

BANKING IMPLICATIONS OF THE ECONOMIC DEVELOPMENT OF INDIGENOUS PEOPLE

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TRANSCRIPT

You all know, and I know that Aden and I and Barry are in the graveyard spot after lunch. The challenge is to keep your interest for at least another half hour. If you think at this point in time that you have made a wrong decision between stamp duty and economic people's right I have no problem if you want to leave now.

I will have a slightly different approach to what Aden said, but I just might make a couple of preliminary comments which came to my head as Aden was speaking and indeed as Barry was speaking and others were speaking this morning.

Behind all of this, the economic development of indigenous people, there is a huge area of debate and discussion in terms of political rights, constitutional rights and so on. The focus of what I am going to talk about is slightly different, it is really a banking perspective, it is really an awareness-raising exercise for Australian professionals, for Australian banks, perhaps not so much for my New Zealand colleagues amongst you. But I think it is very important because as you all know three of our four major banks are now Australian owned. Maori are a significant part indeed of the economy in New Zealand and are continuing to raise their profile for various reasons which I may touch upon. So I think it is very important for the Australian banks, particularly at your home base, that you are aware of these sorts of issues and indeed that your advisers also know that these sorts of issues crop up.

Just one more preliminary point - I interchange between a word called "Maori" and "Iwi". Most of you will be familiar with the word Maori as being the word to describe the indigenous peoples of New Zealand. But Maori is in actual fact a word which derived from the Colonial settler - they used it to conveniently define Iwi or tribal groupings throughout the country. So just by way of background explanation, I will move between those two words.

The purpose of this first slide is just to give you a quick historical view to the financial position of Iwi (or of Maori) with respect to land ownership, because what it exemplifies is the fact that in asset based terms Maori do not have a very considerable presence in the country. In terms of land ownership I do not know what the current figures are, but they are not much larger than what you have there.

FINANCIAL POSITION OF IWI

- Marginal asset base
eg decline in land ownership

1840	66,400,000 acres
1860	21,400,000 acres
1891	11,079,486 acres
1911	7,137,205 acres
1920	4,787,686 acres
1975	3,900,565 acres
- Mere lessors of land - low risk with low return
eg one central North Island Iwi leases up to 20,000 hectares of land to a single forest company
- Little demand for debt

Between 1840 and 1975, as you can see, there was a huge decline in the area of land ownership. From 1840 through to 1891, that was because of the Colonial friction, the friction, where two races had come together and there was a period of interaction in terms of ownership and management of resources. So a huge amount of land was lost during that period. From 1911 through to 1920, it slowed down considerably and from 1975 onwards I would not be surprised if the graph now begins to go up the other way, but I do not have those figures available.

The land which Maori do own is very much on an absentee landlord basis. In most cases they are mere lessors of land, not really participating in the added value of the vertical integration of any business arising from their land. A classic example in my area in the central north island around Rotarua is that we have something like 20,000 hectares of afforested land which is leased to a forestry company and that is it; we get a rent for it, and do not participate in any of the value added processing which takes place. So on a historical view that is basically where Iwi were a few years ago. Things have progressed considerably, and I will go into that in a moment. But the point to make in the context of this conference is that in the past there has really been little demand for debt. Maori or Iwi as an entity, as a commercial borrower, is something pretty uncommon.

The next slide will give you some pointers as to what has been happening in the last ten or twenty years.

A CHANGING NEW ZEALAND SOCIETY

- Deregulation of a welfare state
 - Maori have become reliant on the welfare state
 - privatisation
 - Maori Affairs Department now dissolved
 - "self help society"
 - "do it yourself"
- Treaty of Waitangi 1840
 - Treaty of Waitangi Act 1975 set up the Tribunal
 - principles of the Treaty in legislation
 - courts uphold the principles of the Treaty
 - raised political and constitutional awareness of Maori demanding change
 - rebirth of Iwi/Maori identity
- Economic independence of Iwi
 - Treaty of Waitangi settlements
 - development of assets under Iwi control

I think most of you will be aware of New Zealand's advances in terms of privatisations, devolving a welfare state into a more laissez faire economy, into a more competitive market. And many, of course, will say that New Zealand is in fact leading the world in this whole exercise. That has had a huge impact on Maori economic development, a powerfully considerable impact. We became very reliant on the welfare state, we used to have a department called the Maori Affairs Department, which played a huge paternalistic role in the management of Maori land and the management of Maori education, Maori health, and so on. That department was dissolved some six years ago now and basically the government said: "OK Maori/Iwi, you look after yourselves, we will provide the funding through the various social arms of government like health and so on, and you administer your own scheme."

