



Office of Hon Mark Burton, M.L.R. for Taupo
Minister in Charge of Treaty of Waitangi Negotiations
Minister of Defence
Minister of Tourism
Deputy Leader of the House

RECEIVED

12 DEC 2006

Eru George
Chairperson
Nga Kaihautu o Te Arawa Executive Council
1 Peace Street
ROTORUA

Tēnā koe Eru

Valuation process for Crown Forestry Licensed land

I write in response to the request of your negotiators for the valuation process for Crown forestry licensed land ("CFL land") offered under the Agreement in Principle ("AIP") to be undertaken earlier than the time specified in the AIP.

The AIP provides for the valuation process for the CFL land to take place after the Deed of Settlement has been ratified and signed. The reason for this timing is that the date at which values are to be effective is the date of Deed signing, so it is preferable to begin the valuation process once that signing date is certain.

As my officials have explained to you, the Crown would bear considerable financial risk if the valuation were to be undertaken before the Deed is signed and the anticipated signing date is unexpectedly delayed. This is because the financial value of land tends to increase over time and, if a settlement is delayed, the Crown (on behalf of the taxpayers) could be in the position of transferring commercial assets considerably below market value. Some settlements have been concluded months or even years later than anticipated.

I have, however, considered your request and I am conscious that much of the economic value of the proposed settlement is centered on the CFL land. In particular, I agree with your point that it is important at the time of ratification for your people to know how much CFL land can be purchased and at what price. I further acknowledge it is important that we both design a process for these negotiations which reflects our respective needs and builds on the efficiency and goodwill demonstrated between the parties to date. In this spirit, I understand that you have worked with my officials to develop an approach which mitigates the key risks to the Crown of your proposal.

I therefore accept your request to undertake in the next few months the valuation of all CFL land offered in the AIP by two valuers appointed separately by the Kaihautu Executive Council (KEC) and the Crown, and providing separate reports to their principal, on the basis that the KEC agrees to:

- the effective date of the valuations being 30 September 2006, the projected date for signing of the Deed of Settlement;
- the valuations expiring on 30 April 2007, being 12 months from the date that the final valuers' reports are to be submitted to the parties (in May 2006);
- all CFL land being re-valued following a similar valuation process in the event that the Deed is not signed by the expiry date of 30 April 2007, in which each valuer can take into account any information that the valuer considers is relevant (including the previous valuation) and consequently, the transfer values being re-negotiated; and
- the 14 areas of CFL land (referred to as "economic units"), including the divisions of the two large CFL areas that have been agreed between our respective negotiators, being the basis for both valuation and KEC selection of CFL land. Any or all of the economic units can then be chosen by the KEC for purchase. One title only, however, will be raised for all the selected economic units currently subject to a single CFL.

This approach provides a strong basis for our negotiations to move forward in an efficient manner. However, it will require a high level of co-operation and commitment from both parties (for example, to avoid the need for arbitration on the value of CFL land) in order to achieve a signed Deed in September 2006, or no later than April 2007. However, I am confident that these ambitious objectives can be achieved.

Accordingly, I attach the amended Attachment Six to the AIP (setting out the revised valuation process and timeframes) and the Joint Instructions to our respective valuers. I understand that these documents have been drafted with your negotiators on the basis of your proposal.

Please countersign this letter and initial each page of the two attached documents and return them to my officials at the Office of Treaty Settlements.

Nāku noa, nā

Hon Mark Burton
Minister in Charge of Treaty of Waitangi Negotiations

For and on behalf of Nga Kaihautu o Te Arawa Executive Council:

Eru George
Chairperson

Executive Council Member **Executive Council Member**

Date: 10 / 12 / 2005

INSTRUCTIONS TO VALUERS FOR LICENCED CROWN FOREST LAND

INTRODUCTION

The Agreement in Principle for the Settlement of the Historical Claims of the Affiliate Te Arawa Iwi/Hapu dated 5 September 2005 (the "AIP") provides the opportunity for the claimants to acquire the licensor's interest in the Crown Forest Land that is subject to the Waimaroke and Waimangu Crown forestry licences and parts of the Crown forest land that is subject to the Pukuriri, Reporoa, Wairapukao, Highlands, Horohoro and Rotoehu West Crown forestry licences (the "Crown Forest Land").

The valuation of the licensor's interest in the Crown Forest Land is to be undertaken in the context of the AIP, in particular Attachment 5 (in accordance with paragraph 2 below) and Attachments 6 (as amended) and 7.

The licensor's interest is the interest as proprietor of that land and is to be assessed on the basis that the Crown Forest Land will transfer as a result of a deemed recommendation from the Waitangi Tribunal and that the restrictions of the Crown Forest Assets Act 1989 such as prohibition on sale no longer apply (i.e the licensor is assumed to be the claimants, not the Crown, for the purpose of the valuation).

