Report to

Crown Forestry Rental Trust

Models for Collective Forest Management

Working Towards a Limited Partnership

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Contents

1. Introduction 3
2. Rotoehu Forest: A case study for collective forest management 4
3. Crown forest licensed land 6
4. Benefits of Collective Management 8
5. Potential Collective Structures and Organisational Forms 16

Figure 1 Ownership of Rotoehu Forest Lands... 5
Figure 2 Operational Synergy Enhancements from Combinations of Forest Lands 11
Figure 3 Cost Benefit Analysis for Forest Land Collective Including Case Study CFLL 13
Figure 4 Forestry Collective Functions and Commercial Impacts 15
Table 1 Land Areas in Rotoehu Forest Ownership and Estimated Annual Harvest 6
Table 2 Estimates of the Benefit Pool from Combining Forest Land Areas................... 12
Appendix 1: A Model Joint Venture Checklist 22
Appendix 2: Memorandum of Understanding... 33

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1. Introduction

The Crown Forestry Rental Trust (the Trust) has engaged Burleigh Evatt to prepare advice for claimants whose settlement redress includes Crown land subject to Crown Forest Licence (CFL). The advice is in relation to models for management of CFL land where ownership has been fragmented by the Treaty settlement process.

After struggling for so long to resume title to lands though the Treaty Settlement process it is a disappointment to iwi that the only apparent use for those lands will be to lease them without a realistic prospect of controlling and influencing their future use. This raises valid questions:

- Is there another way of gaining control of the use of CFL lands that have been resumed via Treaty Settlement by working collectively and with other Māori owners of forestry land?
- What models of collective management exist that might be appropriate?

This paper discusses the reasons for collective management of resumed CFL lands in terms of a cost and benefit imbalance and lowering the transaction costs of doing business with both commercial counterparties and government agencies. The paper then explores the potential organisational models that a joint venture could adopt. At its simplest the joint venture might be a "gentleman's" agreement to work together for mutual interest, share information and support one another in rent negotiations. This form would require little or no formal structure because no tangible assets are created. On the other hand, if the land owners want a deeper commercial involvement by involving asset creation by replanting, tending, harvesting and marketing the next rotations then an incorporated joint venture would be appropriate. Incorporation provides legal protection for the joint venture and for the contributing land owners' other non-forestry assets in the form of limited liability. It also provides a recognisable commercial entity for third parties, including potential co-investors to deal with and a pre-agreed set of rules of conduct for the joint venturers in their dealings with one another and the joint venture entity. Another route may be through contracting the management of the lands and forests to a professional forestry management company.

It may be possible to achieve a level of coordination among land owners through the employment of a single forestry management company, but without the landowners pooling revenues, costs and risks. Joint management has the potential to generate net benefits of the same magnitude as a joint venture, but the distribution of the benefits will differ. Under such joint management arrangements, landowners are likely to be better off in value terms than if they independently manage their own land, but are unlikely to achieve the full extent of potential benefits available under an incorporated joint venture.

Of the available structures, one emerges as preferred, a limited partnership[1]. While a new structure and relatively untested in the New Zealand context, the limited partnership organisational form appears superior in most respects having regard to the particular situation of Māori land owners. The superior features of importance (compared with corporate alternatives) are as follows:

- A legal structure that relates closely to the roles and responsibilities within the joint venture.
- Tax transparency. This is important because of the variation in tax status of Māori land owners.
- Low cost to establish and maintain.
- Self-regulating, i.e. not subject to regulation by the Maori Land Court or by difficult and complex legislation.
- Familiar structure to potential co-investors in subsequent forestry rotations.

2. Rotoehu Forest: A case study for collective forest management

Rotoehu Forest is an example of fragmented ownership as a result of the Treaty settlement process. Rotoehu Forest is a small CFL area in the Bay of Plenty with a total area of 8,522 hectares, of which 8,044 hectares is productive. The forest is divided into two blocks: Rotoehu West and Rotoehu East. The forest has been subject to a single forest management regime by a single licensee[2]. The Rotoehu East block was used as part of the Crown's settlement with Ngati Awa in 2003. Areas of Rotoehu West have been set aside for four claimant groups: affiliate Te Arawa iwi/hapu Te Pumautanga o Te Arawa (TPT) accepted the north-western portion of 1,689 hectares in 2008, Ngati Tuwharetoa ki Kawerau (TKK) accepted an area of 844 hectares in the south eastern part in 2002, and Ngati Awa took 1,044 hectares in the eastern part in 2003. At the date of writing, the 3,450 hectares remaining in Crown ownership located in the central area has been offered and conditionally accepted by Ngati Makino.

As it stands, the ownership of the Rotoehu Forest CFL lands has been fragmented among four owners. This has the potential to further fragment as two Ngati Awa-affiliated hapu (Ngati Hikakino and Ngati Te Rangihouhiri) and two TPT-affiliated Ngati Pikiao hapu (Ngati Tamateatutahi and Ngati Kawiti) claim to exercise *mana whenua*[3] over the relevant lands. Eventually Rotoehu Forest lands may have six owners. The following Figure 1 shows a map of the relevant forest areas with the current and intended ownership marked in colour.

