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Tena koe Claude

PROTECTION OF NATIVE BUSH

You have sought an opinion on arrangements available to landowners for the protection of indigenous forests. There are a number of categories for which protection of bush areas may be considered. They are:

- (a) Where the bush is considered as having special conservation values and its protection is specifically sought by the the Crown.
- (b) Where the bush does not necessarily have special value nevertheless its protection is sought as a matter of Government policy.
- (c) Where the bush has special significance for the land owners or hapu and its protection is sought for that reason regardless of Government interference.

Category (a) largely applies to situations where protection is sought under the Reserves Act 1977 at the request of the Department of Conservation.

Category (b) applies to the policy behind Nga Whenua Rahui and similar policies where incentives are offered enabling landowners to protect bush on their properties.

Category (c) to a certain extent impacts on (b), however the decision in this case to protect bush is private and not necessarily influenced by Government Policy.

It is worthy to note that although the Government encourages landowners to voluntarily protect bush it does so under threat of passing the Indigenous Forests Bill which is designed I believe, to protect to some degree bush on private properties.

The Bill no doubt is controversial and could entail the Government to pay compensation for the loss of owners use rights over land covered in bush.

In view of that one may better understand Government's incentive to ensure landowners to voluntarily enter into arrangements for the protection of bush.

Protection of bush at the request of the Crown

Under this heading the protective mechanism is considered paramount. There are various procedures available enabling the Crown in conjunction with the landowner to protect and administer bush as if it were a reserve vested in the Crown.

I will deal with all the options available under the Reserves Act 1977 applicable to your situation.

The scenario under this heading involves bush of high conservation values of which the Crown (DOC) desires to protect. As the land is under Maori ownership the option of purchase is not available.

Section 38: Appointment of a Maori Trust Board to administer land as a Reserve

Under this section, the Minister of Conservation may, by notice in the Gazette, appoint a Maori Trust Board to be an administering body to control and manage land not being a reserve vested in the Crown for any purposes specified in the Reserves Act.

These purposes are:

1. Recreational
2. Historical
3. Scenic
4. Nature
5. Scientific or
6. For any purpose relating to a Government or Local Purpose Reserve.

Before a Trust Board can be appointed to control and manage the land for any one of those purposes, the owner or controlling authority of the land must give its consent. The owners consent must firstly be given for the use of the land for any of the purposes stated and secondly as to the proposed body to control and administer the land. The consent of the owner can be made subject to an arrangement setting out the terms and conditions relating to the use of the land. In the absence of a special arrangement, the regulatory provisions contained in the Reserves Act apply with any necessary modifications as if the land in all respects was formally set-aside as a reserve under the Act.

Comment

You probably appreciate by virtue of this section, that there is absolutely no legal requirement for the Crown to acquire land or interests in land for reserve purposes.

The Crown has an option to enter into if you like a partnership arrangement with any landowner to administer any part of the land belonging to the owner as if in all respects the land in question was vested in the Crown as a reserve.

This section has special relevancy for Maori Trust Boards. It provides specifically for Trust Boards to become an "administering authority" of land for any classification or purpose listed in the Reserves Act. The involvement of Trust Boards is no mere coincidence as the policy of the Act is to enable the Crown deal with Maori freehold in a way which is acceptable to the owners.

The concept allows the owner of the land to negotiate an arrangement acceptable both to the Board and the Crown and does not require in any way for the Crown to acquire a legal interest in the land.

These are a number of flow on effects that I should mention if land is "reserved" in the way stated.

If implemented, the Crown is authorised to provide guidance with or without change, advice, technical and related assistance to the administering body.

Pursuant to Section 8 (9) of the Reserves Act, the administering body, that is the Trust Board, may appoint any officer or servant of the Board to be a ranger for the purposes of looking after the land. The rangers should they be appointed by the Board are deemed to be rangers in an honorary capacity unless appointments were made by the Chief Executive of DOC.

It is likely that the Crown in conjunction with an arrangement and the appointment of an administering authority would want to designate the land in some way in order to confirm the arrangement as one binding on successors in title.

There are two options:

A. Section 76: Declaration to declare the land as protected private land

Under this section the owner of the land, say the Trust Board as responsible trustee may apply to the Minister to have the land or any part thereof to be declared as protected private land. As earlier stated, the declaration can be made subject to an arrangement between the Board and the Crown.

The declaration can only be revoked by the Minister of Conservation.

As long as the declaration remains in force the regulatory controls apply (subject to any arrangement) as if the land was a reserve under the Reserves Act 1977.

The declaration in this instance is no more than a reservation however is capable of registration against the title. The Crown by virtue of the declaration does not acquire any interest in the land. Once the reservation is recorded it becomes binding on the successors in title.

Comment

The control and management of protected private land can be vested in the administering body (Trust Board) or otherwise left to be regulated under the provisions of the Reserves Act.

A combination of declaring private land protected land with an arrangement vesting the administration of the land in the Trust Board would in my opinion be close to creating an ideal situation.

An arrangement would by way of illustration entail the same criteria in many respects set-out in the proposed lease concerning the reservation of bush on the Nukutere Trust lands.

B. Section 77: Conservation Covenant

This option is very similar to that of a Declaration noted above except that the Crown by virtue of the Covenant acquires an interest in the land for any specified term or in perpetuity.

Apart from the options discussed others include:

Section 12 - Lease/acquisition of freehold

Under this section the Minister is able to acquire a lease over the areas to be protected or if need be acquire the fee-simple if the Minister of Maori Affairs so consents.

The Crown "acquisition" of bush areas under the Reserves Act are capable of purchase depending upon the arrangement or terms agreed upon with the owner.

You should also note that the Reserves Act also contemplates Maori Reservation Trustees being administering bodies and in each case where the land is protected by a Maori reservation or as protected private land the Crown is empowered to contribute in whole or in part towards rates.

Voluntary protection of bush

Outside the frame work of the Reserves Act owners of any land may protect bush areas either by way of a restricted Covenant registered against the title or by Covenant under the Queen Elizabeth Trust Act.

However, it would more likely be the case in the instance of Maori landowners to set-apart bush areas as reservations under Section 439 Maori Affairs Act.

All I need to mention here is that identifying bush areas by way of reservation does not constitute a subdivision of land. On that note I suggest that if a lease of the Nukutere lands is your preferred option then adequate measures need to be taken to protect watercourses within the block. Under Section 267 Local Government Act, a subdivision of land enables the Crown or Local Authority to acquire esplanade reserves. A lease of part of the land in excess of 14 years is deemed under the Local Government Act to be a subdivision.

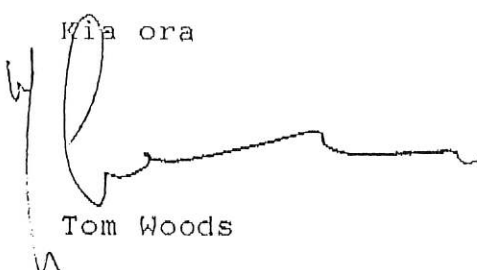
Conclusion

I have not mentioned the effect of the Conservation Act 1987 as that Act has significant impact on Waioeka reserve which, of course, is subject to the Waitangi Tribunal claim.

It is important to appreciate that in dealing with DOC there is considerable scope for Maori land owners, through Trust Boards, to enter into partnership arrangements under the Reserves Act for the protection of native bush without the Crown having to acquire in any way interests in the land.

I will address the Waioeka situation separately as that entails consideration of other matters that bears no relation to the interests of private land owners.

Kia ora



Tom Woods