

# professional papers

## Forestry on Maori Land

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### Abstract

This paper describes issues specific to Maori landowners with regard to using their lands for plantation forestry. In order to best understand this, a brief history of Maori land ownership, and associated practical constraints on utilising such lands, is provided.

An ability to take a long term view on land-use is identified as the primary characteristic which sets Maori landowners apart from most other freehold owners, and this approach is considered to be consistent with forestry as a land use. There is recognition by most owners and by Trustees that they have a limited time as kaitiaki of the land, and that they are obliged to leave the asset in at least as good a condition and situation as when they start. Ownership and historical links with other lands and waterways in a district leads to a holistic approach to land use, with consideration given to off-forest effects.

Generation of employment for beneficial owners is recognised as being an important consideration in land use decisions, though over time this emphasis can change toward generating financial returns for all owners. While protecting and respecting waahi tapu is very important to the landowners, few difficulties are experienced in accommodating this within the framework of forestry management.

The bureaucratic and consensual nature of managing activities on Maori lands are beneficial for long term stability, but do impose significant costs to productive utilisation of the land. Large numbers of owners, difficulties in locating owners, and the small shareholding of many owners, are seen as impediments to easy distribution of profits back to the owners. Many owners are either unaware or unwilling to succeed to their parents or grandparents shares in land blocks, this requiring applying to the Maori Land Court, and paying a fee. These impediments will increase over time as owner numbers increase.

Lake Taupo Forest Trust is used as an example of a Maori Trust with large forest assets. Access for recreational land use is an important consideration for many owners. LTFT issues around 1,750 permits/year for owners to access their lands – mainly for hunting.

The environmental benefits of forestry are increasingly being recognised by regulating authorities. However the reaction of most such authorities is to try and capture these benefits, or values, by insisting that the landowners continue to provide these benefits. The control of excess nitrogen entering into Lake Taupo is provided as one such example. The proposed control measures will see owners of forestry and undeveloped lands be forced to stay in this land use in perpetuity, while those responsible for the excess nitrogen emissions – farmers – are permitted to continue their pollution.

### Introduction

To understand why forestry on Maori land differs from forestry on other lands, it is necessary to understand something of the history and bureaucracy of Maori land ownership. This paper provides a summary of that issue, before going on to present some issues relating to managing forests on Maori lands.

### Maori land ownership

Land in Maori ownership differs from general freehold land primarily in that it has multiple owners, each with varying shares in the land. Current ownership is a consequence of the work of the then Native Land Court in the 1880s, which required that all Maori lands be surveyed and the names of the owners and their shares in the block to be provided. This shares and shared ownership issue was a difficult one for many Maori, as while it was frequently possible to identify who held ownership in a piece of land, just what share each person held was not always clear. Maori had a hierarchical society, and in general the more dominant families received larger shareholdings. Also, it wasn't unusual for those present at the time of the surveying to claim large shares of ownership. Land owned by a family would receive a Grant of Title in the names of as few as two kaumatua. The Torrens Title system used throughout Australasia did not allow for trusteeship to be noted.

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Normal practice has been for owners to leave their shares to their children, and so since the 1880s there has been a steady increase in the number of owners in any given block. The Lake Taupo Forest Trust, which is used as an example throughout this paper, administers 65 land blocks, covering around 32,000 ha. There are around 10,000 individual owners in these blocks. Each block has a separate ownership list and the number of owners in individual blocks ranges from fewer than 20 to 3,300.

Many owners have shares in more than one land block – indeed, most owners in Lake Taupo Forest Trust have shares in several blocks – some as many as 25. These same owners are often shareholders in many other blocks in the district which are not within the Trust, and being Ngati Tuwharetoa, also share in the ownership of the bed of Lake Taupo itself.

### Practical Constraints to Using Maori Land

There are significant bureaucratic and logistical constraints to successfully utilising Maori land. Because of multiple ownership, considerable effort is needed to get a degree of consensus as to what the land might be used for. The level of consensus required varies depending on the significance, and time-frame, of any proposal.

The rules about use of Maori Land are contained in the Te Ture Whenua Maori Act 1993, and administered by the Maori Land Court (MLC). First the owners of the land have to create a structure – the most common being a Trust, though Incorporations are also used, these being

more akin to a European company structure. For previously unproductive land, this in itself can pose difficulties, including locating the owners, getting them to attend a series of meetings, and then reaching consensus on a proposal. The owners must approve a Trust Order, which outlines the rules under which the organisation will operate. This needs to be submitted to and approved by the MLC. The owners will then select or elect Trustees who will represent the owners and have the responsibility to carry out any agreed business on their lands.