This land ownership fragmentation would matter little if the continued pattern of occupation and land use remained as it is and governed by long-term lease arrangements akin to the CFL. There would be some duplication of administrative costs and, at times when the licence fee for use of the land was reviewed, this

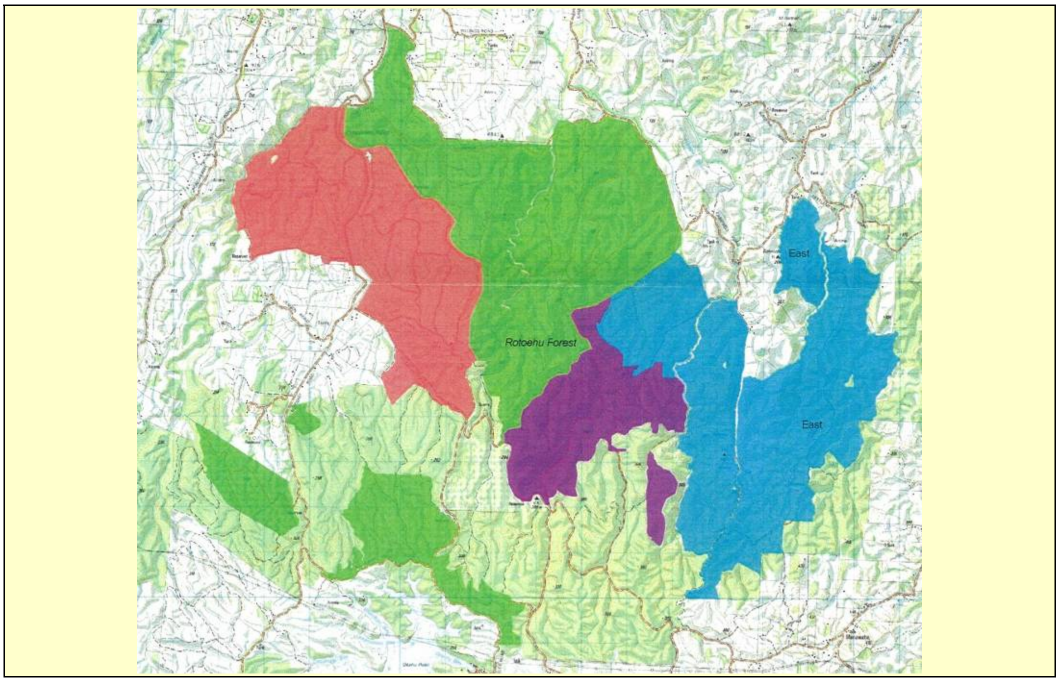
[1] The Limited Partnerships Act 2008 came into force on 2 May 2008 and replaced special partnerships that existed under Part 2 of the Partnership Act 1908.
[2] Kaingaroa Timberlands Limited.
[3] The concept of *mana whenua* has multi-layered meanings in terms of the important relationships that Māori have with *whenua* (land) and of the spiritual value placed upon land within the culture. *Mana whenua* also relates to customary authority that is exercised within tribal areas (*rohe*) and derived through *whakapapa* (ancestry).

cost would increase. Using the same methodology that is used to value the licensor interest in CFL lands, the aggregate value loss in respect of the whole forest amounts to about 3 percent. Even this level of value loss might be avoided in large part by means of simple cooperation and agreement among the owners to share information, services and costs.

Figure 1

Ownership of Rotoehu Forest Lands

Rotoehu East was used as part of the 2003 settlement with Ngati Awa which also took 1,044 hectares in the eastern part of Rotoehu West. Areas of Rotoehu West have been set aside for: Te Pumautanga o Te Arawa (TPT) north-western portion of 1,689 hectares, Tuwharetoa ki Kawerau (TKK) 844 hectares in the south eastern part. 3,450 hectares remain in the central part conditionally accepted by Ngati Makino.



Notes:
1. Blue marks the Rotoehu East block and 1,044 hectares in the eastern part of Rotoehu West accepted by Ngati Awa.
2. Purple marks an area of 844 hectares in the south eastern part accepted by Ngati Tuwharetoa ki Kawerau (TKK).
3. Green marks the remaining 3,540 hectares that has been offered and conditionally accepted by Ngati Makino.
4. Red marks an area of 1,689 hectares accepted by Te Pumautanga o Te Arawa (TPT).

Source: Office of Treaty Settlements.

The problem for the owners arises if they eventually want to be more than just the leaseholder in respect of the lands owned by them.

To obtain commercial value from lands obtained through the settlement process, claimants aspire to build an economic base around settlement redress. The purpose of such economic development is to provide economic resources to support tribal infrastructure and employment opportunities under their direct influence. Achieving these aspirations requires a greater involvement in the cycle of planting, tending, harvesting and marketing of forest products than has formerly been the case. By implication it also entails investing in the crop of trees, infrastructure, equipment, market relationships and related and supporting businesses.

It is in this case, in trying to achieve a critical mass to manage the forests growing on the land, as well as the land itself, that land ownership fragmentation matters.

Table 1 shows the areas of land in Rotoehu Forest by their post-settlement ownership and the estimated harvest profile ranging from 35 hectares to 116 hectares with an aggregate annual harvest of 287 hectares. The harvest profile roughly corresponds to the amount of land that will be resumed by its owners year-by-year under the CFL termination provisions, and therefore the amount of land available for replanting by them if they should choose to. These areas by themselves are too small to justify independent management in line with the owners' aspirations.

Table 1

Land Areas in Rotoehu Forest Ownership and Estimated Annual Harvest
As at 30 June 2009

	Legal area	Prod-uctive area	Estimated harvest p.a.[1]
	ha	Ha	ha
Rotoehu West			
Ngati Makino[2]	3,450	3,257	116
TPT	1,689	1,595	57
TKK	844	797	28
Ngati Awa	1,044	986	35
	7,027	6,634	237
Rotoehu East			
Ngati Awa	1,495	1,410	50
Total	**8,522**	**8,044**	**287**

Notes:
1. Estimated on the basis of a 28-year rotation. As land is harvested it is returned to the land owner by the licensee on a compartment-by-compartment basis.
2. Offered by the Crown as part of Settlement Redress and conditionally accepted by Ngati Makino. The land remains Crown owned until settlement.