The whole privatisation process forced Maori, indeed it forced the country as a whole, to look more independent in terms of doing things yourselves, in terms of what we call a "self help society". So the whole process of privatisation has had a huge impact on Maori.

Alongside all of that there is another more political aligned process involving the Treaty of Waitangi, which is the second point. In 1975 a tribunal, the Treaty of Waitangi Tribunal, was introduced and the purpose of this tribunal was to hear the claims of Maori people relating to breaches by the Crown of the terms of the Treaty of Waitangi signed in 1840. And that piece of legislation has become quite powerful from a Maori perspective, and the whole process, the tribunal process, has created a constitutional, a political and economic awareness in Maori that did not exist twenty years ago and before that as well.

So those two areas have caused Maori to consider their economic, their social and political presence in New Zealand. I am looking at it purely from the economic motivation, and the economic independence of Iwi is now a very significant factor in our economy. That derives from two principal areas - the Treaty of Waitangi settlement, negotiations and claims between Maori claimants for breaches by the Crown of the principles of the treaty are giving rise to some quite substantial payments to disenfranchised Iwi, and secondly the development of assets currently under Iwi control. Those two areas are huge areas of economic development in our country at the moment.

I will just quickly have a look at the asset base of Maori at a micro level. It is pretty much primary sector. As I am sure you will know, the manufacturing industry in New Zealand is not as substantial as it is here in Australia.

THE ASSET BASE

- Land
 - forestry
 - farming
 - horticulture
- Fish
 - Maori interests own up to 50 percent of commercial fishing quota
- Tourism
- Energy / mineral resources

There are four main areas, I think, where Maori have a significant presence. Land, broken down into forestry, farming and horticulture (those are just examples, it extends beyond that). And the forestry industry Maori are of particular attraction to the forestry companies. A lot of the land we have is undeveloped. A lot of the land that is developed is in pine and other species. So forestry companies have a particular interest in Maori.

I mentioned before that in forestry we have been mere lessors of land. Forestry companies are now taking a different approach to the contracting of forestry arrangements with Maori - joint ventures, 50-50 joint ventures are not uncommon. I think two months ago a South Korean company established a joint venture with an east coast tribe on the north island involving something like 50,000 hectares of land to be planted and processing facilities to be provided as well. Both Maori and that particular company, I understand, are participating on a pretty even basis.

We are currently dead smack in the middle of a huge asset sale in New Zealand at the moment. The government is selling Forestry Corporation which is a NZ\$2 billion asset - they are hoping to sell that by the end of July. Maori have claims for ownership of the land on all the land underlying that estate - some 190,000 hectares of mature sustainable forest. All interested bidders for that

asset are looking at joint venture arrangements with Maori in terms of the future management and ownership of that forest.

The sale of Forestry Corporation is quite interesting in the context of this discussion because most of the banks are very keen to project finance any particular bidder of this asset. A number of banks have already made approaches to Maori on the possible financial backing of a bid. There is a real keenness amongst the bankers to participate in this particular transaction. And even the levels of gearing that have been suggested take you back to the mid-1980s, but forestry as a cash flow asset is particularly attractive to project financing and Maori are sitting down and talking to banks and joint venture partners on this basis. So there is another case in point where both New Zealand and overseas forestry companies have noted the presence of Maori and are willing, indeed very keen, to sit down and conclude joint venture arrangements with them.

Farming and horticulture - not quite to the same scale as forestry, but nevertheless Maori are still very active in that area.

Fish is another area. Maori participation in the fishing industry derives from a treaty settlement which took place approximately a little more than five years ago. What it has resulted in is that Maori now own up to 50% of the commercial catch of certain species in New Zealand - there is no one more dominant than they in this particular industry in certain species anyway.

Tourism is a continuing development for Maori. They are very active in that area as the country is as a whole.

Energy and mineral resources is also a very dynamic area. The Crown is also in the process of selling hydro-electric power stations and many of the iwi or the local tribes who own land underlying those stations and in the region of those stations have been approached by many of the potential purchasers in terms of doing joint ventures and so on.

Geo-thermal power is another particular asset which is raising itself in New Zealand at the moment. One particular tribe has undertaken the building of a geo-thermal power station pretty much on their own. The financing was on a project financing basis - a syndicate of largely New Zealand banks with limited recourse debt which was quite nice to see in New Zealand. We do not get a lot of it these days, but the geo-thermal industry once again has created huge opportunities for Maori.