Most Trusts represent a single land block, but there are some, such as LTFT, which administer many land blocks. The difficulties in getting the level of consensus required increase with the number of blocks trying to be brought into the single structure.

Multiple ownership does not lend itself to individual owners investing funds into a property, as it is highly unlikely that all owners would similarly invest. Consequently, few Maori landowners have the resources to develop plantations of any scale on their own lands, and thus most have got into forestry through various forms of joint venture or lease. Such schemes have to be self-funding, but do provide a way for Maori land owners to make their land productive and to eventually fully own a forest.

To agree to a joint venture or lease requires the majority of owners at a properly constituted and advertised meeting to agree to the proposal. If the lease including any renewals is to be for longer than 52 years then to the MLC will require proof that owners holding at least 50% of the shares in the land approve the transaction. Sale of the land requires approval from 75% of the shareholding. There are also restrictions on the ability to grant Licences, Easements, Profits a prendre and Forestry Rights.

As an example of the hurdle this can pose, the Lake Taupo Forest Trust, which has a team working on its ownership database, has contact details for owners representing only 65% of its total shareholding.

### Maori Perspective on Land Use

In agreeing to use their lands for forestry - with a partner, or under their own right, the single characteristic which differentiates the approach of Maori landowners from other forestry companies is, in my opinion, their ability to take a long term view. This characteristic has probably been further highlighted by the changes in ownership of forests throughout the country over the last decade.

I imagine that if any landowner started from a stance that their land was unable to be sold, it would lead to a longer term approach. However Maori have had a bit more practice at this than others, and they've got pretty good at it. There is recognition by Trustees and most owners that they are only temporarily responsible for the land, and that subsequent generations will also expect to use and take benefit from the land. In my experience there is a genuine acceptance among trustees of their responsibility to leave their beneficiaries' asset (their land – NOT their forest) in at least as good a condition and situation as when they start.

The feeling runs deep – its not just land; spiritual concepts are bound to the land forms, to the historic uses

and events on specific parts of the land. They are part of everyday life, in speech, songs and writings. The hills and valleys, the rivers and streams, the mud pools and geysers, the pure water and waterfalls, the cliff faces and shorelines, the headlands and swamps and the food cultivations and bird catching places, are all associated with “ngā mata kua ngaro atu” (the faces of our ancestors who have departed). The whenua and ana (caves) hold their koīwi (bones). Thus the people of a specific area connected with their ancestral lands, and this has engendered a deep and emotional connection with the entire surrounding environment

As kaitiaki, or stewards of the land, the owners have an intrinsic duty to ensure that the Mauri and the physical and spiritual health of the environment is maintained, protected and enhanced. Ownership and historical links with other lands and waterways in an area leads to a holistic approach to land use, with consideration given to off-forest effects. This refers not only to the land blocks which the Trust administers, but also the wider environment. In the case of Ngati Tuwharetoa, this means considering impacts of their land use on Lake Taupo itself.

This mind-set is exemplified in the lease which LTFT signed with the Crown in 1969, which states up front that the purposes of the lease are for:

- (a) Preventing soil erosion, reducing pollution of the waters of Lake Taupo and of the streams and rivers flowing into and out of the said Lake and minimising adverse changes in river and lake waters
- (b) Conserving and protecting fish and wild life habitat and other natural resources of the area
- (c) Preserving and safeguarding the graves of the Maori people and all historic and sacred places in and around the said land and the areas of natural beauty and scenery and of unique vegetation
- (d) Consistent with the above purposes establishing managing and protecting a forest or forests thereon and appraising selling realising removing and utilising the produce thereof in a manner consistent with good forestry practices so as to achieve the maximum financial yield to the Minister as forest owner and the Trustees as Lessors.

