RECENT EVENTS

Sale of Crown Forests: Treaty issues

“The implications of the Treaty of Waitangi for the sale of the Crown’s commercial forestry assets are highly significant.” With this statement the Forestry Working Group identified a major policy issue for the sale of Crown forests. (Refer to “Sale of the Crown’s Commercial Forestry Assets”, October 1988.)

At the heart of the matter is the need to protect Maori claimants to the Waitangi Tribunal, whilst also addressing the purchasers’ need for security of tenure. The mechanism the Working Group recommended was for the Crown to retain ownership of the land but sell the rights to the crop over a 50-70 year lease period.

Clearly, these major changes in government policy needed to be discussed with Treaty partners. To this end, the Minister for SOEs, Stan Rodger, invited Maori representatives to a national hui in Rotorua on January 20 and 21, 1989. The discussions were undertaken in a spirit of partnership and aimed to disseminate information and to begin a dialogue with Maori.

The following points were emphasised at the hui:

1. The present Government does not propose to sell the land. What is for sale is the forestry assets on the land and the right to manage these assets for at least 50-70 years (i.e. two rotations).
2. A minimum 50-70-year term is necessary because of the purchasers’ need for security of tenure. In order for secondary industry to be developed, for example further pulp mills, investors need to be assured of supply. Clearly it is desirable for New Zealand to develop further processing, due to the regional, social and economic benefits.
3. As the land is not being sold the provisions of the Treaty of Waitangi (SOE) Act 1987 do not apply. However, this does not indicate any less protection for potential claimants.

Following the national hui further discussions with various iwi is anticipated. A commitment to consult fully with Maori interests is evident from these recent hui. While the Government is to be congratulated on its commitment to consult with Treaty partners, it would have been nice to be able to congratulate Government for a similar commitment to wider consultation.

Sarah Wilson,
Ministry of Forestry

Maori afforestation leases

BACKGROUND
Maori groups have leased some 70,000 ha of land to the Crown in 19 different lease agreements which have been drawn up at varying times since 1960. Peter Tapsell, Minister of Forestry, invited representatives from these groups to a hui on March 22, 1988. At that hui the lessors were offered three options:

i) Purchase the Crown’s interest in the lease on a commercial basis;

ii) Assignment of the Crown’s interest to the Forestry Corporation; or

iii) That the leases remain the direct responsibility of the Crown with the Forestry Corporation being given the first opportunity to manage.

The lessors were asked to indicate their preferred option by September 30, 1988. At the time it was thought that negotiations between Treasury and the Forestry Corporation on the value of State Forests for transfer to the Forestry Corporation were nearing completion and that the outcome of that process would provide a good basis for valuing the Crown’s interest in the Maori afforestation leases. These lease valuations would be given to lessors to help them decide which option they should choose.

However, Government’s decision in mid 1988 to privatise the State Forests as soon as possible has meant that the values of State Forests will now be determined in a much more reliable way, i.e. they will be contested on the open market. It has also meant that the Forestry Corporation probably will not have a long-term future and accordingly options (ii) and (iii) are respectively unworkable and need modification.

This will mean that it will take longer than previously envisaged to negotiate changes to the leases but it also provided some new and positive opportunities for the lessors.

HUI OF DECEMBER 20, 1988
In order to continue to provide the lessors with relevant information, to con-
continue outlining the Crown's opinions and to continue discussing the process of restructuring the lease agreements to the mutual advantage of both the lessees and the Crown a further hui was called by the Minister of Forestry and this was held on December 20, 1988.

Unfortunately the Minister was unable to attend but the Secretary of Forestry, Robin Cutler, represented him and provided the lessees with the following information.

He said the Minister of Forestry will have responsibility on behalf of the Crown for the Crown's interest in Maori afforestation leases.

This means that the Ministry of Forestry will have the function and funding for:

- managing the Crown's interest under the lease agreement;
- monitoring the Forestry Corporation's performance in the interim (or under such new terms as are appropriate) under the existing management agreement;
- liaising with the Treasury on any issues associated with the sale or disposal of the leases.

The Crown would continue to offer each lessor an option to purchase the Crown's interest, on agreed terms, at a price to be determined during the sales process and the lessees would be free to negotiate with third parties during the process of sale of the Crown's own forests. Discussions could cover the lessees' option to purchase the Crown's interest, and the possible effect of this fact on third party desire to purchase nearby Crown forests. For example, in some cases Maori lease age classes complement the age classes of nearby State forests (e.g. Awahohonu and Esk).

Lessees were told that they would be free to bid for the Crown's own forests on the same terms as other bidders.

If a lessor wished to exercise the option to buy back the Crown's interest in the lease, the price could be determined by reference to the sale of the Crown's own forests.

If the lessees did not wish to exercise the option to buy back the Crown's interest, the Crown and lessees could, after sales of the Crown's own forests have occurred, negotiate the future of each lease with the Crown in the spirit of partnership. These negotiations would be conducted on a lease-by-lease basis.

The lessees were told that although some hard negotiations between the Crown and the lessees eventually could be expected if the lessees chose to purchase the Crown's interest, in the interim a "co-operative rather than adversarial" approach would be encouraged in defining possible options for revised afforestation lease agreements. The Crown would help the lessees identify the advantages and disadvantages of the possible options.

(An indication of the impacts of a range of such options is provided in the table above.)

Mr Cutler also said that if it was the wish of the meeting the Minister would seek Cabinet support for financial assistance from Government to help the lessees obtain quick interim independent forest valuations and provide advice on raising money and other analytical and financial matters. This was seen to be necessary for both the lessees and the Crown to agree on revised lease agreements which would be advantageous to both parties.

The lessees were in full support of this approach.

Hamish Levack