

# House of Representatives

# Supplementary Order Paper

Tuesday, 2 September 2008

## Central North Island Forests Land Collective Settlement Bill

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### *Proposed amendments*

Hon Dr Michael Cullen, in Committee, to move the following amendments:

*Preamble: recital (4)*

To omit “86.4%” (line 6 on page 4) and substitute “86.7%”.

To omit “13.6%” (line 11 on page 4) and substitute “13.3%”.

*Clause 2*

To omit this clause (lines 22 to 24 on page 4) and substitute the following clause:

**2 Commencement**

- (1) **Subpart 2 of Part 3** (except **sections 34 and 35**) and **Schedule 4** come into force on a date to be appointed by the Governor-General, by Order in Council, made on the recommendation of the Minister in Charge of Treaty of Waitangi Negotiations and the Minister of Maori Affairs in accordance with **section 34**.
- (2) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.

*Clause 3(a)*

To omit “CNI Iwi Holdings Limited” (line 31 on page 4) and substitute “the company”.

*Clause 4*

*Paragraph (a)* of the definition of **Crown agreed proportion**: to omit “13.6%” (line 16 on page 6) and substitute “13.3%”.

*Paragraph (a)* of the definition of **deed of settlement**: to omit “of Treaty Settlements” (line 30 on page 6) and substitute “in Charge of Treaty of Waitangi Negotiations”.

Definition of **deed of settlement**: to insert the following paragraph after paragraph (b) (after line 31 on page 6):

- (ba) the Associate Ministers in Charge of Treaty of Waitangi Negotiations; and

*Paragraph (a)* of the definition of **historical claim**: to omit “or part of a claim” (line 37 on page 6).

*Paragraph (a)(i)* of the definition of **historical CNI forests land claims**: to omit “an iwi of the CNI Iwi Collective” (line 21 on page 7) and substitute “the CNI Iwi Collective or a member of the Collective (or any representative entity)”.

Definition of **ongoing rentals**: to omit “Trust” (line 6 on page 8) and substitute “company”.

To insert the following definitions in their appropriate alphabetical order:

- member of the Collective** has the meaning given to it in clause 1.6 of the deed of settlement
- representative entity** has the meaning given to it in clause 1.7 of the deed of settlement

#### *Clause 6*

*Subclause (5)(c)*: to omit “**sections 7 to 12**” (lines 36 and 37 on page 9) and substitute “**sections 8 to 12**”.

*Subclause (6)*: to omit “for all or part of the parcel of CNI forests land” (lines 4 and 5 on page 10).

*Subclause (6)(a)*: to insert after “register” (line 7 on page 10) “for that parcel of CNI forests land”.

*Subclause (6)(c)*: to omit “**sections 7 to 12**” (lines 13 and 14 on page 10) and substitute “**sections 8 to 12**”.

*Subclause (8)*: to omit “**subsections (5) and (6)**” (line 19 on page 10) and substitute “**subsection (6)**”.

#### *Clause 7*

*Subclause (3)*: to omit “**sections 22 and 23**” (line 36 on page 10) and substitute “**sections 22 to 24**”.

*Subclause (4)*: to omit this subclause (lines 1 to 9 on page 11) and substitute the following subclause:

- (4) **Subsection (1)(a)** does not exclude the jurisdiction of the Waitangi Tribunal in so far as it relates to the steps that are necessary for the Tribunal to complete its inquiries and report on the following:
  - (a) the Tongariro National Park Inquiry (Wai 1130):
  - (b) the Te Urewera Inquiry (Wai 894).

#### *Clause 8(5)*

To omit “by the deed of settlement” (line 37 on page 11) and substitute “to fulfil the terms of the deed of settlement in relation to the vesting of the CNI forests land by the Crown in the company”.

*Clause 9*

*Subclause (3)*: to omit “a right of way easement over land adjoining the CNI forests land that is owned or administered by the Crown, as required by the deed of settlement” (lines 12 to 15 on page 12) and substitute “the right of way easements in Part 7 of the deed of settlement”.