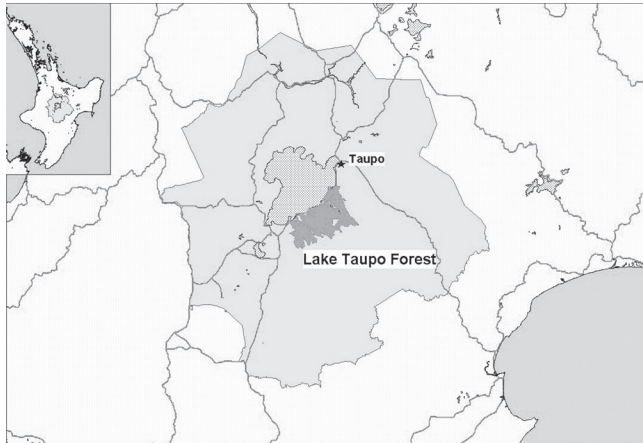
These priorities have resulted in around 30% of the Trust's lands remaining unplanted, primarily to protect the environment.

### Lake Taupo Forest

The Lake Taupo Forest Trust was established in 1968, and in 1969 signed a 70-year lease of their lands to the Crown – long enough to establish and grow two rotations of pine plantation. Profits were to be shared on a stumpage share basis. This itself was a long term decision; the kaumatua who were elemental in gaining consensus among owners for the arrangement knew that many of them would be dead before any stumpage income would be generated. However they also realised that a share of stumpage formula would allow the owners to take an interest in the business of forestry on their land, whereas a simple rental arrangement would not lead anywhere, and would potentially make it difficult to ever transition to full forest ownership.

The forest has a planted area of around 22,000 ha, of which 90% is *P. radiata*. It reached its long term sustainable harvest of 480,000 m<sup>3</sup>/annum in 1999.

## *Location of Ngati Tuwharetoa Rohe and Lake Taupo Forest Trust lands*



In 2000 the lease was shortened to one rotation. The area of first rotation trees harvested each year is removed from the Crown's lease area, and the Trust uses its share of stumpage to replant and manage a second rotation on those lands. No cash transaction is required in this transition. To date around 38% of the forest is Trust-owned second rotation, and the Crown is scheduled to complete harvest of its stands in 2020. Harvesting of the Trust's second rotation stands will commence in the following year.

## Employment Objectives

All Maori Trusts are concerned about generating employment for their people, but the vigour with which they pursue this seems to vary considerably between Trusts. That many have started out (and often remain) under a joint ventures or lease has often limited the ability of these objectives to be pursued.

Although it is an important consideration for many of the Trustees, there is no clause in LTFT's lease to the Crown requiring its owners to be employed. There is an expectation, however, that owners will be awarded contracts should they be 'there or thereabouts' in terms of their price, skills and experience. As a result, over half of the contractors running harvesting and silvicultural crews in the forest are owners.

The desire to have owners working on the land is more than simply job creation. There are many owners, particularly among the older generations, who instinctively feel more comfortable knowing that those working on the lands are also owners, and believe that fellow owners will have more respect and understanding on how to relate to the land and particularly to sensitive sites (waahi tapu).

While owner-run gangs will tend to employ more owners than independent gangs, there is no exclusivity on either side. Workforce surveys in Lake Taupo and Lake Rotoaira Forests (management of the two are closely aligned) showed that:

- 75% of the workforce is Maori
- 38% are owners or descendents of owners of the forest lands

Emphasis on work creation was significant at the commencement of the lease. However as the forest has progressed, and harvesting has reached a sustainable level, there is now a greater emphasis on ensuring financial returns are maximised. With 10,000 owners, there is considerable effort in ensuring that there are benefits to all, not just those employed directly. The emphasis may not be the same in Trusts with smaller numbers of owners.

## Waahi Tapu

The LTFT lands have been in Maori hands for hundreds of years, and not surprisingly there is a significant history of events on the lands. While to some extent all of the land can be considered tapu, there is a continuum of importance of sites depending on what may have occurred there. Graves (urupa) are always highly tapu, as are sites of battles where people may have been killed. Old pa sites and housing sites are also sacred, as are some pathways.

Lake Taupo Forest has around 80 waahi tapu registered and mapped, and these must be considered when any work is occurring in an area. However the process for this is very straightforward and poses little difficulty for the forest managers or workers. Most sites are less than 50m<sup>2</sup> in area, with only a few being 1 ha or more. Most of these sites remain unplanted, others may need to be blessed before work occurs on them.

## Overhead costs

As you will have gathered from the preceding discussion on owner numbers, the management of Maori Trusts can create quite a bureaucracy. There is very much a culture of consultation and consensus on management decisions, which while at times slow and inefficient, is generally enduring.

