



# FORESHORE AND SEABED THE SECOND CHAPTER

**After 170 years you would have reason to expect the country to have sorted out who owns what, yet the coast is under another legislative change as the Government prepares to remove the foreshore and seabed from Crown ownership and make it 'public space', owned by no one.**

THE PROPOSED LAW lifts the 2004 Foreshore and Seabed Act lid on litigation by introducing a new property title that re-opens customary claims through the courts or by direct negotiation with the Government. Iwi, who have already completed a Treaty of Waitangi settlement, can make a new claim for customary title in the foreshore and seabed.

Maori tribes and sub-tribes will have to prove exclusive use and occupation since 1840 to be granted customary rights that involves a deed giving (non-freehold) title to a coastal area and development rights to non-nationalised minerals. They won't be able to sell the land or deny public access, but will have some control and veto over developments, permitting activities, and conservation issues currently under the jurisdiction of councils and other statutory organizations.

The Government will also declare in law that Maori have universal recognition or "mana tukuiho" over the foreshore and seabed.

## **The petroleum industry view**

Arguably the Government's proposed the legislation is not any different from the seven principles what it proposed at the beginning of the year in its public discussion paper.

Pepanz, representing members actively involved in oil and gas exploration and mining, made a submission on this paper that its executive officer, John Pfallert, says is still the view held by the association.

Pepanz is concerned the new legislation creates an "uncertainty" that could have a negative effect on petroleum industry investment.

"From an industry where the majority of investment funding is sourced offshore it is critical that the new regime creates a clear and certain set of rules which provides confidence that investors have certainty," Pepanz said in its submission.

Placing Crown land into some "limbo" status of 'public domain' and accommodating greater Maori involvement in RMA decision making by Regional Councils, threatened certainty, as it creates a new category of land, the legal status of which is considerably less certain than under the current legislation.

"There are 40 or more statutes that exist which have some interface with the management of the foreshore and seabed. Many, if not all, rely on Crown ownership of the underlying foreshore

and seabed for the exercise of powers and responsibilities under those statutes.

"If foreshore and seabed ownership is removed from the Crown then there is a real possibility that this will leave the Crown open to disputes with parties over the exercise of those power, duties and functions under those 40 or so statutes."

The concept that proven customary interests will mean a combination of property rights and input to environmental management processes, worries the association.

"Maori are already consulted via Resource Management Act processes over all developments on the foreshore and seabed out to the limits of the territorial sea. It would be of concern to industry if a different regime under the RMA were to apply to customary activities."

The discussion document proposed that coastal iwi/hapu who gain proven non territorial interests will be given powers to develop planning documents under Part 2 of the RMA, which sets out their objectives and policies according to their "world view, including sustainable management and the protection of cultural and spiritual identity".

Pepanz submitted that these plans should be subject to Part 5 of the Act to allow public scrutiny. "They must also be subject to the appeal provisions of the RMA. These proposals have the potential to cause serious conflict with other planning instruments and consenting processes unless handled carefully." Existing use rights should be protected if these provisions are proceeded with, it adds.

The discussion paper also proposed that coastal iwi/hapu would have the right to decide whether an activity requiring a coastal permit could be progressed by the consent authority (ie regional council).

"This will create huge uncertainty for investment. For the effective development of nationalised petroleum resources there needs to be some mandatory requirement for an applicant to go to arbitration if access to the land in question is essential to effectively investigate the underlying petroleum potential."

John Pfahlert says now that, "Recent comments from the Minister for Treaty Negotiations office, Chris Finlayson, "that iwi with customary title could veto access to petroleum resources" is a real worry."

The discussion paper claims that this award has been developed to be similar to the rights that a private landowner would have, said Pepanz in its submission.

"However, the Crown Minerals Act contains provisions for an applicant to go to compulsory arbitration if a private landowner is unreasonably withholding access to private land for exploration.

"We submit that a similar power needs to apply to foreshore and seabed under any award in this statute. If coastal hapu/iwi can refuse access or consent according to a Maori world view on grounds which are not covered by the RMA, this will create significant difficulties for the development of petroleum resources." ○