To add the following subclause as *subclause (5)* (after line 18 on page 12):

- (5) The permission of a council under section 348 of the Local Government Act 1974 is not required to lay out, form, grant, or reserve a private road, private way, or right of way under this section.

*Clause 10(1)*

To omit “Clause 6.2” (line 20 on page 12) and substitute “Despite clause 16.5 of each Crown forestry licence, clause 6.2”.

*Clause 11*

*Subclause (1)*: to insert after “Crown Forest Assets Act 1989” (line 34 on page 12) “and that easement is enforceable in accordance with its terms”.

*Subclause (4)*: definition of **Matea easement**: to omit “Part 10 of Schedule 6” (lines 14 and 15 on page 13) and substitute “clause 7.20.1(d)”.

*Subclause (4)*: definition of **public right of way easement**: to omit “Part 7 of Schedule 6” (line 18 on page 13) and substitute “clause 7.20.1(a)”.

*Subclause (4)*: definition of **Tokorangi easement**: to omit “Part 8 of Schedule 6” (lines 19 and 20 on page 13) and substitute “clause 7.20.1(b)”.

*Subclause (4)*: definition of **Whaka easement**: to omit “Part 9 of Schedule 6” (lines 21 and 22 on page 13) and substitute “clause 7.20.1(c)”.

*Subclause (4)*: definition of **Whirinaki easement**: to omit “Part 11 of Schedule 6” (lines 23 and 24 on page 13) and substitute “clause 7.20.1(e)”.

*Clause 12(2)*

Definition of **Plot Road covenant**: to omit “Part 1 of Schedule 7” (lines 32 and 33 on page 13) and substitute “clause 7.31.1”.

Definition of **Rangitaiki River covenant**: to omit “Part 2 of Schedule 7” (line 35 on page 13) and substitute “clause 7.31.2”.

*Clause 15(1)*

To omit “86.4%” (line 34 on page 14) and substitute “86.7%”.

*Clause 17(6)*

To insert after “by” (line 16 on page 16) “the transfer to which this section applies and”.

*Clause 21(2)*

To omit “**section 6**” (line 1 on page 18) and substitute “**section 7**”.

*Clause 23(1)*

To omit “**sections 6**” (line 23 on page 18) and substitute “**sections 7**”.

*Clause 24(a)*

To insert after “settlement of” (line 4 on page 19) “, or the making of a recommendation under **section 22(2) or 23(1)** in respect of, ”.

*Clause 25(2)(b)*

To add (line 6 on page 20) “, as determined under the deed of trust”.

*Clause 28(3)*

To omit “registered” (line 10 on page 21) and substitute “registrable”.

*Clause 29*

To add the following subclause (after line 19 on page 22):

- (6) A statement that the transfer of a selected DSP property has been effected under this section is sufficient evidence to that effect if it is executed by the Registrar-General on the document effecting the transfer.

*New subpart 1 heading*

To insert the following heading (before line 23 on page 22 above clause 30):

**Subpart 1—General**

*Clause 31(1)(b)*

To omit “Property” (line 7 on page 23) and substitute “property”.

*Part 3: new subpart 2*

To add the following subpart (after line 7 on page 24):

**Subpart 2—Consequential amendments to this Act  
if Ngāti Rangitihī becomes signatory to deed of  
settlement**

**34 Process to apply before this subpart and Schedule 4 may be commenced**

The Minister in Charge of Treaty of Waitangi Negotiations and the Minister of Maori Affairs may recommend the making of an Order in Council under **section 2(1)** only if the Ministers are satisfied, at the time of making the recommendation but by no later than 25 December 2008, that Ngāti Rangitihī has a sufficient level of support for it to—

- (a) be a member of the Collective; and
- (b) enter into the deed of settlement.

**35 Expiry of this subpart and Schedule 4**

This subpart and **Schedule 4** expire with the close of 31 January 2009 if an Order in Council under **section 2(1)** has not been made by that date.