Abbreviations: Ha = hectare, TPT = Te Pumautanga o Te Arawa, TKK = Ngati Tuwharetoa ki Kawerau

Sources: Office of Treaty Settlements, Burleigh Evatt analysis.

3. Crown forest licensed land

The decision to sell the Crown's commercial forestry assets was announced in the 1988 Budget. Māori interests were successful in legally blocking the sale process. In July 1989, the Crown and the New Zealand Māori Council (NZMC and Māori Council) and the Federation of Māori Authorities Inc. (FOMA) entered into the 1989 Crown Forests Agreement. The 1989 Agreement provided that the Crown could sell the standing timber, but would retain ownership of the land, with protection mechanisms to safeguard Māori claims to the land. The Crown Forest Assets Act 1989 was passed and the Crown Forestry Rental Trust was established in April 1990 as a result of the 1989 Agreement.

The Trust comprises three trustees appointed by the NZMC and FOMA, and three by the Crown. The Trust receives and invests rental income from Crown Forest Licensed (CFL) land, and uses the interest earned to assist claimants with claims before the Waitangi Tribunal involving CFL land.

The Act also created Crown Forest Licences (CFL) that separated land ownership from the right to occupy and use the land for commercial forestry purposes, i.e., growing timber. Of particular importance were two aspects of the CFLs:

- Termination arrangements that protected the occupier in the event of a successful land claim. On transfer of land ownership from the Crown to Māori in fulfilment of a settlement, a termination notice is given to the occupier. During the next 35 years, occupancy progressively returns to the Māori land owner as timber is harvested. The occupier may not replant harvested areas. Improvements to the land transfer to the Māori land owner at no cost.
- The payment of accumulated rentals to successful claimants following a Waitangi Tribunal recommendation that CFL land be returned to them.

At the time that the Trust was established, there were 81 ex-state forests which were subject to Crown forest licences. Following the Crown settlements with Ngai Tahu, Tainui Waikato, Te Uri o Hau, Ngati Awa and the iwi of the Central North Island this has now reduced to 45 CFLs. Of the remaining CFLs the ownership of 21 is covered in a number of Agreements in Principle.

There were clear expectations among the parties to the 1989 Crown Forests Agreement that settlement of the CFL lands would occur quickly, and as a matter of priority, as a result of the deal struck that year. In the event, twenty years were to pass before significant progress was made. In 2008, an important agreement occurred involving CFL land. The CNI Iwi Forestry Collective Settlement is an agreement between the Crown and eight iwi/affiliate[4] groups to transfer 176,000 hectares of land in the Central North Island with a value of $196 million, together with accumulated rentals of $284 million. Also in 2009, the Crown settled with the affiliate Te Arawa iwi/hapu in respect of areas in Rotoehu West (with accumulated rentals amounting to $4.6 million), and offered the balance of the Rotoehu West forestland to Ngati Makino. These are important developments because the upshot of them was that more than 50 percent of all CFL lands were transferred out of Crown ownership and the termination of the Crown Forestry Licences was triggered.

What permitted this development to occur was a change in policy towards Treaty Settlements. In 2007, following approaches from CNI Iwi, the Crown had a change of heart on the following key matters:

- Allowing an “on-account”[5] settlement instead of insisting on “full and final” settlement of comprehensive claims.
- Allowing competing claimants to resolve *mana whenua* interests themselves instead of in a Crown-determined redress.

Additionally, and importantly, the Crown relinquished the notion that it might be the beneficial owner of any of the CNI forestlands and accumulated rentals. Those policy changes broke the impasse that has bedevilled settlement on a collective basis with the CNI claimants, something they had been requesting for

[4] Ngati Tuhoe, Ngati Tuwharetoa, Ngati Manawa, Ngati Whakaue, Ngati Whare, Raukawa and the Affiliate Te Arawa Iwi/hapu (Te Pumautanga o Te Arawa) and Ngati Rangitihi.

[5] Comprehensive settlements for the CNI iwi will be negotiated separately, and have been completed in the case of the Affiliate Te Arawa iwi and hapu.

over a decade. Facilitating this was the realisation that after nearly two decades the apparent claimants were the ones likely to prevail.

As noted above, the settlement with Te Pumautanga and the conditionally accepted offer to Ngati Makino meant that, barring unforeseen obstacles, the CFL lands in Rotoehu Forest will all be transferred out of Crown ownership, subject to passage of settlement legislation, by 2011.

4. Benefits of Collective Management

The transfers of CFL land ownership have fulfilled Treaty settlement objectives but they have also resulted in ownership fragmentation that has the potential to undermine the commerciality of timber growing. This potential value loss was highlighted in a June 2007 report[6] to the Crown Forestry Rental Trust and Te Puni Kokiri by the MoCoM Consortium. The report commented in respect of the Kaingaroa forest estate:

> *While a final outcome on the future ownership pattern for the Kaingaroa forest lands is some way off there is no doubt there will be (a lot) more owners. This is a new and uncharted phenomenon for Kaingaroa (and the rest of the CNI estate) which, as noted above, until now had only the one land owner. That owner has at any one time had to deal with only one licensee.*

The report continued saying:

> *A worst case scenario would be if there were to be say 20 licensors each dealing with a different licensee such that there was a multiple of licensees (though some may be mutual). In such a scenario there is the possibility (by way of example only) that licensees could, during the course of a licence fee review process, reach agreement with smaller more vulnerable iwi land owners which could well compromise the negotiating position of larger iwi owners. The extraordinarily litigious processes that have occurred from the time of the Tasman Contracts in the 1960's through to the last rent review in 2005 (where in that time only two parties have been involved) is a constant reminder of the challenges that could lie ahead under this scenario.*
>
> *At the other end of the spectrum iwi could accept the challenge of establishing a fully integrated forest company which "rented" the land and owned and managed the entire forest estate on a sustainable basis throughout the forest growing cycle. Logically this is the best value proposition.*

The MoCoM model of collective management is the one explored in this report.