Most who have experience with Maori Trusts will be aware that there is a range of levels of skill and understanding among the Trustees. As a Trust begins in its development phase a lot of the day-to-day/management work is done by Trustees. As the business starts generating income, Trusts will generally restructure toward more commercial business practices, including employing staff. This transition can lead to difficulties in separating the roles of governance and management.

Much like a corporate overhead, a Trust itself can be expensive to run. Lake Taupo Forest Trust has 11 Trustees, these elected from among the owners every three years. They hold regular monthly meetings, occasional special meetings, hold an AGM, send out newsletters and an annual report. The Trust shares with the Lake Rotoaira Forest Trust a staff of 18. I won't go into the details of the roles, but a significant number deal with owner issues and relationships, and few deal directly with forestry matters.

This amounts to a considerable overhead in itself – a cost in the order of \$50 - 100/ha/year would not be uncommon



for forest trusts with large numbers of owners, which are dealing with the full range of forest growing, harvesting and distribution issues. While efficiencies can always be gained in any business, this is essentially the cost of doing business on Maori land. There is no doubt, however, that a well run Trust can and does engender confidence in the owners, without which progress would be limited.

### Distributing Returns to Owners

The sheer number of owners in Maori blocks creates difficulties in current and future planning. We know from MLC records that there are around 10,000 owners in the Lake Taupo Forest Trust lands. However that only provides their names, and their shares, it doesn't mean you can contact them.

The Trust has three people working on ownership database and distributions, and despite their effort we only know the addresses of around 50% of the owners, these representing around 65% of the shareholding. Processing succession and vesting orders absorbs considerable resources. Much of this is assisting owners to navigate their way through the MLC process – the court itself having limited resources and no proactive approach to facilitating successions.

LTFT is currently distributing around \$2.5 million per annum to its owners. This works out at an average \$250/owner/year, but the range around that figure is large, and around 30% of the owners receive less than \$10/year.

Many of these 'smaller' owners do not bother to go through the bureaucratic process of applying to the Court to succeed to their shares, as this requires a significant effort, and a \$61 fee. We know that many of the 5,000 owners for whom we have no contact details:

- are dead; or
- do not consider it worth the effort of making themselves known; or
- are not aware that they have shares in the land blocks.

When paying out distributions, Trusts have to keep the unclaimed distributions in case the owners ever turn up. To date LTFT has amassed around \$6 million which has not been claimed. However under current Trust order it is possible to use the interest that these monies earn for charitable purposes. This generally goes into such things as educational grants, marae grants, health initiatives and assistance for the elderly.

Growth in owner numbers, and a fall in the proportion of owners succeeding to shares, will see the proportion of distributions which do not get claimed will increase over time. Similarly the average amount received by each owner will decrease. This will result in the forest gradually becoming less financially relevant to more and more owners. The forests (or anything else on the lands) will therefore gradually change from being something for the benefit of the owners according to their shares, to become more like a community scheme.

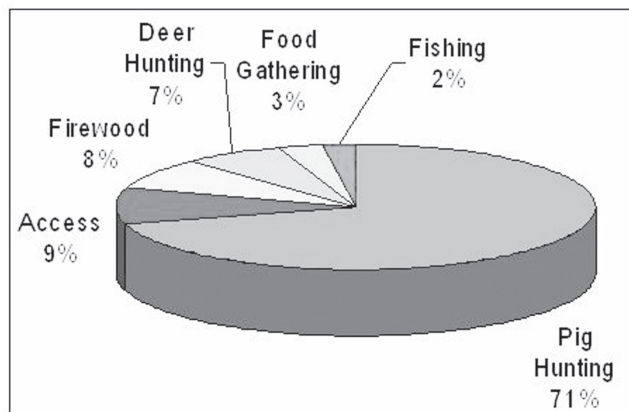
To counter this, Trusts need to grow their business, so that profits can at least keep pace with growth in ownership

numbers. This will frequently require investing off the land, as the ability to increase returns from the land asset itself is generally limited. It will also require the owners agreeing to forego immediate distributions in return for better long term security. Again, Maori owners have a history of being prepared to look to the long term in such matters – such as the decision to take a share of stumpage rather than an annual rental.

### Recreational / Traditional Land Use

Many Maori landowners insist upon exclusive rights of access to their land. The Lake Taupo Forest Trust is one such Trust. It runs an electronic permit system, under which owners, their descendants and spouses can get a two week permit and a key for the gates. Last year, 1,763 permits were issued, to 416 individuals. Their primary purpose for wanting access is shown below.