**36 Preamble amended**

Recital (4) of the Preamble is amended by—

- (a) omitting “86.7%” and substituting “90%”; and
- (b) omitting “13.3%” and substituting “10%”.

**37 Section 4 amended**

- (1) Paragraph (a) of the definition of **CNI Iwi Collective** is amended by inserting the following subparagraph after subparagraph (ii):

“(iia) Ngāti Rangitahi; and”.

- (2) The definition of **Crown agreed proportion** is amended by omitting “13.3%” and substituting “10%”.

**38 Section 15(1) amended**

Section 15(1) is amended by omitting “86.7%” and substituting “90%”.

**39 Schedule 3 substituted**

**Schedule 3** is repealed and the Schedule 3 set out in **Schedule 4** substituted.

*Schedule 2*

To omit this schedule (line 1 on page 29 to line 36 on page 35) and substitute the following schedule:

**Schedule 2**

**s 14**

**Tikanga based resolution process for CNI  
forests land**

**1 Interpretation**

- (1) In this schedule, **CNI Iwi Collective**, **company**, **Crown agreed proportion**, **Crown initial period**, **deed of settlement**, and **deed of trust** have the meanings given to them in **section 4**.

- (2) In this schedule,—

**adjudication** means the adjudication process set out in **clauses 6(10) to (15)** of this schedule

**adjudication panel** means the adjudication panel comprising at least 3 members appointed in accordance with **clause 6(10)** of this schedule to determine the dispute

**board of the company** means the board of directors of the company

**iwi** means an iwi of the CNI Iwi Collective

**final allocation agreement** means the document prepared by the company that records the outcome of the resolution process in this schedule

**resolution process** means the tikanga based resolution process for CNI forests land set out in this schedule.

- (3) Terms used, but not defined, in this schedule have the same meaning as in the deed of settlement.

## **2 Principles of resolution process**

- (1) The CNI forests land will be allocated to iwi on the basis of mana whenua and the agreements reached between iwi in a kanohi ki te kanohi process or otherwise determined by the resolution process provided for in this schedule.
- (2) The CNI Iwi Collective is committed to the iwi deciding upon the allocation of CNI forests land for themselves, on their own terms, answerable to one another.
- (3) The iwi acknowledge their commitment to a resolution process that—
- (a) enhances and promotes the mana and integrity of all iwi; and
  - (b) is open and transparent; and
  - (c) promotes whanaungatanga, manaakitanga, and kotahitanga amongst the iwi; and
  - (d) recognises the desirability of post-settlement collaboration between them in the collective management of assets.
- (4) Allocation of CNI forests land will be to iwi only, or their nominees (acknowledging that it is up to iwi whether they make their own internal arrangements with hapū or other entities).
- (5) The CNI Iwi Collective acknowledges its intention to respect any existing arrangements between iwi and district or regional councils, the Historic Places Trust, or Crown forestry licensees.

## **3 Governance of process**

- (1) Each iwi will be represented by their governance entity in the resolution process.
- (2) The resolution process will be governed by the company and the governance entities, in their capacity as shareholders in the company.
- (3) The governance entities may amend the resolution process from time to time by unanimous resolution, passed in accordance with the procedures set out in the deed of trust.
- (4) The company may appoint individuals or committees to undertake particular roles in relation to the resolution process.

- (5) The Crown appointed observer to the company is not entitled to attend meetings concerning the resolution process unless they are relevant to the Crown agreed proportion.
- (6) The resolution process will be run with set time frames for each stage and be completed by 1 July 2011.