The snag with the CFL encumbrance from a claimant perspective is that the termination arrangements for CFLs may take up to 35 years to be complete. Under this scenario, the productive land returns at a rate of less than 4 percent per annum. This exacerbates the effect of ownership fragmentation through the slow trickle back of land. Claimants may face a long wait before a critical mass of land is in their hands. During that time, land returns to the claimant piecemeal as the trees are cleared by the CFL licensee compartment

[6] MoCoM Consortium, *Scoping Study of Claimant Support for Future Central North Island Forest Business Models*.

by compartment[7]. Until the land is cleared the claimant is locked in to a leaseholder role receiving the licence fee (rent on the land's unimproved value at fairly low rates). In the meantime the trickle is too small to be economically managed on a stand alone basis.

The aim of this section is to focus on collective management of forest lands and the potential commercial value from such an approach. The MoCoM report highlighted the potential for costly litigation to be a consequence of fragmented ownership and uncoordinated management. MoCoM also listed but did not attempt to measure, the potential benefits of collective forestland management. The listed benefits (page 11) included:

- Continuity of employment opportunities: planting, tending, harvesting.
- Continuity of wood supply to multiple markets and a price premium for scale and reliability of supply.
- Continuity of management and overhead efficiencies.
- Infrastructural efficiencies (e.g., roading, shipping, transport).
- Operational cost efficiencies (e.g., planting, harvesting).

Collective management is one means of mitigating the problem of fragmentation for land owners that want to be active in the management of the forests growing on their land. However it is important not to over-state the commercial case for collectivism. As noted in the introduction, the potential benefits from collective management of the terminating CFLs amounts at most to 3 percent of the licensor value of the CFL land, and this value gain could be accessed simply and at a low cost by a "gentleman's" agreement to cooperate, share services and share costs[8]. Looking at the cost structure of timber growing provides some clues about the potential commercial benefits of collective action[9] and a basis for making robust estimates of the potential pool of benefits available to a collective. In large part the costs of planting and tending trees are variable costs, not fixed costs[10] and the scope for driving a market advantage that will reflect in a true price premium is quite limited. At the harvest stage, there are cost differences observable that relate to the scale of harvest and volumes of timber transported. Similarly small differences in prices paid for otherwise similar timber can be observed that relate to the size of offerings.

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[7] As a rule of thumb, the amount of land that will typically return each year can be worked out as 90 percent of the total land area divided by 30. Thus for an area of 3,300 Ha containing 3,000 productive Ha, roughly 100 hectares will be returned each year.

[8] Deciding how to share the costs may be a little more problematic because the greatest proportionate benefit from collective management is to the smallest land owners while the smallest proportionate benefit is to the largest landowners. The simplest and fairest division of costs of this arrangement would be in equal parts between the landowners.

[9] See *Forestry Investment for Individuals* by A J Ogle in *Forestry Handbook*, NZ Institute of Forestry Inc.

[10] Fixed costs are business expenses that are not dependent on the level of business activity. Fixed costs tend to be time-related, such as salaries or rents that are paid weekly or monthly. Along with variable costs, fixed costs make up one of the two components of total business cost. Variable costs are activity-related (usually related to the volume of activity carried out in a time period).

The benefits of acting collectively are generally known as synergy enhancements. For synergy enhancements to have value, combining operations must result in either higher (or a faster rate of growth in) revenue or a reduction in expenses. Three kinds of synergy enhancements are relevant:

- **Operating synergy** results from the combination of operating units to achieve unit cost savings and/or higher revenue. Cost savings chiefly arise from improved procurement practices, increased market power in relation to suppliers, better inventory management as a result of lumpiness and indivisibilities in key cost items. Revenue synergies are the result of product bundling and cross-selling and more effective utilisation of marketing and sales forces.

- **Financial synergy**[11] results from the combination of being able to access external finance on better terms from being a larger entity or being able to access capital markets denied to smaller firms. Financial synergies may also be the result of improved risk management including accessing internal hedges and as a result of utilisation of preferential taxation provisions.

  Experience shows that the combination of small into large entities also reduces risk.

  The other source of financial synergies is reduction in business risk. Usually risk reduction synergy is not counted because investors can access such synergy by adjusting their portfolio holdings. However, it may be considered that such synergies are available due to the restricted nature of ownership in Māori authorities, but we have not attempted to quantify the value enhancement from this source.

- **Strategic synergy** is the most nebulous form of enhancement, often claimed but seldom realised in practice. Such synergies arise from being able to derive tangible advantage from the ability to shape the terms on which competition occurs in industry segments.

  It is not considered that the proposed collective will give rise to strategic synergy gains that are able to be confidently valued.

It is possible to evaluate the commercial benefits of combining smaller operations. The approach is a standard merger analysis. In Figure 2 we show an enhancement curve that is derived from industry data that represents the value enhancements (cost savings and price premium) of combining forestland areas. The benefits are measured in capitalised gains per hectare expressed as a percentage of the land expectation value[12] (LEV). The enhancement curve[13] depicts the potential value gain from combining forestry

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[11] For a discussion of financial synergy see Leyland, H. and Skarabot, J, *On Purely Financial Synergies and the Optimal Scope of the Firm: Implications for Mergers, Spinoffs, and Off-Balance sheet Finance*, June 2003, Haas School of Business, University of California, Berkley. See also Robert F Bruner *Applied Mergers and Acquisitions*, Wiley Finance 2004.

