

Clients' Bulletin

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FORESTRY CORPORATION SALE

The Rt Hon Bill Birch, the appointor of the Trust's Crown representatives, has prepared the following statement for Trust clients concerning the sale of Government shares in Forestry Corporation of New Zealand Ltd.

After an intensive review and consultation process lasting six months, the Government has confirmed that its shares in Forestry Corporation of New Zealand will be offered for sale through an international tender process.

Forestry Corporation's principal assets are cutting rights to 188,000 hectares of exotic plantation forest land in the central North Island, principally Pinus Radiata and Douglas Fir - the corporation does not harvest native timber.

Forestry Corporation's wood crop accounts for around 12 per cent of New Zealand's total planted forests and one third of the forests in the central North Island. The corporation does not own the land under these trees and the land will not be included in any sale.

These trees were planted to be harvested. The Government wants to see significant new investment in further processing of wood in New Zealand. Selling Forestry Corporation will create the opportunity for more jobs for New Zealanders, increase export returns, and will ensure taxpayers get the most value from Forestry Corporation's forest assets.

Local Maori have expressed strong support for a sale and the Government is aware that they are

interested in participating in the sale process, possibly by joining forces with other bidders.

Maori will make the decision whether they want to be involved, and with whom. From the Government's perspective, Maori participation will be viewed on a strictly commercial basis, as part of an open, contestable process. The Government will not reserve a portion of shares for Maori.

Maori claims under the Treaty of Waitangi for any of the land on which Forestry Corporation trees are planted are protected by law and these claims will not be affected by the sale. The Government has no intention of changing the Treaty protection mechanism under the Crown Forest Assets Act.

As a result of consultation with Maori, the Government and Maori will have discussions to identify hindrances to settlement of Treaty claims and discuss how these may be overcome in the context of the existing Treaty protection mechanisms.

I want to see as much as possible of Forestry Corporation's wood crop processes profitably in New Zealand, creating jobs. That's not the case at the moment. Each year, around 33,000 truckloads of raw logs are exported by Forestry Corporation. That means we are missing out on jobs and valuable export returns.

Selling Forestry Corporation will give the new owner, or owners, the certainty of wood supply needed before substantial funds can be committed to new processing, while at the same time ensuring taxpayers immediately receive the top price for trees.

Previous sales of Crown cutting rights have gone hand-in-hand with increased investment in further processing. For example, Rayonier NZ and Juken Nissho

have between them invested around half a billion dollars in value-added processing since buying Crown cutting rights in 1990 and 1992.

As part of the tender process, bidders will be asked to outline their processing plans for the communities in the central North Island. Bidders will also be asked for their intentions on continuing to supply logs to local sawmills and other wood processors.

The successful buyer or buyers of Forestry Corporation will have to demonstrate their ability to manage and develop the corporation's assets. They will also be required to replant the trees after harvesting. The corporation's Crown forestry licences will be amended to include replanting requirements along the same lines used in the 1992 sale of New Zealand Timberlands Ltd.

The Government intends to get the best price for Forestry Corporation for the benefit of taxpayers. The buyer who pays the best price will also have the greatest incentive to add value to Forestry Corporation's wood crop.

The sale process should take between four and five months. We will use the proceeds of the sale to repay foreign debt.

However, the Government does not have to sell. We will only sell Forestry Corporation if we are able to maximise its value, and we are confident that the sale will lead to investment in further processing and added value to the wood crop.

CROWN NEGOTIATIONS WORK PROGRAMME



The Office of Treaty Settlements (OTS) has distributed a guideline which details the requirements for claimants who wish to enter into direct negotiations with the Crown. We outline the process as described in the document.

Establishing a claim

The historical basis for the claim must be verified by thorough research to a standard acceptable by the Waitangi Tribunal. OTS recommends claimants discuss their research process with them or with researchers and historians from the Waitangi Tribunal. We remind Crown Forestry Rental Trust clients that the Trust also provides this service.

Establishing claimant representation

Before negotiations can begin with any claimant group they

must establish that they are the correct claimant group for the area. The claimant group must also give a mandate to their negotiators which is recorded in a written deed. The OTS document outlines what the deed should contain. The Crown will not negotiate if there are any doubts about who the appropriate claimant group is, or if there is any dispute over who should represent the group at the negotiations table. Nor will it negotiate if a claim overlaps with another claim or claims and no agreement has been reached between the parties concerned. This includes disputes between iwi or within an iwi.

Establishing terms of negotiation

Before negotiations begin the Crown requires the claimants to agree that the outcome of the

negotiations are final unless the Crown makes an explicit exception. Claimants must agree to negotiate on the Crown's stated position on the nature and extent of the breach of the Treaty even if they perceive the breach to be wider than that acknowledged by the Crown. During negotiations claimants must not use any other avenues of redress and agree that the negotiations are private. The settlement will include a lifting of all memorials and any other protection mechanisms that previously applied. This implies that if licensed land is included in the rohe under negotiation, the protection claimants have under the Crown Forests Assets Act would cease to apply.

