

MEMORANDUM

Date: 6 June 2024

To: Hearings Panel for the Proposed Te Tai o Poutini Plan

From: Lucy de Latour | Kate Dickson

Proposed Te Tai o Poutini Plan - Sites of Significance to Māori advice on Victorian Titles

1. Following the hearing on Sites of Significance to Māori (**SASM**) in relation to the Proposed Te Tai o Poutini Plan (**TTPP**), an issue arose as to “Victorian Title”. The Hearings Panel has sought advice as to:¹
 - (a) What a Victorian Title is; and
 - (b) Whether Victorian Title is capable of being defined for the purposes of the TTPP.
2. We set out our advice in relation to each of these questions in turn below.

Executive summary

3. The general rule at common law is that the owner of land is presumed to be the owner of everything up to the sky and down to the centre of the earth.² Therefore, under common law, a person who owned land (in a fee simple title) was generally entitled to all minerals under their land (except gold and silver), unless some other intention was shown on the transfer.
4. While gold, silver, uranium and petroleum are all determined to be the property of the Crown in accordance with the Crown Minerals Act 1991, other minerals may still be owned through a Victorian Title. The Crown also (from around 1913) has generally reserved ownership of all minerals in land it transfers (either through private contract or statutory reservation).
5. The term “Victorian Titles” therefore refers to areas of land that were alienated from Crown ownership, prior to the inclusion of a Crown reservation on transfer of land that the Crown retained ownership of all minerals on the land. We understand these parcels of land were largely transferred from Crown ownership before 1913.
6. This also applies to pounamu. While the Pounamu Vesting Act vested all Crown-owned pounamu in Te Rūnanga o Ngāi Tahu, this did not apply to all pounamu, as some was privately owned in accordance with Victorian Titles.
7. In our opinion, Victorian Title is capable of being defined in the TTPP if the Panel was minded to do so. While we are not aware of any other definitions in legislation or otherwise, this does not mean it is incapable of being defined. We consider that the definition suggested by the section 42A officer is largely appropriate given the legislative context for the use of the term (with some minor amendments, excluding the Crown-owned minerals and removing the requirement for an LMS report, as this is only one method of establishing a Victorian Title).

What a Victorian Title is

8. The general rule at common law is that the owner of land is presumed to be the owner of everything up to the sky and down to the centre of the earth.³ Therefore, under common law, a person who owned land (in a fee simple title) was generally entitled to all minerals under their land (except gold and silver), unless some other intention was shown on the transfer.

¹ Minute 26 – Sites of Significance to Māori, Directions by the Hearings Panel for the TTPP dated 8 May 2024 at [8].

² Daniel Minhinnick and James Winchester “Minerals and Petroleum” in Derek Nolan (ed) *Environmental and Resource Management Law* (LexisNexis, Wellington, 2018) 513 at 519.

³ Daniel Minhinnick and James Winchester “Minerals and Petroleum” in Derek Nolan (ed) *Environmental and Resource Management Law* (LexisNexis, Wellington, 2018) 513 at 519.

9. The term “Victorian Titles” therefore refers to areas of land that were alienated from Crown ownership, prior to the inclusion of a Crown reservation on transfer of land that the Crown retained ownership of all minerals on the land. We understand these parcels of land were largely transferred from Crown ownership before 1913. This means that the minerals (apart from gold, silver, uranium and petroleum) within land owned by Victorian Title are privately owned.
10. Under the Crown Minerals Act 1991, all gold, silver, uranium and petroleum existing in its natural condition in land is the property of the Crown, whether or not the Crown has alienated that land, and irrespective of any instrument of title.⁴ In addition, since 1913, we understand that all alienations of land by the Crown have included a general reservation of all minerals to the Crown.⁵ Alienations of land made before 1913, often referred to as “Victorian Titles”, were almost always made without this general reservation. This means that ownership of minerals other than gold, silver, uranium and petroleum within land owned by Victorian Title remain in private ownership.
11. The private ownership of minerals in land owned by Victorian Title includes ownership of pounamu. This private ownership of pounamu within land owned by Victorian Title is unaffected by the Ngai Tahu (Pounamu Vesting) Act 1997 (**Pounamu Vesting Act**).
12. The Pounamu Vesting Act vested all *Crown*-owned pounamu in Te Rūnanga o Ngāi Tahu,⁶ however, not all pounamu was owned by the Crown in 1997 because of these Victorian Titles. This meant that the ownership of any pounamu within a Victorian Title remained the private property of the landowner.⁷ This private ownership of the pounamu (and all minerals other than gold, silver, uranium and petroleum) within Victorian Titles remains today.
13. It is not uncommon for land originally alienated under a Victorian title to be sold without the minerals.⁸ This means the new owner would acquire the surface only; the Crown would continue to own the gold, silver, uranium and petroleum, and the original owner would retain ownership of all the other minerals. This means that the owner of the Victorian Title land, may not necessarily own the minerals in that land. Regardless of this, the minerals would be in some form of private ownership (rather than being owned by the Crown, or Te Rūnanga o Ngāi Tahu).
14. Guidance produced by the Crown indicates that except for gold, silver, uranium and petroleum, the Crown is not aware of the extent of its full mineral estate.⁹ When an application is lodged for a mining permit under the Crown Minerals Act, a Land Mineral Status report (**LMS report**) is required to be provided to determine ownership of the minerals. In some, but not all, situations, the ownership of the minerals may be noted on the record of title itself. This requirement for an LMS report has been formalised under the Crown Minerals (Minerals Other than Petroleum) Regulations 2007.¹⁰

