



NGĀ KAITIAKI RĒTI NGAHERE KARAUNA

CROWN FORESTRY RENTAL TRUST



Clients' Bulletin

Tuawhiti Whiringa a nuku 1995

Number 7 October 1995

Forestry Corp Sale

Trust clients may be aware that the Government has declared its intention to sell Forestry Corp. According to the Minister of Finance the sale should support the trend of creating products for export rather than exporting the raw logs.

The proposed sale will not alter the current arrangements between the Crown, the Crown Forestry Rental Trust and the Trust's clients. There will be a continuation of rentals for the land flowing

from the owners of Forest Corp irrespective of their identity.

The Bay of Plenty claimants have discussed with Crown Advisers the possibility of buying into Forest Corp. A deadline for the sale (to who-ever) has not been finalised but it should be completed within the next six months. The Trust will keep its clients informed as information is received on the sale.

New Mileage Rates—Inland Revenue Department

Earlier this year the Inland Revenue Department (IRD) reviewed the Public Service mileage rates and concluded that the old rates tended to over-reimburse motorists and should be reduced.

For many years the State Services Commission set the Public Service mileage rates for government department to reimburse their employees who used their own vehicles for government business. IRD has allowed all employers to use the same rates for calculating the tax-free reimbursement paid to employees who use their vehicles for work purposes.

The Department originally decided that the new rates would take effect as of 1 August 1995. However, because the Department received complaints about the late notice of this change, the starting date has been put off until 1996.

As of **1 April 1996** the new mileage rates may be used by:

- employees to calculate the taxfree reimbursement paid to employees who use their own vehicle for work related use
- employers to calculate the taxfree reimbursement paid to shareholder-employees who use their own vehicle for work related use of up to 5,000 km
- self-employed taxpayers to calculate the tax-deductible motor vehicle expense incurred in using

their own vehicle for work related use of up to 5,000 km.

The Crown Forestry Rental Trust will fund claim committees at the new rate. Committees who wish to reimburse travel above that rate are free to do so, but will have to pay tax on the difference. Committees may wish to inform their independent contract workers of this option for calculating their tax deduction for use of their vehicle for work. The other option for self-employed people is to claim the percentage of business running over total running.

Inland Revenue Mileage Rates from 1 August 1995

	Annual Work-related km	
	Motor vehicles	Motor cycles
1 to 3,000 km	56c per km	28c per km
Over 3,000 km	19c for each km over 3,000	10c for each km over 3,000
Flat rate	26c per km	14c per km

IRD says the 56 cents per km is a full cost-recovery mileage rate that includes estimated overheads. The rate that applies for kms over 3,000 covers running costs only.

You cannot claim a GST deduction on motor vehicle expenses using mileage rates.

Update on Ngai Tahu Court Action

In the May 1995 bulletin we reported the Waitangi Tribunal's response to Ngai Tahu's request for a hearing on relief and particularly on the return of forest land. When the Tribunal declined this request, Ngai Tahu filed a proceeding in the High Court against Edward Durie and the Waitangi Tribunal which sought to overturn Judge Durie's decision not to grant an urgent hearing.

In July 1995 Ngai Tahu filed another claim in the Waitangi Tribunal, this time seeking binding recommendations on the resumption of all SOE land in the Ngai Tahu rohe. This too was declined by the Tribunal so in September Ngai Tahu filed another claim in the High Court which expands and replaces their earlier action.

The primary objective of these proceedings is to get Ngai Tahu's case before the Tribunal as soon as possible so that the claim can be finally resolved. Their main arguments are:

Judge Durie should not have become involved in the claim because he is not a member of the Tribunal for that claim

Judge Durie's decisions were made for policy or political reasons inspired by his own commitment to see claims settled on a pan Maori basis

that they (Ngai Tahu) have a right to have their claims determined, that they are ready for a hearing and that it is wrong to refuse to treat them as claimants with a justifiable grievance. If they cannot have an urgent hearing they should at least be allocated an ordinary hearing.