Cabinet approval

The Minister in Charge of Treaty Negotiations will seek Cabinet approval to have a claim entered onto the Negotiation Work programme. Once the Crown is satisfied that the relevant criteria have been met and claimants have agreed in writing to the terms of negotiation.

For further information contact

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If you wish to share your views on the Crown Negotiations Work programme through the Bulletin, please contact your regional manager at the Trust.

TRUST BOARD NOT RECOGNISED

A Planning Tribunal decision has ruled that a trust board cannot appeal an Historic Places Trust decision.

The Historic Places Trust had granted a property owner limited authority, subject to conditions imposed, to destroy seven middens on Nganguru Sandspit, Northland.

The Ngatiwai Trust Board appealed the decision because the Sandspit was the scene of a battle which ended a sustained campaign by southern tribes against Te Waiariki of Ngatiwai.

The devastation caused by that campaign had almost resulted in the decimation of Te Waiariki. Mr H Te M Parata, speaking for the Trust Board, told the Tribunal that the tapu of the Sandspit will always remain due to the numerous midden there which undoubtedly contain remains of Te Waiariki warriors.

The appeal was dismissed on the grounds that it had been brought by a charitable trust, not by a person. The Historic Places Act gives a right of appeal to tangata whenua or to any person who is directly affected by a decision.

The Planning Tribunal's judgement states that the Charitable Trust Act 1957 is clear

that a trust board is separate from its members; the Tribunal decided that the appeal was not brought by tangata whenua because the Ngatiwai Trust Board is separate from its members.

The Planning Tribunal would have dismissed the appeal regardless of the appellants' status because it was satisfied with the Historic Places Trust's original decision.

The Planning Tribunal decision Ngatiwai Trust Board v New Zealand Historic Places Trust (A13/96, Judge Sheppard, 11.3.96), is available from Deborah Young, The Trust's Librarian.

TREATY CLAIMS INVOLVING PUBLIC WORKS ACQUISITIONS

The Crown's invitation for submissions on a policy proposal on Treaty claims involving public works acquisitions was extended from 28 February 1996 to 7 April 1996.

This is an important document for client groups that have grievances concerning land taken under the Public Works Act, and if the proposal becomes policy, it raises substantial questions on how clients will deal with the research and presentation of these aspects of their claims.

Treatment of Maori versus non-Maori

The policy proposal states that a grievance may be accepted by the Crown as legitimate where, compared to non-Maori in similar situations, the Crown did not pay Maori landowners adequate compensation at the time it was acquired.

Similarly, the document states that the Crown may consider a claim to be well founded where it acquired land for a public work without consulting Maori to the extent it consulted non-Maori.

If non-Maori were treated poorly as well, Maori are not considered to have a legitimate grievance. Under article three of the Treaty of Waitangi, where Maori were accorded equal rights of citizenship with non-Maori, poor treatment of both parties may be seen to exclude a Treaty breach. However, the compulsory acquisition of Maori land without adequate compensation or consultation may constitute a breach of article two of the Treaty where Maori were guaranteed undisturbed possession of their lands for as long as they wished.

Confusion surrounding 'lack of consultation'

Confusion may be created by the statement in the document which says that lack of adequate consultation may constitute a Treaty breach but will not on its own entitle claimants to fiscal redress. However, it says that monetary compensation may be forthcoming if, through lack of consultation:

- Maori were unnecessarily left landless and economically impaired,

- there was a significantly negative impact on the cultural or spiritual well being of the people, when more land than was necessary was acquired,
- the land was not used for the purpose for which it was taken, or
- Maori land was taken in preference to non-Maori land for expedience.

It is unclear whether this list of provisions is superseded by the former statement that a grievance is not considered to be a breach of the Treaty if non-Maori suffered the same consequences through public works acquisitions. The policy proposal does not explain how the Crown would compare the treatment of Maori and non-Maori.

Failure to offer back surplus land

The proposed policy states that grievances will be considered where the Crown failed to offer back surplus land following the Public Works Act 1981. But, it says, no Treaty Breach exists where the Crown failed to offer back land taken for public works before 1981. This proposed policy may not sit comfortably with the 1985 amendment to the Treaty of Waitangi Act which states that a claim may be made against any Act of the Crown back to 1840.

Actions of local authorities and statutory bodies

In the proposal the Crown considers that it is not responsible for the acts or omissions of local authorities or statutory bodies. The questions are raised: is the Crown responsible for the Acts which entitle the actions of these bodies; and is a grievance against the Crown in such circumstances therefore legal under the Treaty of Waitangi Act 1975, and worthy of inquiry?

Offer back at current market value

The proposed policy states that "for historical Treaty claims the Crown takes the view that offer back of the land under the Public Works Act 1981 is not unfair to former Maori or non-Maori owners and accordingly cannot give rise to a well founded public works

grievance for Maori or non-Maori, whatever the circumstances". Leaving aside the fact that non-Maori are not entitled to make Treaty claims, this policy may be at odds with the Treaty of Waitangi Act, which gives Maori the right to an inquiry, without prejudice, into their claim against any Act of the Crown.