Lake Taupo Forest Owner Access– 2004/05



For many owners, these access rights are the main benefit they get from their ownership in the lands. In addition to the actual recreational use, the owners maintain their connection to the lands. Many of the elders have strong memories of time spent on these lands, and they are comforted by the knowledge that the younger generations also have the opportunity to pursue these activities.

### Environmental Benefits - or Erosion of Property Rights

Forestry is increasingly being recognised as an environmentally friendly land use. However rather than be a benefit to the land owners, this recognition by regulatory authorities all too often leads to restrictions to pursuing alternative uses for their lands. Like all owners of forestry lands in the country, Maori forest owners are experiencing a steady erosion of their property rights. Issues facing LTFT at present include:

- District-wide regulations, such as Natural Values Areas and Outstanding Landscape Values Areas, Growth Management Strategies;
- Regional regulations – in particular the nitrates debate concerning the protection of Lake Taupo; and
- National regulations, such as Kyoto, public access to lands.

Without going into detail on all of these, I do feel Maori

landowners display a different reaction to these issues from other forest land owners. Again this relates back to the long term view – the lands are not able to be sold, so any restrictions on land use will directly impact on these owners and their descendants. The impact on land value seldom has much direct impact on the owners – with a few exceptions, where rental is linked to land value - increased land values only presage higher rates.

With many Maori having shares in a wide range of land blocks, and being Trustees on several Trusts, the impacts of these regulations across Maori-owned lands soon becomes apparent. While District Councils have an obligation to protect such things as Natural Values and Landscape Values Areas, it is clear that a disproportionate share of lands retaining such values are on Maori land.

I recall as a kid travelling around the country and being able to identify 'Maori land' effectively from the lack of intensity of land use. While there are a range of reasons as to why this was so – some of which are touched on above – it is ironic to now see that it is the very values that the Maori owners have managed to retain that are now being sought after for protection.

However, despite describing the natural characteristics and look of land as being "values", it is clear that the regulators have no intention of paying for that value. To many Maori owners, it appears that regulators are realising that there has been overly intensive development over much of the countryside, so they want to lock up what is left - for the benefit of the community and country at large – and to do it for free.

History will show that the 20<sup>th</sup> Century was a window of opportunity for land development in NZ. Many Maori landowners were not in a position to take advantage of this window, and their lands now look to be allocated the role of protecting the environment.

## Controlling Nitrogen Emissions

The single most significant regulatory issue facing Ngati Tuwharetoa at present is the control of excess nutrients entering the lake.

In summary, the problem is that too much nitrogen is entering the lake, which is enabling algae to grow and generally reducing water quality. The cause of the problem has been identified as the increased nitrogen emissions from farming, being from the urine of sheep and cows. Little of the increase is directly from fertiliser, but clearly fertilising does enable more sheep and cows to be farmed.

All land emits nitrogen. Typical emission levels are:

- Forestry and undeveloped lands 2 kg/ha/year
- Sheep and beef farms 8 – 15 kg/ha/year
- Lifestyle blocks 8 – 12 kg/ha/year
- Dairy farms 49 kg/ha/year

The history of the catchment saw farming start in the 1940s and 1950s, farmed area increase through the 1960s and 1970s, and farming intensity increase considerably over the last decade. The time lag between farm run-off and ground-waters entering the lake averages around 35 years,

meaning that even if all farming was to stop tomorrow, the lake would still get worse before it gets better.

Controlling the nitrates is the responsibility of the Regional Council (Environment Waikato - EW), who is working in partnership with the Taupo District Council, central Government (MfE) and Ngati Tuwharetoa. EW's proposed solution has two steps:

1. Reduce the amount of 'manageable' (man-induced) nitrogen going into the lake by 20% - by buying up farmland and covenanting it to lower N emission levels before reselling, or by paying existing landowners to similarly covenant their own farmlands;
2. Control ongoing nitrogen emissions at the new lower level – by limiting all landowners to their existing per-hectare N emission levels ('grandparenting' emission rights).

Ngati Tuwharetoa certainly wants the lake protected – indeed as owners of the lake bed, and strongly connected to the lake and land, and knowing that they will be there in perpetuity, they are insisting upon it. The iwi questions however whether a 20% reduction in the manageable load of nitrogen will be sufficient to ensure the lake ever gets back to the target of its 2002 level of water quality.