[12] Forestry and analysts commonly use a specialised discounted cash flow (DCF) technique to calculate the value of bare land in forestry. Land expectation value (LEV) is simply the value of a tract of land used for growing timber. It is the NPV of all revenues and costs associated with growing timber on the land in perpetuity. LEV is a yardstick that can be compared with the market price of land to judge whether the proposed land use might be more profitable that available alternatives.

[13] The enhancements curve formula allows us to calculate the potential size of the benefits pool arising from any combination of forest land areas up to 100,000 hectares, including the CFL as the cornerstone.

operations as compared with proportionate increases in cost as the joint venture expands to cover greater forestland areas. We describe these potential value enhancements as the “benefit pool” for the following two reasons:

- The enhancements are potential in the sense that the collective organisation must manage and organise itself in such a manner as to realise the potential benefits. In this sense, the potential benefits are not “free” but require an investment of resources to be realised.
- Even once realised, there will be many different competing opinions on how the pool of benefits should be distributed between the parties to the collective. Some may see the appropriate distribution to be in cash dividends to collective members in relation to their land contribution. Others may prefer the benefits to be invested in creating a bigger commercial asset, while still others may seek the benefits to be applied to other goals such as continuity of employment. All of these are legitimate objectives that need to be reconciled within the collective.

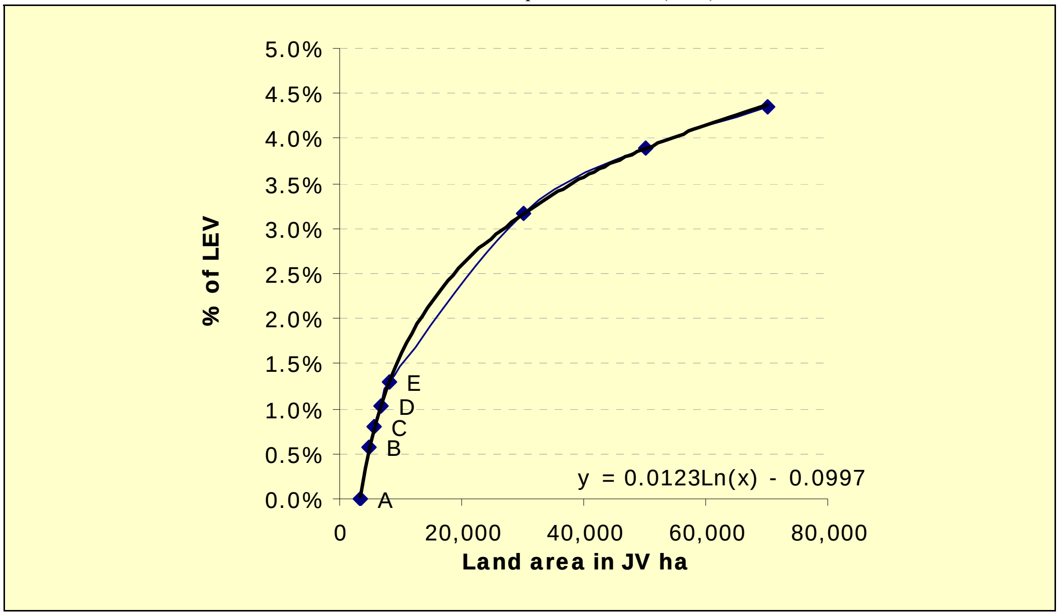
Figure 2

The curve depicts the value gain, measured as a percentage increase in LEV, from combining forestry operations as compared with proportionate increases in cost.

Thus the combination of all the landholding in CFL produces a little over 1 percent gain, while bigger combinations drive the benefits towards about a 4 percent gain in value per hectare.

Operational Synergy Enhancements from Combinations of Forest Lands

% increase in land expectation value (LEV)



Abbreviations: A= Iwi A, B = Iwi B, C = Iwi C, D = Iwi D, E = Iwi E, LEV = land expectation value, ha = hectares.
Sources: Burleigh Evatt analysis.

The combination of all the landholding produces a theoretical value gain of a little over one percent per hectare according to our formula. This is in addition to the three percent gain achieved by co-ordination of administration of the fragmented CFLs. This conclusion is not surprising. The combined productive land area of 8,045 hectares, is simply too small by itself to make much difference in relation to fixed costs, harvesting and transport costs and achieving market leverage, over and above the benefits of combined administration of the CFLs. To a significant degree, the costs of timber growing are variable costs and not susceptible to appreciable scale benefit at this level of activity.

The curve shown in Figure 2 gives us a method of assessing how much bigger the benefit pool becomes as more forest land areas are brought within the collective. In Table 2 we show estimates of the benefit pool for a range of sizes of potential land area combinations.

Table 2 **Estimates of the Benefit Pool from Combining Forest Land Areas**

Land area	ha	5,000	8,000	15,000	20,000	30,000	50,000	70,000
Value	$/ ha	9.29	19.29	32.67	38.80	47.43	58.30	65.46
Benefit pool	$m	$0.0	$0.2	$0.5	$0.8	$1.4	$2.9	$4.6

Sources: Burleigh Evatt analysis.

Bigger combinations have the potential to drive the benefits towards about a 4 percent gain in value per hectare. While this may not sound like much, at 50,000 hectares in the combination of the capitalised value of estimated benefits is $2.9 million in 2009 dollar terms, and at 70,000 hectares the estimated benefit is almost $4.6 million. These enhancements are in addition to the benefit of combined management of the CFL areas in certain forests[14] but do no include any allowance for the avoidance of contingent costs such as litigation. In the more speculative category there may be future opportunities to develop niches and products that may improve returns in real terms.

