arrangement terminate prior to DSO, if Māori Television does not wish to cease broadcasting its analogue channel before the rest of the industry does, it will need to start using the frequencies under its Management Right.

- Frequencies under the current UHF Management right are also currently used to extend the transmission coverage provided by Sky, in areas such as Northland, Gisborne, Nelson and South Canterbury.
- If the current UHF management Right is not extended beyond the current expiry date of 2013 and DSO does not occur until as late as 2016, Māori Television will not be able to continue with its current analogue broadcasts in these extended coverage areas. This will see Māori Television's analogue service turned off many years before the other broadcasters have to.

Proposals for Changes in the Allocation of Spectrum for Maori Television

- The Māori Television Act is currently under review, and this review includes the matter of UHF spectrum to be made available to MTS.
- The Review Panel of the Māori Television Act made the following recommendation: *“that the four channels of UHF right are retained by the Service regardless of changes made to re-package spectrum after Digital Switch Over”*.
- Over the last few years, Ministry of Economic Development (“MED”) have been undergoing a spectrum planning review to determine the allocation of spectrum to be made available for television and telecommunications uses post Digital Switch Over (“DSO”).
- The initial MED proposal was that no spectrum be made available to Māori Television, and that we should lease broadcasting capacity from other spectrum holders.
- This proposal was subsequently revised to the extent that a reservation of 16 MHz of UHF spectrum be made, **as opposed to 32 MHz under the current Management Right**.
- As well as recommending changes to the quantum of spectrum, the MED proposal also recommends a change as to the holder of that spectrum. Instead of the UHF Management Right being held by Māori Television, as is the current situation, any new spectrum would be held by the Maori Electoral College, TPP.
- The MED proposal would see TPP hold this spectrum for wider Māori broadcasting interests not just for Māori Television.
- The MED proposal does not provide any details as to how Māori Television is to secure access to the spectrum it needs for both its current and future needs, or the manner and criteria by which TPP may allocate parts of this spectrum to other broadcasters at the expense of Māori Television.

Maori Television Plans for the UHF Spectrum

Firstly: to keep the spectrum available in case our analogue transmission arrangement with Sky terminates prior to DSO and for the extended coverage areas (e.g. Northland, Gisborne,

Nelson and South Canterbury) for the period from 2013 through until DSO.

Secondly: once DSO has arrived (or we are sure that the spectrum will not be required for analogue transmissions prior to DSO) the spectrum will be used by Māori Television for the digital terrestrial television transmission of our two current channels, in standard definition.

Thirdly: for transition of both current channels from standard definition to high definition (requires 4 times as much spectrum as standard definition)

Fourthly: to facilitate new technological developments such as 3D, and/or new services either of our own for other similar interest broadcasters.

Thereafter: leasing of unused capacity to generate revenue to fund future growth & development.

Concerns about MED Proposals for the UHF Spectrum

Amount of Spectrum

- While 16MHz is better than the initial MED proposal of nil, **it does represent a 50% reduction on the current allocation of 32 MHz.**
- 16Mhz is sufficient spectrum to allow Māori Television to transmit its current two channels in High definition format and still possibly have a small amount left over. However, it does not allow for any future growth or expansion of HD services (which will become the norm over the next 5 years), nor will it be sufficient to allow Māori Television to take advantage of future technology changes such as 3D, which require additional spectrum.
- It was part of Māori Television's longer term strategy to utilise any surplus spectrum to generate additional revenue to offset cost increases and reduce its reliance on direct Government funding. This opportunity will be lost to Māori Television.

Holder of the Spectrum

- If the MED proposal is accepted and TPP becomes the holder of the spectrum Māori Television will be the only national broadcaster not having direct control over its own spectrum.
- Without certainty and control over its spectrum, this makes it extremely difficult for Māori Television to make longer term plans for its future, respond to changing technologies, develop new services, etc.

- It is not clear how TPP will determine how much spectrum it will make available to Māori Television, and on what terms. These factors could be critical in determining the future viability of Māori Television.
- It is not clear what criteria TPP will use to determine what other parties it may allocate spectrum to. As the spectrum in question is only available for use for digital terrestrial television, in doing so TPP will be facilitating the establishment of other new broadcasters who will compete with Māori Television for audience, programmes, staffing, funding etc..
- This is completely contrary to the statutory role of TPP.

Section B: MINING ON THE CONSERVATION ESTATE

This section of the paper provides a brief overview of issues pertaining to mining on the conservation estate.

Background

The Ministry of Economic Development has released a discussion paper on mining on public conservation lands. The context for this paper is that New Zealand is a mineral rich country, with an estimated 40% of this mineral potential located under lands that are protected from mining due to their significant conservation values. The conservation value of these lands is statutorily safeguarded by being included in Schedule 4 of the Crown Minerals Act.

The proposal is that some areas be removed from Schedule 4 to enable potential mining applications to be considered. It is also noted that there may be other conservation lands, not protected by Schedule 4, that also have mining potential, and proposes further investigation of those areas (no legislative change would be necessary to allow mining in these areas). The Paper also proposes;

- Changes to Ministerial approval responsibilities – currently it is only the Minister of Conservation (through the Department of Conservation) that makes decisions on access to public conservation lands, in respect of mining on conservation lands however, it is proposed the Minister of Conservation and the Minister of Economic Development have joint responsibility;
- Conservation Fund – that part of the royalties from mining be directed to a contestable conservation fund that would be publically available for conservation activities both on and off public conservation lands.

Strategic Relevance

This discussion paper is potentially of strategic relevance to Iwi katoa for the following reasons;

- That it represents an overarching government approach to reconciling economic and environmental interests – this government is openly seeking to balance economic and environmental interests across all natural resources related policy (e.g. RMA reforms, restructuring of MfE, strategic direction of DoC etc). The exploration of mining on the conservation estate is a further example of this policy direction unfolding;
- Mineral ownership – the policy is premised on the Crown having sole rights to the mineral estate under Crown owned land, which has a direct impact on the nature of rights and interests Iwi have over the mineral estate;
- Any decisions on mining in the conservation estate will form a precedent for future policy; and
- The exploration of mining on the conservation estate is confined to certain sites which are clearly within the rohe of particular Iwi,

therefore any stance taken by Iwi Chairs on this issue will need to consider how the principle of mana whenua is respected in policy engagement.

Recommendations

It is recommended that Iwi Chairs discuss the strategic relevance of the exploration of mining within the conservation estate as a direct issue as well as more broadly reflecting a change in policy toward reconciling economic and environmental interests.

Section C: FORESEABLE ISSUES OF STRATEGIC INTEREST

This section of the paper identifies further political/ policy related issues that may be of significance to Iwi katoa over the coming months.

The diagram below identifies the issues of significance that are under active collaborative management by the Iwi Chairs and/or have been identified as of sufficient strategic relevance to warrant collaborative management;



It is recommended that the hui consider further issues that should be registered as of significance to Iwi katoa and any arrangements for collaboratively managing the issues and engaging with government.