Mineral resources - there is a huge debate looming in New Zealand as to who own the mineral resources, not dissimilar I suspect to the issues which Aden and his people are working through. That one really has not been argued to any great extent at the moment.

But the asset base, as you can see, although primarily in the primary industry, Maori have a very significant presence in it. And the point really for the banks and the banks' advisers is that when you are involved in these sorts of transactions, it is absolutely crucial to understand the Maori people as a borrower, as a provider of security, and as a manager of debt and of assets.

And on that basis I have just got two more slides, and this is really for the benefit of the banks' advisers and for the banks as well.

STRUCTURE OF IWI

- generally unincorporated
- beneficiary / Iwi member lists are not exhaustive
- problem with mandates and proper authorisation
- uncertainty as to
 - validity of Iwi's actions
 - enforceability of contractual arrangements
 - durability of contractual arrangements
- variable quality management and management structures

Because of the structure of Iwi, of tribes, certain legal issues become very important when working and dealing with Maori. In terms of all the other general legal issues surrounding financing and the taking of security, and the lending of money and so on - by that I mean the ability to repay the debt, the quality of management and the security cover. All those are standard criteria which in the main Maori satisfies borrowers. But there are additional risks. The first one derives from the failure of Maori in European law terms to have a proper legal entity structure. Most Iwi are generally unincorporated as a matter of law and do not have their own legal personality. So that automatically gives rise to problems. The beneficiary and Iwi member lists are not exhaustive - an Iwi does not usually know with any reasonable certainty who its constituents are, where the members live, or anything like that. Iwi derives from a common ancestor, so the Iwi are generally bound by genealogy.

That of course then begets problems with respect to mandate and the authorisation of people to represent all of those constituents, particularly when you do not know who they are, you do not know where they live, and you do not know how to contact them. Yet we have people standing up making very significant decisions on their behalf.

All of that gives rise to legal uncertainty in terms of the validity of an Iwi's actions, the enforceability of any contractual arrangements, and the durability of those arrangements. Now for banks and banks' lawyers when dealing with Maori, these are very real issues, they must be factored into your due diligence.

And lastly, I have to say that in the main the quality of management and the management infrastructures amongst Iwi are not as efficient and accountable and transparent as they ought to be.

The last point I want to make is that there is an increasing demand for debt by Maori borrowers, and your due diligence in terms of legal capacity and so on is an issue which you must raise very early on in the piece. Another issue, which is the second issue which you need to be aware of is that the security arrangements which Maori will want will not normally be what the banks will want. The charging or mortgaging of land is something which Maori are particularly unhappy about. You saw the amount of land which they lost over the last 150 years. They are quite keen to retain the land which they have now. But also more importantly, similar to Australian Aborigines, the New Zealand Maori has a very spiritual relationship with the land, we are tied to the land through genealogy, our genealogy takes us back to our earth mother, *Papatuanuku*, and to our sky father, *Ranginui*, and it is very difficult for Maori generally to accept that land can be

charged. So alternative security arrangements, creativity in security arrangements, is a prerequisite when dealing with Maori.

Now those two issues - legal capacity and our security arrangements - are the only two additional issues which banks and borrowers really need to be aware of. On top of all of that it is really just standard banking practice.

DEMAND FOR FINANCE

- standard banking criteria apply, except flexibility or creativity in security arrangements
 - eg keep land free of encumbrances
- examples:
 - geothermal power project - project finance with limited recourse debt
 - sale of Forestry Corporation of New Zealand - cashflow financing

Well, that is all I have to say. The purpose, as I say, of my talk is really just to create an awareness of the participation of Maori in the banking sector. We have spoken, Roger Drummond and I, to many of the banks in New Zealand about the options for banks. Westpac in particular has set up *Aotearoa* Financial Services which operates off the Westpac balance sheet and the purpose of that subsidiary is obviously to get that commercial lending work in, but also to be more aware of the Maori issues when you are banking with Maori. ANZ have also set up an Iwi banking unit. They have taken a lower profile, but nevertheless they are sitting down and focusing specifically on Maori as a banking market. The BNZ are a little bit slow off the mark and National Bank, we do not quite know where they are. But it is something which is very relevant to our New Zealand economy and also to Australia in view of the fact that most of our banks are now Australian owned.