New Zealand is bringing in apartheid by stealth

By Dr Muriel Newman, NZCPR Weekly, 7 May 2017

Claim CVI-2017-485-182: Taking of kekeno (seals), penguins, dolphins and whales…

Over the years, the NZCPR has taken a lead in raising concerns about the race-based demands of the tribal elite as they seek legal privilege at the expense of other New Zealanders.

On many occasions we have found ourselves head to head with the Government of the day - most notably with National over law changes to the foreshore and seabed, and more recently, the Resource Management Act.

In the case of the foreshore and seabed, we opposed National's repeal of Crown ownership back in 2011, raising concerns that the Marine and Coastal Area Act could open the floodgates to a "*land grab*" by iwi.

We warned that giving Maori sovereignty over large tracts of New Zealand's coastline and Territorial Sea would expose the area to exploitation through mining and the uncontrolled taking of wildlife.

We raised concerns about extortion and corruption – through demands for royalties from commercial operators using the coast, and the vetoing of proposed developments … until suitable payments are made.

We worried that demands by iwi for Wardens and Fisheries Officers to be appointed to patrol 'wahi tapu' areas - imposing fines of up to $5,000 and reporting 'trespassers' to the Police – signalled their intention to prohibit public access.

We were accused of scaremongering - with National even gloating about how few claims had been lodged.

Well, all of that has now changed.

The six year window for lodging foreshore and seabed claims closed on April 3rd, with a tsunami of last minute applications pouring in - as many as 550, according to some media.

Hundreds of claimants are opting to go through the High Court - as anyone reading public notices in their local newspaper will testify – while others have chosen the alternative path of

direct engagement with the Crown.

While, over the years, tribal leaders have promoted themselves as selfless – great conservationists who only seek control of resources because the government is not doing a good enough job of protecting them for future generations - the claims now lodged show that to be a grand lie. A review of what is being sought reveals the true agenda - the biggest resource grab in the country's history, and the largest ever exploitation of New Zealand's conservation estate.

In addition to claims for "*the entire foreshore and territorial waters of New Zealand*", there are multiple, overlapping applications, that not only cover the coastline out to the 12 nautical mile territorial limit - including all "*islands, reefs, tidal rivers, tributaries, estuaries, springs, wet lands*" and the "*airspace*" above - but also extend to the edge of the "*200-mile Exclusive Economic Zone*".

Some of these great 'conservationists' are planning on "*taking*" "*dolphins, whales, penguins, and seals*".

Many intend 'taking' "*seabirds*" – and their *eggs*.

All species of "*fish*" - including "*deep sea*" varieties - are being targeted, as are all "*shellfish, oysters, snails, kina, paua and crayfish*".

Some are claiming protected islands like the Poor Knights - home to the endangered tuatara – with plans for "*recreational uses*" and the "*gathering of natural resources*", while others want "*the right to derive commercial benefit*" from their areas.

Many claims prioritise "*mineral extraction*" – the mining of "*sand, peat, shingle, aggregate, rocks, stone, and ochre*", while others specify control of the "*landing, launching, anchoring* and *mooring"* of vessels, all "*boatsheds*", and all "*aquaculture"* developments.

Many claimants state they intend imposing "*rahui*" - to ban others from fishing – and most are planning to declare "*wahi tapu*" to prohibit public access to the coast, especially *sand dunes*: "*all the sand dunes of our foreshore are wahi tapu…*"

This week's NZCPR Guest Commentator Dr Hugh Barr, the Secretary of the Council of Outdoor Recreation Associations of New Zealand - who has registered as an interested party in opposing some applications through the High Court - explains what is being claimed:

"In the Marine and Coastal Area Act, the main type of privatised title is called a *Customary*

Marine Title. To qualify, a tribal group must show that it has "*exclusively used and occupied the coastal area from 1840 to the present day, without substantial interruption*". It gives major private property rights to any tribal group that meets this very stringent condition.

"There is also a second type of tribal right, a *Protected Customary Right*. This also has to have been exercised since 1840 and continue to be exercised in accordance with tikanga (Maori customary practices). An applicant group does not need to have an interest in land - as is normally required for Customary Marine Title. An example of this *Right* is the collecting of hangi stones from the beach, the selling gravel etc - and not being subject to Resource Management Act requirements or payments."

We would urge anyone who plans to object to any claims to register their intention with the Court without delay, as the closing dates for applications run from May through to July. Public notices are being posted on our website and can be viewed HERE.

So, how did this massive resource grab come about?

Until 2003, the ownership of the foreshore and seabed was vested in the Crown through settled law affirmed by a Court of Appeal ruling in 1963.

But in 1997 South Island Maori - in a dispute with their local council over a marine farming application - lodged a claim for ownership of the foreshore and seabed with the Maori Land Court. The Crown argued the Maori Land Court had no jurisdiction over the foreshore and seabed, but the case was found in favour of the claimants. The Crown appealed the case to the High Court and won, with the Judge ruling that the foreshore and seabed were beneficially owned by the Crown and that the Maori Land Court had no jurisdiction in the area.