The principals, being the Crown (acting through Land Information New Zealand in respect to valuations) and the Kaihautu Executive Council, wish to obtain market valuations for specified units of the Crown Forest Land available for selection.

REQUIREMENTS

The principals have agreed the following requirements for these valuations:

1. Any transfer of the Crown Forest Land to the claimants would be deemed to be the result of a recommendation from the Waitangi Tribunal under section 8HB of the Treaty of Waitangi Act 1975. This would trigger the relevant sections of Part II of the Crown forestry licences.
2. The Crown Forest Land is to be valued in specified units within the land identified in Attachment 5 to the AIP, and set out in the schedule to these instructions, as follows:
 - a. F1 – split into units F1A, F1B, F1C, F1D and F1E;
 - b. F4 – split into units F4A, F4B and F4C and
 - c. F2, F3, F5, F6, F7 and F8.
3. Each unit is to be valued as though:
 - a. that unit will transfer subject to the Crown forestry licence;
 - b. any unit boundary between units F1A to F1E and between units F4A to F4C that is a forestry road is, for the purposes of valuation, along the centre line of that road;
 - c. the termination period of the licence will begin on 30 September following the giving of the termination notice (assumed to be 30 September 2008);
 - d. the provisions of clause 14.2 and Part IIB (clause 16) of that licence will apply to Waimangu, and the provisions of clause 14.3 and Part IIC (clause 17) of the licence will apply all units except Waimangu;
 - e. the Crown will be responsible for carrying out and completing the survey necessary to define the boundaries between the selected units and the balance units;

- f. a computer freehold register has been issued for each unit to be valued and is subject to and together with the encumbrances identified in the disclosure data and, in relation to units that comprise only part of the land contained in a Crown forestry licence, together with any subject and appurtenant easements arising from consultation under clause 17.4.1 of Part IIC of the Crown forestry licence. For the avoidance of doubt, and in respect of the Kaingaroa Crown forestry licensed areas only, the requirements of clause 17.4.1 of Part IIC of the licence may be substantially satisfied by the easements that will be created as a result of the following paragraph;
- g. there is an arrangement in place that provides the owners and occupiers of the land subject to each of 13 Kaingaroa/Waimihia Crown forestry licenses (or part thereof) with reciprocal rights of free access across the Kaingaroa forest road network (as shown on attachment A) for the purposes of forestry and agricultural operations subject to payments of maintenance charges; and
- h. reciprocal rights of access exist as anticipated in clause 8.4.7 of the Deed of Settlement of the Historical Claims of Ngati Awa dated 27 March 2003 (and its amendments) ("the **Deed**") and Part 5, subpart 3 of the Ngati Awa Claims Settlement Act 2005, to facilitate the ordinary use and management of the Kaingaroa forest land, as described in Attachment 8.3 to the Deed, by its owners and the owners' lessees and licensees and their agents and contractors.
4. Each valuer is required:
- to provide a valuation report as at 30 September 2006 (the "**Valuation Date**");
 - to provide separate valuation reports for each unit e.g. F1A, F2 , F3 etc;
 - to provide the market value of the licensor's interest (as described in paragraph 5 below) clearly setting out how this was determined;
5. The value required is the market value being the amount, exclusive of GST, at which the licensor's interest in the Crown Forest Land might be expected to exchange, on the Valuation Date, between a willing buyer and a willing seller, in an arm's length transaction, after proper marketing, wherein the parties had each acted knowledgeably, prudently and without compulsion.
6. Both Valuers are to jointly, at times to be agreed between them and the licence holders:
- inspect the properties; and
 - inspect the sales information and its supporting evidence.
7. Before the valuation reports are prepared, both valuers are to agree on:
- a list of comparable sales to be used in determining the value of the Crown Forest Land;
 - the geographic extent and relevant matters concerning the licensor's interest in the Crown Forest Land; and
 - the extent, if any, to which the effect of the Kyoto Protocol will be taken into account.

Should the valuers not reach agreement on any issue, each valuer will separately identify in his or her report the effect, if any, of the point of disagreement on the value of the licensor's interest.

8. Each valuation report provided by a valuer shall:

- include an assessment of the market value of the unit being valued as at the Valuation Date, identifying the key issues affecting value, if any;
- meet the requirements of:
 - The Property Institute of New Zealand's Valuation Standards, including the minimum requirement set out in Section 5 of the "New Zealand Institute of Valuers Valuation Standard 1: Market Value Basis of Valuation"; and
 - other relevant standards, insofar as those requirements are relevant;
- include an executive summary containing:
 - a summary of the valuation along with key valuation parameters;
 - a summary of key issues affecting value, if any;
 - the name of the valuer and his or her firm; and
 - the signature of the valuer and lead valuer if applicable; and
- attach appendices setting out:
 - a statement of valuation policies;
 - a statement of valuation methodology; and
 - relevant market and sales information.