Originally these proceedings were only against Judge Durie, but in response to an order from the High Court, Ngai Tahu amended the claim to join the Waitangi Tribunal and the Crown to the proceedings as defendants because the allegations were made against him in his official capacity, rather than his personal capacity. The defendants were ordered to file their statements of defence by 9 October.

Various claimant groups have indicated that they wish to intervene and the High Court has appointed Philip Green as amicus curie or friend of the Court. His role is a neutral one in which he will ensure that the Court has before it all material relating to implications of the case for all Maori groups other than Ngai Tahu.

Ngai Tahu filed another High Court action against the Crown which concerns the Crown's failure to provide the Tribunal with adequate resources to carry out its functions. A number of claimant groups applied to join the action as plaintiffs but both Ngai Tahu and the Crown opposed the application so a hearing was held on 14 September where the application was argued. The High Court did not make a ruling but instead suggested that the would-be plaintiffs go and negotiate with Ngai Tahu and the Crown. Ngai Tahu then said it would consent to the other groups joining it, but on certain conditions including that all groups be represented by Ngai Tahu counsel. The Crown says that it will object if such a deal is reached because it does not consider it necessary for all of these different groups to participate in the proceedings.

This proceeding is therefore stalled until some agreement is reached on whether the other claimant groups can join the proceedings.

Employment Status Of Claim Workers

The Crown Forestry Rental Trust, while providing advice and assistance for claim committees, has always maintained that the committees are independent of the Trust and are responsible for their own business arrangements. The Trust's advice on the employment arrangements of claim workers has always been that independent contracting of workers rather than taking on employees is simpler for the committee. It avoids a lot of administration incurred through tax payments and leave entitlements.

The Inland Revenue Department guidelines on what constitutes self-employment (or independent contract

worker) and employee status do not always fit the situation of claim workers. Several regional IRD offices have told claim committees that they consider people working on their claim to be employees of the claim committee.

CFRT sent 55 claim committees a questionnaire on the status of people working on their claim. Of the 13 replies, two thirds engage employees and one third independent contract workers. The status of these workers in most cases has been imposed by the local IRD office.

Trust staff are working with IRD at a National level to resolve the issue.

Legal Aid

At its last meeting the Trust discussed the need to revisit legal aid for Trust clients because of the pressure on the Trust's own funding. There is a special legal aid provision for Maori with Treaty claims which is administered by the Wellington District Legal Services

Committee. The Trust wishes to remind claim committees that this fund exists and would be interested in hearing about the experiences of any groups that have applied for legal aid. Please telephone or write to the secretary, Karen Waterreus.

Planning Tribunal Decision On Costs

- Penalty for not employing a lawyer?

The Bay of Plenty Regional Council, in May 1993, granted an applicant a coastal permit to extract sand from the foreshore at Otamarakau Beach in the Bay of Plenty. Two Otamarakau Marae Trustees called for an inquiry by the Planning Tribunal into the granting of the application. After conducting the appeal inquiry the Tribunal dismissed the Trustees' concerns about inadequate consultation with iwi and the relevance of a pending Treaty of Waitangi claim.

The Regional Council then sought an order from the Planning Tribunal for \$1,500 from the Otamarakau Trustees towards the Council's \$9,030.94 legal costs for the appeal. The Regional Council submitted that the Trustees had been unsuccessful in their appeal, had not challenged the sustainability of the resource, nor called any expert witnesses to support their case. The decision states that the Regional Council also submitted that even though the Trustees had a right not to employ a lawyer

for the appeal, 'the exercise of that choice should not be made at the cost of another party where the appeal is unsuccessful.'

The Otamarakau Trustees did then employ a solicitor who submitted that each party should bear their own costs. He said the reason the Trustees called for an inquiry was to raise important matters of principle.

In his decision Judge Sheppard said, 'although the Trustees were entitled to seek the enquiry and to have their grounds for opposition to the proposal considered on their merits, the result of the inquiry was that their grounds of opposition were found to lack any merits.' He therefore considered it just that the Trustees make a contribution towards the Regional Council's costs of the inquiry.