However, the case was appealed to the Court of Appeal, and in a highly controversial ruling, Chief Justice Sian Elias overturned the 1963 Appeal Court decision, finding that the Maori Land Court could hear foreshore and seabed claims.

Under normal circumstances, such a rogue decision would have been appealed to the Privy Council, but Helen Clark's Government had just ended that right. So, with foreshore and seabed claims flooding into the Maori Land Court, Labour rushed to legislate for Crown ownership through the 2004 Foreshore and Seabed Act – which also provided special *rights* to any Maori tribe that could prove their customary interest in the High Court, namely through owning the land *contiguous* to their claim and providing evidence of *uninterrupted* and *exclusive* use of the area since 1840.

National opposed Labour's law change, with Nelson MP Nick Smith stating, "Anyone who wants to divide up the shoreline for one exclusive group of citizenship must be stopped".

The Party ran newspaper advertisements opposing Maori rights: "Holders of Customary Right Orders will have the power to 'veto' resource consents…. You know what that means. You want to build a boat ramp. But local iwi says, *Not so fast. Your ramp will have a 'significant adverse effect' on our customary rights*. You then have two choices. A court case (bound to be long and expensive). Or a bribe (merely expensive). You pay the koha."

The ad concluded: "This legislation will divide our country, not bring it together. This is not the way to build a better future for all of us. National says the foreshore and seabed is Kiwi property. Not iwi property."

With iwi struggling to meet the high test for customary rights under the Foreshore and Seabed Act, once National was in Government, it didn't take long for the Maori Party to persuade them to repeal Labour's law.

The Iwi Leaders Group pressed for replacement legislation giving Maori title to the coast, but they were worried about "*scaring the horses*" and wanted to avoid alarming the public. However, they relished the prospect of controlling the 'jewel in New Zealand's crown', with Ngai Tahu's chairman stating, "Maori stand at the gateway of a golden opportunity".

National's unprincipled hypocrisy over this debacle couldn't have been more obvious. For the sake of a political accommodation, their commitment to Crown title of New Zealand's foreshore and seabed was ditched, in favour of appeasing Iwi Leaders.

The foreshore and seabed is by far the richest natural resource in the country. At stake is 10 million hectares – a third of the land area of New Zealand - with the coastal marine area covering the distance between the average spring high tide waterline and the 12 nautical mile territorial limit, along with the airspace above, the water, and the subsoil, bedrock and mineral wealth below.

At the time, TV3's Duncan Garner sought clarification over whether National's law would enable Maori owners to sell their coastal rights to third parties, asking Minister Chris Finlayson, "So would it allow an iwi with a customary title to do a partnership deal with the Chinese government who come forward with a 100 million dollars and say we want to build a number of resorts on your land, lease it to us over 100 years - would Maori with customary title and iwi be able to get away with that?"

The Minister replied "Oh yes" - subject to the Resource Management Act and other relevant

legislation.

Duncan then asked about “mining”, saying “Maori would like minerals wouldn’t they”, to which the Minister replied that apart from those that are nationalised, including petroleum, uranium, silver and gold, “I’m prepared to listen to other people on those other minerals.”

So mining was not ruled out, nor the ability of tribal groups to sell such rights to other parties - including foreign interests - on 100-year leases.

Local Government NZ opposed the law change claiming it would “trample on democracy”, by giving Maori owners superior powers to ride roughshod over coastal planning laws and the rights of citizens to have their say on how the country’s natural resources are used and protected.

At stake are ports, wharves, boat ramps, marinas, roads, structures used for river and coastal flood protection, and land used for reserves and future urban development - and while the new law specified that some of these cannot be influenced by customary right owners, a great deal of uncertainty remains.

For this new law is going where no law has gone before - as an iwi leader explained at the time: “Until now there’s never ever been such things as customary title… it’s a new one for New Zealand legislation and it’s untried and untested. We know lots about customary interest… but never before has the state gone outside the Westminster paradigm to create a new form of title. So for us it’s new territory and I’m sure it is for the government - we have to really feel our way into it.”

With the lodging of claims now ended, deliberations are underway on the hundreds of applications that have been received.

Altogether around $15 million has been allocated for the claims process, with some earmarked for Crown Law to assist the Court by assessing whether the claims are valid and comply with the law. While other funding is available for claimants – up to $412,000 for those with complex claims applying for Crown engagement, and $316,750 for the High Court - no financial assistance is available for anyone objecting to claims.

So at a time in the country’s history when Labour’s Treaty of Waitangi claims process - that has privatised billions of dollars of state assets to iwi - is finally coming to an end, thanks to National’s Marine and Coastal Area Act, the bulk of foreshore and seabed claims are about to begin. This time, at stake, is not only the wildlife and resources of the sensitive coastal marine area, but free access to a part of the country that all New Zealanders hold dear.

Winston Churchill famously called for the British to fight on the beaches to defend their country's liberty. Literally, in New Zealand right now, the battle for our beaches is about to begin in earnest. Is this something you are prepared to fight for?

THIS WEEK'S POLL ASKS:

Should Crown ownership of the foreshore and seabed be restored?

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