9. Each valuer shall also provide an executive summary of all 14 valuation reports containing:

- a summary of valuation parameters common to all reports;
- a summary of key issues specific to individual reports;
- a copy of the executive summaries from each report; and
- a schedule of the valuations of the 14 units.

10. Each valuer must submit to his or her principal a draft valuation report for each unit valued prior to submission of the final reports, so that the principal can provide comment.

11. Each valuer will provide the final reports to his or her principal once the draft has been reviewed and comments received.

12. **TIMING**

- 1) Principals appoint respective valuers
- 2) Valuers submit draft reports to respective principals (40 Business Days)
- 3) Principals provide comments to respective valuers (10 Business Days)
- 4) Valuers finalise reports and deliver to their respective principals (15 Business Days)
- 5) The final reports are shared and negotiations over valuation differences commence (65 Business Days from the appointment of the valuers)

13. **DEFINITION**

In these valuation instructions, **Business Day** means the period of 9am to 5pm on any day other than:

- (a) ~~Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Labour Day, and Waitangi Day;~~
- (b) ~~a day in the period commencing with 25 December in any year and ending with the close of 15 January in the following year; and~~
- (c) ~~the days observed as the anniversaries of the provinces of Wellington and Auckland.~~

Attachment 6

Valuation Process for Licensed Crown Forest Land

Definitions and interpretation

1 In this valuation process, unless the context otherwise requires:

Affiliate Te Arawa Iwi/Hapu's Valuer means any Registered Valuer appointed by the Affiliate Te Arawa Iwi/Hapu under paragraph 3 to take part in this valuation process set out in this Schedule;

Arbitration Commencement Date means the date the Crown makes the referral referred to in paragraph 12;

Arbitrator means a person appointed under paragraph 5;

Business Day means the period of 9am to 5pm on any day other than:

- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Labour Day, and Waitangi Day;
- (b) a day in the period commencing with 25 December in any year and ending with the close of 15 January in the following year; and
- (c) the days observed as the anniversaries of the provinces of Wellington and Auckland.

Crown Forest Land means the Licensed Crown forest land to which this valuation process applies;

Crown's Valuer means any Registered Valuer appointed by the Crown under paragraph 3 to take part in the process set out in this valuation process;

Market Value is the amount, exclusive of GST, for which the Crown Forest Land might be expected to exchange on the Valuation Date, between a willing buyer and a willing seller, in an arms' length transaction, after proper marketing, wherein the parties had each acted knowledgeably, prudently and without compulsion;

Registered Valuer means a valuer registered with the Valuers Registration Board of New Zealand and with experience in the valuation of commercial forest land in New Zealand;

Transfer Value means the amount determined by this valuation process;

Valuation Commencement Date means the date by which both valuers have been appointed under paragraph 3;

Valuation Date means 30 September 2006; and

Valuation Exchange Date means the next Business Day after the date of expiration of the period of 65 Business Days commencing on the Valuation Commencement Date; and

Valuation Reports means the valuation reports prepared for the Crown and the Affiliate Te Arawa Iwi/Hapu in accordance with this valuation process.

Preliminary steps: disclosure, appointment of valuers and arbitrator

- 2 The Crown will within 10 Business Days of the date when this valuation process is agreed give the Affiliate Te Arawa Iwi/Hapu all material information that relates to the Crown Forest Land, of which Land Information New Zealand is aware including all information able to be obtained by the Crown under the provisions of the licence, having inspected its records but not having undertaken a physical inspection of the Crown Forest Land or made enquiries beyond Land Information New Zealand records.
- 3 No later than the next Business Day after the date of expiration of the period of 30 Business Days commencing on the date when this valuation process is agreed the Crown and the Affiliate Te Arawa Iwi/Hapu shall each:
 - a appoint a Registered Valuer and instruct him or her to assess the Market Value of the Crown Forest Land, in accordance with this valuation process; and
 - b give notice to the other of the identity of the Registered Valuer.
- 4 The Crown and the Affiliate Te Arawa Iwi/Hapu shall ensure that the terms of appointment of their respective Valuers require them to participate in the process set out in this valuation process in accordance with the terms of this valuation process.
5. The Crown and the Affiliate Te Arawa Iwi/Hapu shall attempt to agree and appoint a person who is suitably qualified and experienced in determining disputes about values of assets similar to the Crown Forest Land no later than the next Business Day after the date of expiration of the period of 35 Business Days commencing on the date when this valuation process is agreed. If no agreement and appointment has been made by that date, the Crown shall within 5 Business Days request that the President of the New Zealand Institute of Valuers make such an appointment.
- 6 An appointment under paragraph 5 is made once the appointee has confirmed that he or she shall conduct an arbitration, if requested by the Crown, in accordance with this valuation process.

