

Maori expectations for consultation

J Barnes

JBA Pacific, PO Box 11-371, Wellington, Telephone 0064-4-472 0299, Email jba@clear.net.nz

Abstract

James Barnes is Managing Director of James Barnes & Associated Ltd which is a company that has invested ten years of development to provide developers with a transparent, user friendly consultation framework that identifies who needs to be consulted, how they are to be consulted and procedures required to manage the risks associated with getting it all wrong!

Despite the assertion above, this paper is not about to provide delegates with the answer to whom they ought to consult or identify the expectations that Maori might have in regard to the consultation process. It would be a very brave person indeed who would venture an opinion on such a sensitive subject. There are no short cuts to finding out what expectations Maori might have on any given situation. Nothing can be taken for granted.

What this paper will attempt to do however is provide practical insights into what might be on the minds of Maori interests as they deal with the issues associated with mineral resources, particularly those under Treaty of Waitangi Claim.

The Treaty of Waitangi has a significant bearing on the current debate between Maori and the Crown regarding ownership of mineral resources in New Zealand. The Waitangi Tribunal is currently hearing a case presented by a number of Iwi over the ownership of oil and gas resources in Taranaki and Hawke's Bay. Others will follow.

The Crown and Maori have never been able to settle differences over ownership rights without resorting to legal action and it looks like this scenario is about to be repeated in regards to minerals. The Crown has a duty to actively protect the Maori interest. This is a fundamental expectation in the relationship between Maori and the Crown. In the case of minerals, Maori have yet to see the Crown do its duty. The impact on developers has become evident through Maori objections to consent applications as the issues of mineral right remain unresolved.

Introduction

This paper is not about to provide delegates with the answer to whom they ought to consult or identify the expectations that Maori might have in regard to the consultation process. It would be a very brave person indeed who would venture an opinion on such a sensitive subject. There are no short cuts to finding out what expectations Maori might have on any given situation. Nothing can be taken for granted.

What this paper will attempt to do however is provide practical insights into what might be on the minds of Maori interests as they deal with the issues associated with mineral resources, particularly those under Treaty of Waitangi Claim.

The Treaty of Waitangi has a significant bearing on the current debate between Maori and the Crown regarding ownership of mineral resource in New Zealand. The Waitangi Tribunal

is currently hearing a case presented by a number of Iwi over the ownership of oil and gas resources in Taranaki and Hawke's Bay. Others will likely follow.

The Crown has a duty to actively protect the Maori interest, however, in the case of minerals, the Maori interest has not been acknowledged and/or recognised.

The Crown and Maori have never been able to settle differences over ownership rights without resorting to legal action and it looks like this scenario is about to be repeated in regards to minerals. The latest Crown edict that Maori shall not have a property right over mineral resources will be tested by those Maori who consider their rights are being denied. If the Crown's position is to be seen as more than just mere posturing, then a review of the results of such legal encounters between the Crown and Maori may suggest that the Crown's position on the matter could be vulnerable.

The basis of Maori expectation for consultation

The reality that developers and users of natural resources will have to come to terms with is the fact that Maori consider the Treaty of Waitangi a guarantee that certain rights of Tino Rangatiratanga citizenship do transcend the legal description and definition of constitutional citizenship. The Kawanatanga framework (constitutional law) and Tino Rangatiratanga framework (customary lore) were both affirmed by the Treaty. In terms of Tino Rangatiratanga rights, the Treaty did not bestow customary traditions and practices upon Maori but rather Article II of the Treaty protects those rights, as they existed under the common law doctrine of aboriginal title.

In my ten years of consultation experience, the general basis of Maori expectation is that whoever comes to consult will understand and acknowledge the Maori interest in those terms and will have particular regard for the status of Maori with:

- Mana Whenua (authority over lands and territory); and
- Kaitiakitanga (guardianship over resources).

There will be many variations to what Maori expect consultation to deliver, but fundamentally the expectations of Maori will in the majority of cases revolve around Treaty issues. There is therefore a clear expectation that developers and resources users will have an understanding of the Treaty as it relates to the interests of all parties.

General expectations for consultation

Having regard for the Maori interest has lead the way to improving consultation methodology generally. Awareness has emerged in recent years regarding the value that can be added to projects where community issues are identified well in advance of projects being launched. The key therefore to

ensuring costly delays in the consenting process and disruption to down-stream activity do not occur unexpectedly, is effective consultation up front.

While there are many statutory requirements to consult with Maori, it is prudent to reflect on the issues that need to be addressed in terms of the rest of the community. Communities at large will have common interests with Maori to be consulted on such topics as:

- demonstrating regard for community values;
- delivering benefits to the local community;
- protecting heritage sites and significant land marks;
- restoring land utilisation;
- ensuring environmental safety; and
- involvement in project management.

Conclusion

The expectations that Maori have for consultation are relatively straightforward. The issues surrounding the ownership and use of minerals however are not. There are therefore a number of problems facing the minerals and mining industry that have to be resolved before too long.

It is my view that the potential and development of the mineral resources of New Zealand will depend to some extent on the outcome of the Crown's veto on Maori rights to ownership. An immediate impact on the industry is that Maori interests are likely to look to developers for compensation. This is happening already and up until now Maori have accepted the argument that this is a matter that the industry is not capable of resolving. This argument may not be enough anymore and may require a protocol to be established between Maori and the industry, to allow exploration and development to continue in the meantime.