**4 Stage 1: Identification of mana whenua interests: 1 July 2009 to 1 October 2009**

- (1) By 31 August 2009, each iwi will provide maps to the company indicating the extent of their mana whenua interests over the CNI forests land. The area of interest claimed is not constrained by the current legal boundaries of the CNI Crown forestry licence blocks.
- (2) The test of mana whenua is the mana that iwi traditionally held and exercised over the land, determined according to tikanga including, but not limited to, such factors as—
  - (a) take whenua; and
  - (b) demonstration of ahi kā roa, ahi tahutahu, or ahi mātao-tao.
- (3) Evidence of mana whenua may be derived from whatever sources of knowledge that each iwi considers relevant, including—
  - (a) oral korero, including whakapapa, waiata, and tribal history; and
  - (b) written sources, including Native Land Court evidence and decisions, research reports, and other records.
- (4) The company will provide all iwi with a full set of the maps provided under **subclause (1)**. The maps will be confidential to the company and the iwi, and may not be disclosed to third parties or used for any other purpose.
- (5) By 30 September 2009, the board of the company will identify, based on the maps provided by the iwi under **subclause (1)** and advice from the Crown,—
  - (a) the areas of CNI forests land in which a particular iwi has exclusive mana whenua interests; and
  - (b) the extent to which there is agreement on allocation of particular areas of CNI forests land to particular iwi. Agreements must be in writing and signed by authorised representatives of the governance entities of each of the iwi that had claimed mana whenua interests; and
  - (c) areas of land for which agreement has not been reached, and the iwi that are claiming that land; and
  - (d) areas of land that the Crown has advised are or may be subject to claims by other CNI claimants to the Crown agreed proportion.

- (6) Areas of CNI forests land that may be subject to the Crown agreed proportion cannot proceed through the resolution process or be included in the Collective's final allocation agreement unless and until the Crown has confirmed that the area of land is not part of the Crown agreed proportion. If the Crown does so confirm, the CNI forests land will be subject to the resolution process provided for in this schedule, with any appropriate modifications to the time lines and process determined by the board of the company.
- (7) Subject to **subclause (6)**, the company will record in its draft final allocation agreement the agreed allocations under **sub-clause (5)(a) and (b)**.
- (8) Subject to **subclause (6)**, all CNI forests land for which allocation is not agreed will be the subject of the Stage 2 process of negotiation between iwi kanohi ki te kanohi.

**5 Stage 2: Kanohi ki te kanohi negotiation: 1 October 2009 to 30 June 2010**

- (1) Following Stage 1, iwi must embark on kanohi ki te kanohi negotiations with iwi with whom they have overlapping claims, to reach agreement on allocation of the CNI forests land in question.
- (2) The process will be kanohi ki te kanohi between iwi and—
  - (a) the iwi involved will determine the tikanga that applies to the process; and
  - (b) the governance entity of each iwi will appoint their representatives to engage in the Stage 2 process; and
  - (c) the expectation is of kōrero rangatira (open principled trustworthy dialogue by rangatira with authority to commit their iwi); and
  - (d) no expert advisors, including lawyers and historians, are permitted to participate directly in the kanohi ki te kanohi negotiations.
- (3) The iwi concerned in each process will endeavour to reach consensus on the allocation of the CNI forests land in question, having regard to the strength of the mana whenua interests. Innovative solutions that reflect tikanga, whanaungatanga, manaakitanga and kotahitanga, and the complexity of mana whenua interests could include, but are not limited to—
  - (a) joint or multiple ownership of land as tenants in common, either divided in equal shares or proportionally according to the respective interests of the iwi; and
  - (b) subdividing land and allocating the subdivided portions to each iwi; and



- (c) agreeing to “exchange” interests in more than 1 block, so that exclusive interests can be granted to each of the blocks; and
  - (d) one iwi becoming the owner, but acknowledging the relationship of other iwi with the land in an agreed manner; and
  - (e) agreeing not to transfer title of the land from the company, but acknowledging mana whenua interests in a manner agreed by the iwi.
- (4) Minutes of each hui will be taken and confirmed by the iwi participating.
  - (5) Agreements reached during Stage 2 must be signed in writing by the governance entities of each iwi.
  - (6) Throughout Stage 2, the board of the company will obtain regular reports from iwi on the progress of negotiations, and consider whether it can facilitate the resolution of any disputes with the agreement of the iwi concerned.
  - (7) The iwi involved in each kanohi ki te kanohi process may request the appointment of mediators to assist in the Stage 2 process, as set out in **clauses 6(7) to (9)**.

