

B/uy? 19/1

WAIORAU TENURE REVIEW

Enforceability of the Covenant

PANZ comment is;

'We do not believe that the proposed covenant will be enforceable. Its terms are so broad a lawyer would have little difficulty driving a bulldozer through them'.

I am a lawyer; I can't drive a dozer; I believe that a dozer-driver/lawyer would not be able to drive through the proposed covenant. From my reading of various covenants under S.77 Reserves Act, this is one of the better worded ones. S.77(1) provides for the Minister and the owner to agree '... for a covenant to provide for the management of that land in a manner that will achieve the particular purpose or purposes of conservation.' Recital C provides for the particular conservation purposes, although I note it calls them 'objectives'. The conditions then provide for the management to achieve the purposes. I consider that the conditions are satisfactory as far as conservation purposes are concerned. From the landowners point, the Minister has discretion as to grazing area A (cl. 1(a)), planting trees, burning and mining (cl. 5) and that he may jointly with the landowner prepare a management plan (cl.13(c)). These discretions are to be exercised to implement the objectives of the covenant. If they don't the Minister's decisions may be reviewed and as between the parties any dispute may be referred to a third party or to arbitrators (cl. 13(h)).

S.77(4) Reserves Act provides 'Notwithstanding any rule of law or equity to the contrary, every conservation covenant shall run with and bind the land... and shall be deemed an interest in the land for the purposes of the Land Transfer Act 1952.' and it further provides for the DLR to note the covenant on the title. The covenant is supported by the Act and is worded in such a way that a dozer could not be driven through it.

PANZ also 'favour a special lease... under S.67(2) of the Land Act.' My view is that such a lease would contain provisions similar to those in the covenant. Those provisions would be the responsibility of the C.C.L. DoC are clearly charged by Government as the body responsible for Conservation matters. To address those matters, it is clear that the machinery under S.77 Reserves Act is the correct method to adopt. Even if it were a special lease then the Minister must still enter into a covenant with the lessee. The bottom line is that DoC must be responsible for ongoing conservation matters and not the C.C.L.

  
C.D. Mouat

13 January 1994

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Dept of Survey &  
Land Information  
HEAD OFFICE

Commissioner of Crown Lands  
Office of Crown Lands  
Dept Survey & Land Information  
DX 8831, Thorndon  
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ATTENTION: David 

Dear Sir

**WAIORAU TENURE REVIEW**

Your memo of 21/12/93.

I attach comments provided by Kit Mouat on the two issues.

With regard to the proposed covenant I recommend that it be proceeded with.

The freeholding plan is not so clear and I am not able to recommend with any certainty that the proposal is strictly in accordance with the statute. Certainly 'PANZ' is very clear that it is not. The prospect of reclassifying as 'commercial' land has considerable attraction and is consistent with the proposed use of the land. The land can also be considered 'pastoral' and have a need for Section 106 and 108 protection - see Kit's notes.

This being the case I believe that to proceed with freeholding would result in a significant objection (and perhaps a legal challenge by PANZ). The best approach would appear to be a Special Lease with appropriate conditions regarding management and commercial use. This will have to be explained/negotiated with the lessee for the project to proceed.

Yours faithfully  
**LANDCORP PROPERTY LIMITED**

**M.W. ELLIS**  
Manager

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