Whether Victorian Title is capable of being defined under the TTPP

15. In our opinion, the term “Victorian Title” is capable of being defined under the TTPP. We set out our reasons for this below.

⁴ Crown Minerals Act 1991, s 10.

⁵ [Report of the Review Team on Mining Legislation](#) [1986] NZAHGovRp 2 (17 October 1986) at [2.2]. We understand that this was formalised in statute following the commencement of the Land Act 1948 (s 59), but prior to 1948 this reservation may have been included in private contracts.

⁶ Ngai Tahu (Pounamu Vesting) Act 1997, s 3.

⁷ This is confirmed by the explanatory note to the Ngai Tahu (Pounamu Vesting) Bill 1996 which provides that “The pounamu vested in Te Runanga o Ngai Tahu is that owned by the Crown. Any privately owned pounamu in land held under Victorian title is not affected.” See Ngai Tahu (Pounamu Vesting) Bill 1996 (212-1) (explanatory note) at i.

⁸ Report of the Review Team on Mining Legislation [1986] NZAHGovRp 2 (17 October 1986) at [2.3].

⁹ “Minerals Guidelines: Mineral Ownership and Land and Mineral Status”, Ministry of Business, Innovation and Employment, MB13402_2119, June 2017.

¹⁰ Crown Minerals (Minerals Other than Petroleum) Regulations 2007, Schedule 2, parts 2 and 3.

16. The term “Victorian Title” is not defined in the Pounamu Vesting Act nor any other legislation that we are aware of. However, this is not an indication that the term “Victorian Title” should not be defined, rather there seems to have simply not been a need to define this term before. As discussed above, the Pounamu Vesting Act does not deal with Victorian Titles, therefore, there was no need to define the term in that Act.
17. The closest to a definition of Victorian Title that we have found is the definition of “private land” under the Mining Act 1971, which provides:¹¹
- "Private land" means land owned in fee simple under title from the Crown the minerals on or under which are not owned by the Crown; and includes land the minerals on or under which are owned by the Crown (including land that is the subject of a lease or licence under the Land Act 1948, other than section 66, section 68, or section 69 of that Act), but which is not subject to associated rights relating to the prospecting, working, extraction, or removal of the minerals on or under the surface of the land; but does not include Maori land or land to which paragraph (d) of the definition of the term "Crown land" applies:
18. The Mining Act 1971 has been repealed.¹² However, the Crown Minerals Act 1991 (now in force) still refers to definitions from the Mining Act 1971, including reference in one section to this definition of “private land”.¹³
19. This definition provides some guidance on how Victorian Title could be defined under the TTPP, and suggests that the term is sufficiently certain to be capable of definition under the TTPP, if the Panel recommended the inclusion of such a definition (noting that its use is proposed to be limited to an Advice Note).
20. If the Panel was minded to include a definition of Victorian Title, we consider that the definition suggested by the section 42A officer is appropriate given the legislative context for the use of the term with some amendments, shown in red text below:
- (a) means land whereby ownership of minerals (other than gold, silver, uranium or petroleum) in the ground lies in private ownership with the landowner, not rather than the Crown, or Ngāi Tahu in the case of pounamu in accordance with the Ngai Tahu (Pounamu Vesting) Act 1997. Advice Note: In order to establish whether Victorian Title exists a Land and Minerals (LMS) report prepared under the Crown Minerals (Minerals Other than Petroleum) 2007.
21. Our proposed amendments delete the reference to the requirement for an LMS report, given that we have noted above that an LMS report is not the only way in which a Victorian Title may be able to be identified – in some cases the record of title to the land makes this apparent itself. Given that the definition is also proposed to be referred to within an advice note, we do not consider that it is essential that the TTPP specifically outlines how the Victorian Title can be established (and this will be a question of fact in each circumstance).
22. We have also suggested amendments to remove reference to the minerals that have been determined to be the property of the Crown, as well as acknowledging that the owner of the land may no longer be the owner of the minerals where a Victorian Title exists (if the land has since been transferred without the ownership of the minerals).

Conclusion

23. We trust that our advice assists. Please let us know if you have any further questions.

Wynn Williams

¹¹ Mining Act 1971, s 5.

¹² The Mining Act 1971 was repealed by section 62(1) of the Health and Safety in Employment Act 1991.

¹³ Crown Minerals Act 1991, s 66(1)(b).