Rights to Buy Crown Assets

As part of the CNI Forests Collective Settlement, the CNI Iwi Collective (of which Ngāti Tūwharetoa is one of the members) was granted certain rights to buy Crown Assets.

There are two types of rights. Both types give the Collective preferential ways to secure core Crown properties over time.

Deferred Selection Procedure (DSP)

The first type of right is known as a Deferred Selection Procedure or DSP. The DSP gives the Collective a relatively short-lived opportunity to buy certain Crown Assets at values struck in June 2008, whether or not the owners want to sell them.

This creates the possibility of buying Crown assets at a profit (i.e. if the Collective can see that their market values have risen since June 2008). In effect, the Collective can use the DSP to "pick its horses after the race has run". This will give four or five years equity to use as a basis to arrange finance for the purchase.

As Ngāti Tūwharetoa is a member of the Collective, if any property or asset is located exclusively within our traditional boundary, the Tūwharetoa Settlement Trust (TST) will have the right to exercise an option to purchase it. This right of purchase is an internal arrangement and is not part of the agreement with the Crown.

Within Ngāti Tūwharetoa it is the TST's policy to identify which Tūwharetoa Hapū have mana whenua rights over the land and asset under offer, and then to offer these Hapū the DSP option. This approach falls in line with TST's commitment to returning whenua, assets and commercial income streams to member Hapū.

If these Hapū are unable or unwilling to take up the offer, the TST may then decide to purchase the property as a commercial investment.

The advantages to Tūwharetoa of including these properties within the Collective's DSP mechanisms are threefold:

- The prices of the properties are set at 1 June 2008 values.
- The inclusion of the properties in the DSP list gives certainty and will enable the Hapū to commence planning now.
- The value of the properties will not be included in the lwi comprehensive quantum.

An example of how the DSP might work



1. The Colletive identifies a Crown Asset that it may wish to buy under the DSP e.g. a school.



2. It may be that an individual Iwi, either a member of the Collective or not, could claim the property as part of its future comprehensive settlement. In this case, the Collective needs to obtain a waiver from that Iwi, agreeing for the school to be on the Collective's DSP list rather than on the Iwi's comprehensive DSP list.



3. Once any neccessary waivers are obtained, the school will be added to the Collective's DSP list, with the Crown's agreement.



4. Ngāti Tūwharetoa will be notified of the DSP properties in our rohe and will then need to indicate which properties it wishes to purchase e.g. school. This needs to happen within the DSP selection period, which is from 1 January 2010 to 1 July 2012.



5. TST through the Collective and the Crown would then enter into an agreed process to determine the value of the school as at June 2008.



6. TST will then look into the potential profitability and possible uses for all of the assets on the DSP list, and develop a valuation and potential commercial uses, with recommendations. e.g. With the school it maybe possible to come to a lease back agreement with the Ministry of Education.



7. TST will identify which Hapū have mana whenua and notify them of the property and provide them with the valuations and recommendations. These Hapū will then be given the first option to purchase.



8. The Hapū then decides whether or not to purchase the property or to pass the option back to TST. If TST doesn't take up the option it will pass back to the Collective.

Right of First Refusal (RFR)

The second type of right is known as a Right of First Refusal or RFR. The RFR gives the Collective a relatively long-lived opportunity to be the first to be offered certain Crown Assets, if and when the owners decide to sell them. Having the right of first refusal creates the possibility of buying Crown Assets at a profit, if the asset is being sold at a good price, or if it can be profitably added to an existing portfolio of properties. Note that any DSP assets that the Collective decides not to buy will still be available through the RFR.

Once again as Ngāti Tūwharetoa is a member of the Collective, if any property or asset is located exclusively within our traditional boundary, the TST will have the right to exercise an option to purchase it. This right of purchase is an internal arrangement and is not part of the agreement with the Crown

TST will again follow a process of identifying our Hapū who have the mana whenua right and offering them the RFR option to purchase.

In the case of the RFR listed properties there is no fixed purchase date or price. For Tūwharetoa the advantage of including these properties in the Collective RFR process is again threefold:

- The Collective has secured a RFR period of 100 years which is significantly longer than those being offered under present comprehensive settlements.
- The RFR list gives certainty that any potential surplus properties will not be "lost in the crown process". For 100 years it places a legal obligation on the Crown to notify the Collective when these properties become surplus.
- The RFR list will not affect any future lwi comprehensive settlement.

An example of how the RFR might work



1. The Colletive identifies a Crown Asset that it may wish to buy under the RFR e.g. a police house.



2. It may be that an individual Iwi, either a member of the Collective or not, could claim the property as part of its future comprehensive settlement. In this case, the Collective needs to obtain a waiver from that Iwi, agreeing for the police house to be on the Collective's RFR list rather than on the Iwi's comprehensive RFR list.



3. Once any neccessary waivers are obtained, the police house can be added to the Collective's RFR list, with the Crown's agreement.



4. Ngāti Tūwharetoa will be notified of the RFR properties in our rohe and will then need to indicate which properties it wishes to purchase e.g. police house. Sometimes in the future, the police may decide to sell the police house. If this happens within the life of the Collective's RFR, which is years from Settlement Date (i.e. to 1 July 2109), they must first offer the police house to the Collective, at a price determined by the police.



5. TST through the Collective and the Crown would then enter into an agreed process to determine the value of the police house.



6. TST will identify which Hapū have mana whenua and notify them of the property and provide them with the valuations and recommendations. These Hapū will then be given the first option to purchase the property under the RFR conditions.



7. If the Hapū decide to buy the police house, the purchase then proceeds as per a normal sale.

If the Hapū do not take up the option the RFR right will revert back to firstly the TST then the Collective.

If the Collective decides not to buy the police house at this price, the police can sell it to someone else, at this price or higher, within the next two years. If they decide to lower the price, or if two years elapse, they must again offer it to the Collective first. Then the process starts again.

Conclusion

These rights to buy Crown Assets have the potential to generate significant income, depending on how they are used. Some assets might be on sold quickly to realize a profit. Others might be retained for future sale, and used to generate ongoing income in the meantime (for example, properties such as schools that are leased back to their Crown owners). Others could be developed commercially to create long-term income streams.

The rights themselves were transferred on 1 July 2009, and will reside within the trust holding entity CNI lwi Holdings Ltd.