The broad reason why a collective may produce a better outcome results from a benefit and cost imbalance. This occurs where the collective can increase the benefit pool if the participants are willing to share the costs. However it is essential that the benefits of undertaking the collective action clearly outweigh the costs.

Inspecting Table 2 above and Figure 3 below indicates that there is a minimum size at below which the benefits in terms of value enhancement would be unlikely to outweigh the costs of collective action. This minimum size would appear to be around 30,000 hectares. Corroboration of this opinion may be obtained by observing the managed estates of the smallest independent commercial forest managers which are generally 20,000 hectares or greater. Thus for a forest collective to make economic sense it needs to be strategically aligned with a wider grouping of similar-minded forest land owners.

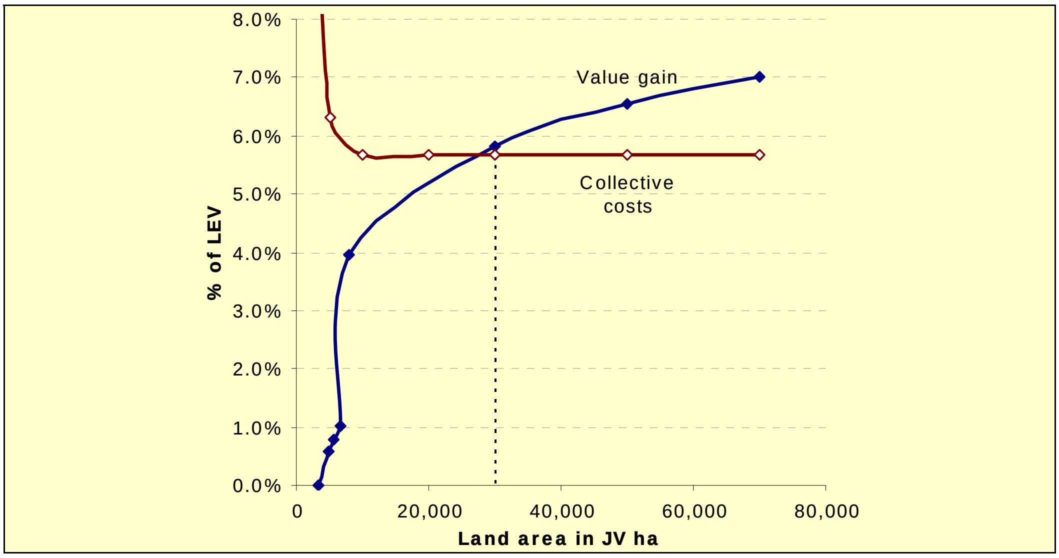
At combined land areas of 30,000 hectares and more there is a clear benefit and cost imbalance, while at land areas below the 30,000 hectare level the collective case is more speculative because it relies on the achievement of "soft" benefits (see discussion below) and the avoidance of contingent costs.

[14] Implicit in this analysis is the assumption that no improvements are available from better planning and management of the forest estate. This may represent an additional source of value enhancement to add to the benefit pool if enough of a region can be combined in to a single forest management plan.

Figure 3 **Cost Benefit Analysis for Forest Land Collective Including Case Study CFLL**

At the point of intersection of the red curve (representing the costs of the collective), and the blue curve (representing the available pool of value enhancements), the minimum economic collective size is identified.

In this case the minimum economic size is approximately 30,000 hectares.



Notes: 1) Value gain includes both value enhancements and the cost saving from collective administration of the case study CFLs.

Sources: Burleigh Evatt analysis.

So far we have focussed on the “hard” benefits, i.e., the readily quantifiable value enhancements from collective action. There is another category of benefits to be considered arising from opportunities for collective action that are likely to produce a superior outcome for the Māori forestland owners as a whole. These opportunities include:

- Promoting a vision of an industry committed to prospering and providing good working conditions and pay.
- Promoting awareness and use of exiting government assistance schemes aimed at improving business performance, workforce development, exporting and research and development (across a wide range from land use to genetics, alternative species, bio-fuel and wood products).
- Arranging opportunities for current and future managers to improve their skills in key aspects of the management function including business development, product development and marketing.
- Establishing and maintaining databases of the assets and capabilities of Māori land owners that are willing to work together.
- Facilitating formal and informal networking activities including bringing together Māori land owners with interests in working cooperatively together in collectives, strategic alliances, joint ventures and export market development.
- Providing contacts for international partner organisations and overseas firms seeking supplies from New Zealand.
- Developing and promoting codes of conduct (e.g., health and safety measures).
- Developing and promoting best practice for a range of forestry activities (e.g., land development, planting, tending, harvesting and marketing).

The case for collective action by Māori forestland owners is compelling, but not overwhelmingly, unless parcels of forestry land totalling at least 30,000 hectares can be combined. In such circumstances the compelling case has the following elements:

- During the termination phase of CFLs and other lease/licence/forestry right arrangements, collective action will enable partners to share and reduce costs of administration (and potentially avoid costly litigation).
- Collective action will increase commercial bargaining power with suppliers, customers and co-investors as well as potential commercial allies such as the CNI Iwi Collective.
- For subsequent rotations, collective action will enable land owners to participate as co-investors in forestry and earn a share of the potential returns (while also suffering potential risks associated with the investment).
- Collective action will enable the partners to assemble a critical mass of forestlands so that they are able to commercially justify a collectively-owned forest management company undertaking the management of forest on their land.
- Collective action will increase the standing of the partners with central and regional government agencies and enhance their ability to have a say on policies of importance to them.

In the next section we give our analysis of the options for structuring a collective entity.