Redress

When a grievance is acknowledged, the Crown will return, where possible, as many property rights as are considered fair to the claimants and the Crown. If this is not possible, cash and assets may be offered.

Redress options include:

- return of the land at nil cost
- return of land subject to lease back by the Crown (where land is not surplus),
- transfer of alternative lands at nil cost,
- monetary compensation, and
- a formal apology.

A historian's view

Historian Bill Oliver critiqued the proposal in an article, Consulting by telling, published in New Zealand Books, March 1996. His concerns are mainly with the manner in which the proposals are offered and the language used by anonymous Government officials.

"The language employed is peremptory in tone, exclusionary in effect and explicitly pre-empts a number of controversial matters ... " says Mr Oliver. He believes that this proposal, "is not proposing anything at all. It is announcing in advance what it will and what it will not agree to ..."

The issues raised in this article will doubtless have been raised in submissions prepared in response to the Government's proposal. The Bulletin will keep clients informed on further developments in the Crown's direction and intention on claims involving public works acquisitions.

STRATEGIC PLAN AND REPORT TO APPOINTORS

Claim committees can order extra copies of the Trust's Strategic Plan 1995-2005, and Report to Appointors 1994-1995. Contact the Trust's office.

RESEARCH PLAN REQUIREMENT

It is now Trust policy that all new clients will be required to work to a research plan compiled by either a Trust historian or an experienced commissioned historian. Existing clients whose funding has been suspended for poor performance will also be required to agree to work to a research plan before funding is reinstated.

The historian will take six to eight weeks to compile the plan and will discuss the historical claim issues with the claims committee.

The research plan will break down the work required into a series of discrete projects which will then be commissioned by a Trust approved researcher or historian who will report to the claims committee and the Trust. The commissioned person will have a proven track record for producing quality work to deadline. For each project the Trust will be prepared to wait until an experienced person is available; this is necessary due to the high cost of commissioning historical

research. The researcher's or historian's contract will stipulate dates for completion of projects and will be examined by the claims committee using quality control criteria laid down by the Trust. When each research project is complete it will be appraised by Trust staff.

The research plan will include a description of the geographical area and an annotated bibliography of all relevant primary and secondary sources. The projects that it identifies for research are likely to fall under the following headings (with variation, depending on the nature of the claim).

The pre-Treaty period

Pre-Treaty contact, land alienation, the signing of the Treaty, etc.

The early colonial period

Relationships with settlers, Crown land purchases, involvement in the wars, etc.

The Native Land Court

Land purchasing procedures, land alienation, effects on customary Maori land tenure, etc.

Twentieth century land administration and alienation

Land boards, fragmentation of title, consolidation schemes, development schemes, etc.

Social impact

The effects of these processes on the material life of Maori: health, housing, education, etc.

The claim plan, which will support the execution of the research plan, will include claim committee duties and responsibilities, administration and communication requirements, costings, performance criteria and reporting requirements.

Claim committees will develop their claim plan with help from the regional managers and then present it to the Trustees in the form of a funding request.

Traditional histories Clients will continue to research their own traditional histories. The Trust will provide a guideline which, rather than being specific about the contents of the report, will list the objectives the research should have. A specimen questionnaire for interviewing people will be provided.

UPDATE ON TRUST PROGRESS

By the end of 1995 nine of the Trust's clients had their claims fully prepared for a Waitangi Tribunal hearing or direct negotiations with the Crown. Seven of those claims have either been heard by the Waitangi Tribunal or are scheduled for a hearing. One or two groups expect to enter direct negotiations with the Government in the near future.

Only one claim has been resolved: the 1995 Waikato settlement determined ownership of Crown forest lands in the Tainui rohe.

The Trust is now actively supporting 44 client groups, 30 of which have agreed deadlines for completion and 14 that are refining their research plans. There are a further 20 or 30 existing or potential groups waiting to receive funding.

The Trustees' March 1996 meeting approved almost \$2.6 million to assist clients. It is expected that a further nine groups will have completed their historical evidence by the end of May and seven more should be in this position by the end of August.

Legal costs

The Trust will not be in a position to fund the full legal costs of the growing number of claims that will be entering the hearing or negotiation process. Clients are requested to refer to the Legal Services section of their Crown Forestry Rental Trust Information Manual and to seek guidance from their lawyers. The Legal Services Act makes special provision for applications for legal aid from Treaty of Waitangi claimants. These applications are all processed by the Wellington District Legal Services Committee, unlike most legal aid applications which are dealt with in the area where the applicants reside.

CRITICISM OF THE RESOURCE MANAGEMENT ACT

The Resource Management Act 1991 is not providing Maori with equal participation in local authority planning according to a report by Emeritus Professor James Ritchie of Waikato University.

Under the Act, regional councils must list resource management issues significant to local iwi. But Ritchie's research found that the partnership between Maori and non-Maori is still unequal and the consultation process asks Maori to contribute more than their share of resources.

Maori Participation in Resource Management is available from the Centre for Maori Studies and Research, University of Waikato, Hamilton. Tel: (07) 824 7688 Fax: (07) 824 7553. Cost: Main report - \$30.00, four further parts @ \$20.70 each.