Secondly there is a serious inequity in the plan for ongoing control of nitrogen. The Regional Council's lack of fortitude to in any way penalise the polluters - the farmers – is abysmal, especially given that this is the basis of the RMA. EW is proposing to allow the polluters to continue their polluting, and to control total nitrogen emissions by ensuring that the non-polluters continue to protect the lake.

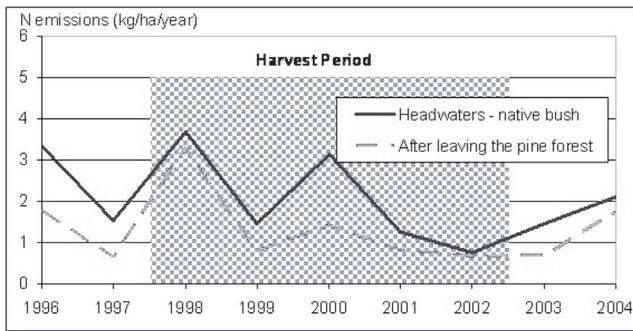
The impacts of the proposed plan on owners of forestry and undeveloped lands is enormous. There are no alternative land uses which emit only 2 kg/ha/year, and thus forestry will be the only productive option for these lands into the future. While technically undeveloped lands can convert to plantation forestry, in reality this is virtually impossible due to other RMA restrictions.

A fairer method of allocating emission rights is to give all rural landowners the same per-hectare emission allowance – a figure of around 5 kg/ha/year would work out right for the catchment. This method has been called 'averaging'. The next step is to allow trading of emission rights, so that those who want to emit more (farmers) would need to purchase surplus rights from those who are prepared to emit less (owners of undeveloped and forestry lands). As well as being equitable, this actually sends the right messages – it rewards those who are protecting the lake, and penalises those who want to emit more than their share. However we have had no success in persuading the authorities to adopt an averaging approach.

The environmental benefits of forestry with regard to nitrogen emissions are well proven. To assess the environmental impacts of their forest operations, monthly stream nutrient measurements have been taken in a few catchments in and around Lake Taupo Forest since 1994. In one catchment, the data shows that nitrogen emissions measured in the native bush area before the stream enters the forest closely match those taken where the stream leaves

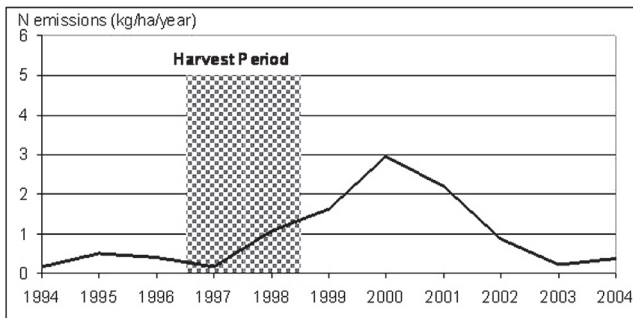
the forest – this despite harvesting having occurred over the period.

*Nitrogen Emissions – Mangakowhitiwhiti Catchment*



In another sub-catchment, which is totally forested, albeit with wide riparian strips, N emissions are shown to have increased for a few years after harvest, but soon fall back to low levels. These levels also indicate that plantations actually soak up Nitrogen while they are growing, and therefore may be of even more benefit in this regard than mature native bush, which is considered to average 2 kg/ha/year in emissions.

*Nitrogen Emissions – Waimarino Sub-catchment – Pine Only*



The Ngati Tuwharetoa position on controlling nitrogen emissions is not straightforward however. As a group they are by far the largest landowner in the catchment. Although 78% of Tuwharetoa lands in the catchment are either in forestry or are undeveloped, they also have extensive agricultural holdings.

The highest returns for landowners in the district has over the last decade or so has been from real-estate development. Farmers have had reasonable returns but are generally considered to have been farming for capital gains more than agricultural returns. Under the proposed plan, farmers will continue to be able to use their lands for subdivision, but owners of forestry land will be precluded from doing so.

The current status of this matter is that the Regional Council has released its draft plan, submissions have been made, and hearings are about to start. Undoubtedly this will end up in the Environment Court. Ngati Tuwharetoa, including the Forest Trust, has a team of expert witnesses preparing for these hearings, as do other forestry companies in the catchment.

The precedent that this issue sets for other areas of the country is important. The Regional Council's plan sends a signal to forest owners elsewhere to rip out their trees as soon as possible and use their lands for dairy, as this will get them up the ladder in terms of emission rights when any new regulations come in.