The purpose of a collective is to manage on behalf of participants their forestry interests. The following key principles might underlie such a collective:

- A regional roll up of forest lands in fragmented ownership.
- A governance entity with open participation by contributing land owners.
- A single management entity with a clear commercial focus.
- Contracting models with contributing Māori land owners that simplify the many existing lease, license and CFL arrangements, to provide an appropriate sharing of commercial benefits, and provide transparent and fair arrangements for entry, participation and exit.
- Co-operative principles relating to the valuation of shares on entry and exit.
- A commercial critical mass that is big enough to give access to meaningful economies of scale and to justify employment of dedicated professional management.
- Providing commercial credibility (with timber customers, financiers, forestry investors, and other collectives).
- Achieving a shared understanding about commercial benefit realisation (e.g., the appropriate mix of wealth, income, employment creation).

In a broad functional sense there are three main kinds of activity that the collective needs to be organised to carry out. These functions divide naturally into the following categories:

- **Agency services**. Under this division would fall all aspects of the management of CFLs and other lease and licence arrangements. This comprises collection of rent and payment of expenses, management of rent reviews and negotiating terms of renewal of licenses or leases (if applicable). It also covers managing the termination of licenses or leases including the transfer of improvements and other obligations of the licensee.
- **Land and forest management operations.** These fit together naturally because they are the commercial and non-commercial land-based activities taking place. It is essential for commercial and safety reasons that there is close coordination of all activities taking place within the forest.
- **Investor services**. This division has responsibility for obtaining finance on suitable terms to fund the replanting, tending and harvesting operations of the cooperative. By itself the income arising from CFL rents is insufficient to finance replanting. Thus the collective will be in a position of requiring co-investors to take a share of the replanting and tending cost in return for a share of the harvest proceeds. Maintaining appropriate relationships with co-investors is a critical element in the success of such a collective.

The following Figure 4 summarises the fit between the forestry collective's functions with the expected commercial impacts.

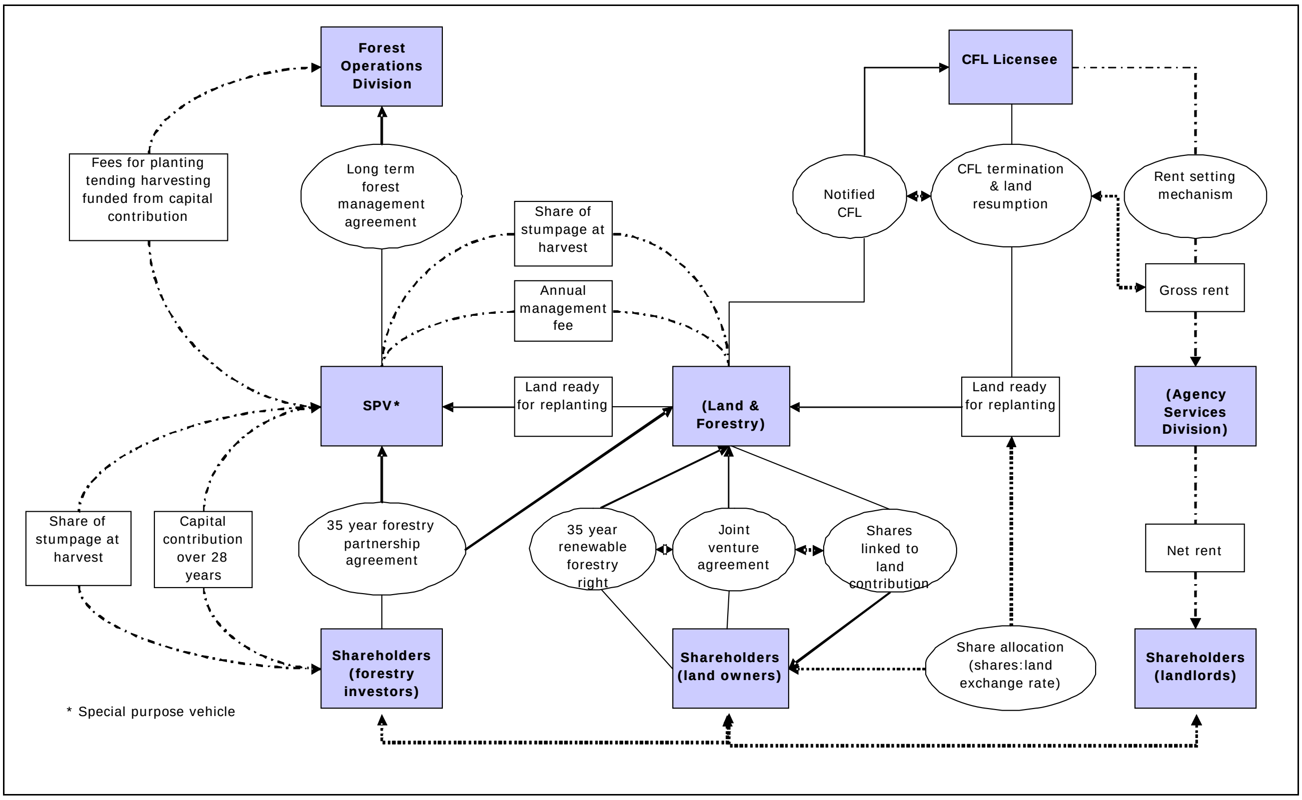
Figure 4 **Forestry Collective Functions and Commercial Impacts**