**6 Stage 3: Finalising allocation agreement: 1 July 2010 to 30 June 2011**

- (1) On completion of Stage 2, the board of the company will prepare a further draft of the final allocation agreement, in which it records—
  - (a) the agreements reached on allocation of CNI forests land during Stage 2; and
  - (b) any remaining areas of CNI forests land for which agreement has not been reached amongst the iwi who claimed mana whenua interests in that area in the maps provided under **clause 4(1) (disputed land)**.
- (2) The board of the company may only alter the agreements reached between iwi regarding the allocation of CNI forests land with the consent of the iwi concerned.
- (3) The iwi interested in the disputed land will decide whether to refer the dispute to—
  - (a) mediation, to endeavour to reach agreement; or
  - (b) adjudication, in order to determine the dispute (whether or not mediation has been attempted first).
- (4) If the iwi involved in the dispute cannot reach agreement on which process to follow under **subclause (3)** by 1 August 2010, the board of the company will decide.
- (5) If agreement is not reached through mediation by 30 November 2010, then the dispute will be determined by adjudication.

- (6) Following determination of the dispute over any disputed lands, the decision reached will be recorded in the final allocation agreement.

*Mediation: to be completed by 30 November 2010*

- (7) The board of the company may, on the following terms, appoint 1 or more mediators to mediate between the iwi and to endeavour to reach agreement over the disputed land:
- (a) the mediators should be fluent in te reo Māori, and have knowledge of, and be skilled in, tikanga based dispute resolution; and
  - (b) the mediators must be independent of the dispute; and
  - (c) the iwi concerned may nominate mediators, and must consent to the mediators to be appointed.
- (8) The mediators will decide, in conjunction with the iwi interested in the disputed land, the process to be followed in the mediation.
- (9) The mediators will not have power to determine the dispute, but may offer advice of a non-binding nature.

*Adjudication: to be completed by 25 June 2011*

- (10) If a dispute over disputed land is referred to adjudication, the board of the company will appoint an adjudication panel that comprises at least 3 members to determine the dispute. The board will have complete discretion to decide who the members of the panel should be, subject to the following requirements:
- (a) the panel members must be fluent in te reo Māori, and be knowledgeable on matters of tikanga, including in particular how mana whenua is held and exercised by iwi; and
  - (b) panel members must be independent of the dispute, and not be members of any of the iwi involved in the dispute.
- (11) The adjudication panel may seek legal advice on process, or legal or other expert advice on any other matter.
- (12) The adjudication panel will hear the claims of the iwi interested in the disputed land.
- (13) The adjudication panel will have complete discretion to determine the process and timetable for the hearing, subject to the following requirements:
- (a) the iwi will provide an agreed joint statement to the adjudication panel outlining the nature of the dispute; and
  - (b) each iwi will have the opportunity to provide a written submission to the adjudication panel stating their mana whenua interests in the disputed lands and their position concerning the dispute; and

- (c) the iwi involved will file written evidence; and
  - (d) each iwi claimant is entitled to a right of reply; and
  - (e) there is a right to question witnesses; and
  - (f) parties are entitled to have lawyers attend to present submissions on behalf of iwi to the adjudication panel, but lawyers will not be permitted to cross-examine witnesses.
- (14) The adjudication panel will reach a decision on allocation of the disputed lands by 25 June 2011, in accordance with the mana whenua test set out at **clause 4(2)**. The adjudication panel will have the power to—
- (a) allocate the land to 1 iwi; or
  - (b) allocate the land to more than 1 iwi in joint or multiple ownership as tenants in common in a block, either divided in equal shares or proportionally according to the respective interests of the iwi; or
  - (c) subdivide the block and allocate the subdivided portions to individual iwi; or
  - (d) allocate the land to 1 iwi, but acknowledge the relationship of the other iwi with the land in a specified manner; or
  - (e) implement any other solutions proposed by 1 or more of the parties, subject to any modifications determined by the adjudication panel.
- (15) A decision with reasons will be given. The decision of the adjudication panel will be final and binding on all the parties.