Tawa v Bay of Plenty Regional Council, A75/95, 9.8.95, Judge Sheppard is available on request from Bruce Stirling at the Trust's office.

Recurring Themes In RMA Judgements

A recent Planning Tribunal decision concerning an appeal against a coastal permit for boat hire developments in Northland reiterates the points made in other decisions in the last couple of years. The appeal which partly concerned iwi consultation, was unsuccessful.

Applicants not Required to Consult with Iwi

The decision states that under the Resource Management Act 1991 the applicants for a resource consent are not specifically required to consult with iwi; nor are local authorities, when acting as consent authorities. However it is recognised as 'good practice' that consent applicants consult tangata whenua when the proposed development may effect them.

Mana Whenua Considerations

In this case, the iwi groups who were consulted were not considered by the appellants to be tangata whenua of the region. The Tribunal found that consent applicants had sought consultation with iwi groups known to the Council and that it was not up to the Council to decide who has mana whenua over a particular site. This was the job of the Maori Land Court. This statement has been repeated over the years by the Tribunal in response to the recurring problem of tangata whenua identity for particular areas where a resource consent is sought.

Pahia & District Citizens Association Inc. v Northland Regional Council, A77/95, 10.8.95, Judge Sheppard is available on request from Bruce Stirling at the Trust's Office.

Staff News

New Researcher Appointed

The Trust welcomes Emma Stevens to the staff. Emma has been appointed as a researcher to support the Trust's Historians. Auckland born and bred, she completed an MA in history at Otago University in 1993. Emma wrote her MA thesis on the Kati Mamoe hapu of South Westland. She majored in Italian language for her undergraduate degree. Emma is delighted to have been chosen for the job and is looking forward to working for tangible results, compared to the academic nature of her recent work at university.

Daphne Makowharemahihi has resigned from the Trust to concentrate on her teacher training. The Trust thanks Daphne for work and wishes her all the best.

Lillan Ngapera married Arlo Anderson on Saturday 23 September at the Botanic Gardens in Wellington. The Trust and staff congratulate Lil and Arlo and wish them a happy life together. Lillian is now Mrs Anderson but we can still call her Lil.

Maori Land Legislation Manual—1995 Update

In the last issue of the bulletin we asked all claim committees to fill in a form stating:

- ▶ whether you want to update the manual or have CFRT staff update it
- ▶ whether you require an IBM or Macintosh disk.

Those committees who want staff to update their manual, please send it now to Maani Kirby.

If you have not already returned the form please let Maani know if you want an IBM or a Macintosh database disk.

Strategic Planning

The Trust is considering a strategic plan to cover the ten years 1995-2005. A broad overview envisages the first five years devoted to preparing the claims and the last five years to resolving the claims and winding up the Trust.

The draft strategic plan is partly a result of the recommendations of the recent review of the Trust's operation which has come to be known as the "Hall Report". That report said, 'To achieve the primary goal (disposal of licensed lands ... within the shortest possible time) a clear vision is needed of the purposes of the Trust and a good focus is needed on the ultimate objective. In respect of the organisational style and management, the report said the Trust must, 'change its emphasis from supervision to consultation ... The Trust should act more as a facilitating agency and mentor.' To support this new strategy the report recommended a restructuring of the organisation.

Regional Teams

Staff facilitators, historians and researchers will be grouped into four regional teams, with other support staff and additional expertise contracted according to demand. Trust clients will benefit from having a small number of staff to liaise with, who will become specialists in the region. The regions will be:

- ▶ Northern region: Tai Tokerau, Auckland and Hauraki
- ▶ Central region: Central Plateau and Bay of Plenty
- ▶ Eastern Region: East Coast North Island/Hawke's Bay/Wairarapa
- ▶ Southern Region: South Island, West Coast North Island from Kawhia south.

The Trust's Appointors have been consulted and their feedback is being taken into account.

Office Closure For Christmas

The CFRT office will close for Christmas at 4.00pm, Friday 22 December, 1995. It will open again on Monday 15 January, 1996.