Exchange of valuation reports

- 7 Both the Crown's Valuer and the Affiliate Te Arawa Iwi/Hapu's Valuer shall prepare a Valuation Report which includes their respective assessments of Market Value and each party shall deliver a copy of its Valuation Report to the other party no later than the Valuation Exchange Date.

- 8 If one party (**Defaulting Party**) fails to deliver its **Valuation Report** to the other party (who has provided a **Valuation Report** to the **Defaulting Party** within the prescribed time) by the **Valuation Exchange Date**, then the assessment of the **Market Value** contained in the **Valuation Report** provided by that other party will be the **Transfer Value**.

Negotiations to agree market values

- 9 Following the **Valuation Exchange Date** the **Crown** and the **Affiliate Te Arawa Iwi/Hapu** shall attempt to agree to the **Market Value**. Where agreement is reached both **Parties** shall sign a statement identifying the amount which the parties have agreed is the **Market Value**.
- 10 ~~The amount agreed as the **Market Value** shall be the **Transfer Value** for the **Crown Forest Land**.~~
- 11 Where agreement is not reached under paragraph 10 by the next **Business Day** after the date of expiration of the period of 20 **Business Days** commencing on the **Valuation Exchange Date**, the determination of the **Transfer Value** for the **Crown Forest Land** shall be referred to the **Arbitrator** in accordance with paragraph 12.

Determination of disputed values

- 12 Within 2 **Business Days** of paragraph 11 applying, the **Crown** shall refer the dispute to the **Arbitrator**.
- 13 ~~The **Arbitrator** shall promptly give notice of a meeting to be attended by the **Crown** and the **Affiliate Te Arawa Iwi/Hapu** and their respective **Registered Valuers**, at a venue and time to be decided by the **Arbitrator** after consultation with the parties and having regard to their obligation under paragraph 14 but not later than the next **Business Day** after the date of expiration of the period of 30 **Business Days** commencing on the **Arbitration Commencement Date**.~~
- 14 The **Crown** and the **Affiliate Te Arawa Iwi/Hapu** shall by no later than 5.00 pm on the day which is 5 **Business Days** prior to the date of the meeting give to the **Arbitrator** (and to each other), the **Crown's Valuation Report**, the **Affiliate Te Arawa Iwi/Hapu's Valuation Report** and any submission or expert evidence based on that information which the **Crown** or the **Affiliate Te Arawa Iwi/Hapu** intend to present at the meeting.
- 15 At the meeting, the **Arbitrator** shall establish a procedure and give each party to the arbitration the right to examine, cross examine and re-examine the **Registered Valuers** and other experts appointed by the parties in relation to the information provided to the **Arbitrator** and otherwise have regard to the requirements of natural justice in the conduct of the meeting.
- 16 The **Arbitrator** shall hold the meeting and give his or her determination of the **Market Value** no later than the next **Business Day** after the date of expiration of the period of 45 **Business Days** commencing on the **Arbitration Commencement Date**. That determination shall be no higher than the higher, and no lower than the lower, of the assessment of **Market Value** contained in the **Crown's Valuation Report** and in the **Affiliate Te Arawa Iwi/Hapu's Valuation Report**.

- 17 ~~The Transfer Value for the Crown Forest Land shall be the Arbitrator's~~
determination of the Market Value.
- 18 ~~The determination of the Arbitrator shall be final and binding on the Crown and~~
the Affiliate Te Arawa Iwi/Hapu.

General provisions

- 19 The Crown and the Affiliate Te Arawa Iwi/Hapu shall each bear their own costs in connection with the processes set out in this valuation process. The costs of the Arbitrator and the costs of the hire of a venue for the meeting referred to in paragraph 13 shall be borne by the Crown and the Affiliate Te Arawa Iwi/Hapu equally. However, in appropriate cases, the Arbitrator may award costs against the Crown or the Affiliate Te Arawa Iwi/Hapu where the Arbitrator considers that it would be just to do so on account of unreasonable conduct.
- 20 The Crown and the Affiliate Te Arawa Iwi/Hapu each acknowledge that they are required to use reasonable endeavours to ensure the processes set out in this valuation process operate in the manner, and within the timeframes, specified in this valuation process.
- 21 **If the processes set out in this valuation process are delayed through any event (such as the death or incapacity or unwillingness or inability to act of any Registered Valuer or the Arbitrator), the Crown and the Affiliate Te Arawa Iwi/Hapu shall use reasonable endeavours and co-operate with each other to minimise the delay.**