## **7 Final allocation agreement**

- (1) The board of the company will complete the final allocation agreement by 1 July 2011.
- (2) The final allocation agreement will be final and binding.
- (3) After 1 July 2011, on receiving a written request from a governance entity, the company will transfer the CNI forests land to that governance entity or nominee in accordance with the final allocation agreement and the deed of trust, provided that—
  - (a) the Crown's consent is obtained as required by the deed of trust, if the transfer is prior to the expiry of the Crown initial period; and
  - (b) the ongoing rentals and other income derived from the land will continue to be paid to the company and distributed according to the Collective's agreed proportions until the Collective's final allocation date (as defined in the deed of trust). After the Collective's final allocation date, income will run with the land.
- (4) If iwi have acquired satellite CNI forests land (that is, land outside Kaingaroa Forest) and wish to transfer the CNI forests

land and the right to the ongoing rentals and other income from the company to the iwi prior to the Collective's final allocation date, then in order to maintain the principles of fairness and equity—

- (a) economic analysis on the impact of taking that action on the Collective and the iwi must be undertaken; and
  - (b) the conditions of transfer shall be agreed; and
  - (c) the transfer is subject to unanimous approval of the shareholders of the company.
- (5) If for any reason aspects of the final allocation agreement are not finalised, or are subject to litigation, that will not prevent the transfer to iwi after 1 July 2011 of areas of CNI forests land for which final agreement has been reached.
  - (6) If agreement is reached not to transfer areas of the CNI forests land, or iwi do not request a transfer in writing, then the company will retain title, subject to the vested beneficial entitlement of iwi in accordance with the final allocation agreement and the deed of trust.
  - (7) On completion of the Crown initial period, any remaining CNI forests land that is vested in the company in accordance with the deed of trust will be subject to the resolution process in this schedule, with any appropriate modifications to the time lines and process determined by the board of the company.

*Schedule 3*

To omit “Ngāi Tuhoe” (line 6 on page 36) and substitute “Ngāi Tūhoe”.

To omit “Ngāti Tuwharetoa” (line 8 on page 36) and substitute “Ngāti Tūwharetoa”.

*New Schedule 4*

To add the following schedule after *Schedule 3* (after line 12 on page 36):

**Schedule 4**

**s 39**

**New Schedule 3 substituted**

**Schedule 3**

**ss 15, 18**

**Percentages for allocation of rental proceeds**

<b>Iwi</b>	<b>Percentage (%)</b>
Ngāi Tūhoe	26.3125
Ngāti Manawa	6.0125
Ngāti Rangitahi	3.6125
Ngāti Tūwharetoa	25.9125
Ngāti Whakaue	3.6125
Ngāti Whare	4.7125

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<b>Iwi</b>	<b>Percentage (%)</b>
Raukawa	14.2125
The Affiliate Te Arawa Iwi/Hapu	15.6125

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### **Explanatory note**

This Supplementary Order Paper amends the Central North Island Forests Land Collective Settlement Bill. The amendments—

- make various minor drafting changes to the Bill; and
  - make changes to the Bill to ensure it is consistent with the deed of settlement; and
  - provide for changes that are required to the Bill if Ngāti Rangitihi becomes a signatory to the deed of settlement between the Crown and the CNI Iwi Collective in relation to their historical CNI forests land claims. Those changes include the necessary adjustments to the allocation percentages set out in *Schedule 3* for each iwi of the CNI Iwi Collective; and
  - replace *Schedule 2* so that it is consistent with the tikanga based resolution process for CNI forests land in the deed of settlement. *Clause 6(13)(f) of Schedule 2* has been changed from that which appears in the deed of settlement at the request of the CNI Iwi Collective.
-