Forestry collective functions		**Commercial impacts**
Representation of the partners' commercial interests.		Lowers or shares costs. Potential scale economies in future forestry operations.
Administration of terminating Crown Forest Licenses and any other existing lease/license/forestry right arrangements.	Collection of rent and payment of expenses. Management of rent reviews. Negotiating terms of renewal of licenses or leases (if applicable). Managing termination of licenses or leases.	Shares and lowers costs. Information sharing improves negotiating position.
Land management.	Management of Wai tapu and other sites of cultural significance. Management of watercourses, fencing, roading, drainage and other improvements to land. Pest control. Public access arrangements.	Shares and lowers cost.
Forestry management.	Development of forest management plans. Procurement of land use rights for forestry. Replanting, tending, pruning, thinning and harvesting trees planted on resumed land areas. Fire protection. Marketing and distribution.	Shares and lowers costs. Potential scale economies to be realised. Improved bargaining power.
Management of commercial relationships with neighbouring forestland owners and other owners of ex-CFLL.		Shares and lowers costs.
Financial and risk management including arranging co-investors in		Shares and lowers costs.

subsequent timber rotations.	Improved bargaining power.
The joint venture is also a vehicle for owners to contribute to the forest industry, and ensure its interests are represented in policy making at a regional and national level.	n.a.
Other activities as agreed by co-venturers from time to time.	

Abbreviations: n.a. = not applicable.
Sources: Burleigh Evatt analysis.

The following diagram summarises the flows between the various parts of, and parties to, the proposed joint ventures.



5. Potential Collective Structures and Organisational Forms

There are a number of potential organisational forms available that a collective entity could take. In this we focus on vehicles for an incorporated joint venture that will undertake the functions discussed above. Such an arrangement would be an agreement amongst the Māori forest land owners to become co-venturers in a shareholding entity[15], or in a joint venture, that would assume responsibility for forest land management and timber-growing activities on that land. The land owners would retain ownership of land and contribute as co-venturers to the joint venture the rights to use that land for commercial timber growing purposes. The key principles underpinning the structure of such a joint venture are as follows:

- All forestry rights in relation to land owned by the co-venturers are covered by the joint venture.
- A minimum commitment related to the crop rotation cycle. This implies a commitment period of 35 years. 35 years is the commitment period for CFLs.

[15] For example, a company, co-operative company or Māori Incorporation.

- Shareholding interests reflect the value of the land use rights contributed. This principle embodies the co-operative principles that contributions (of land use rights) and withdrawals are made at fair value[16].
- Arrangements would expressly cater for the joint venture combining with other similar entities to create an even larger collective.
- Structures should be tax efficient reflecting the potentially differing tax status of the land owners.
- Legal structures should be transparent, simple and readily understood and recognisable by potential co-investors.

A key matter in deciding on potential organising structures is tax. Maori Authorities[17] are taxed differently from other corporate entities in New Zealand and at a lower rate of 19.5 percent in comparison to 30 percent. The rules for Maori Authorities are restrictive meaning that some care is necessary in structuring ventures involving Maori Authorities so as they do not lose the benefits of that status. Another tax-related consideration is the likelihood of and uses for tax losses incurred in the early years of a forestry management joint venture. Once the possibility of co-investors is admitted, the tax complexities mount. There is nothing unlawful or improper about explicitly considering the tax implications of the possible range of structures in a way that produces the best commercial position for the co-venturers. This is simply navigating the commercial complexities of the taxation system.

A range of potential structures is available under two broad headings of shareholding or partnership organisations[18]. The following are considered to be available options:

- Shareholding organisations:

– Company (Companies Act 1993).	Not tax efficient for all Māori land owners. Reasonably familiar as an organising structure. Heavy obligations on Directors including personal liability.
– Co-operative Company (Co-operative Companies Act 1996).	As for Company but based on co-operative principles. Slightly more complicated than a company because of co-operative aspects.

[16] The concept of a fair value share in this context is a *pro-rata* share of the equity undiscounted for minority interest and lack of marketability.
[17] See a the Inland Revenue Department publication *A guide to the new Maori authority tax rule,* IR487 available at www.ird.govt.nz/forms-guides/title/forms-m/ir487-guide-maori-auth-guide.html?id=righttabs
[18] Other options might include a trading trust or a contractual, i.e., "non-equity" joint venture. A trading trust is a trust which in business. Because a trust is not a separate legal entity, the business is actually undertaken in the names of the trustees of the trust. A non-equity JV can either be a co-ownership model or simply a contract between the parties whereby they retain all their own assets and agree their separate rights and obligations. In this respect it is a variation on a partnership.

- Māori Incorporation (Te Ture Whenua Māori Act 1993).

  Highly regulated by Māori Land Court. Difficult to implement given implications for “alienation” of land to an Incorporation. High threshold tests.

  Not able to be used by non-Maori co-venturers.

  Not well recognised by mainstream commercial community.

  However obligations on Management Committee are less than for company directors.

- Partnership organisations:
  - Partnership (Partnership Act 1908).

    Tax transparent (income and expense flow through to partners in relation to their partnership interest). Very lightly regulated, i.e., self regulating.

    Partners’ unlimited liability deeply unattractive.

  - Limited Partnership[19] (Limited Partnerships Act 2008).

    Tax transparent (income and expense flow through to partners in relation to their partnership interest).

    Very lightly regulated, i.e., self regulating.

    Limited liability for Limited Partners.

    Confidentiality of information about the Limited Partners.

    Relatively unknown in the New Zealand context but familiar to overseas investors.

Two potential structures merit further consideration; company and limited partnership:

- Companies are familiar organisational structures both as to the regulation of a company’s affairs and taxation.
- In contrast, the limited partnership organisational structure is relatively new in New Zealand. Limited partnerships are a familiar structure that is extensively used overseas for commercial ventures. The flow-through tax aspect has particular appeal in countries like the United States that retains double taxation of companies and co-venturers in relation to dividends.

On balance, although largely untested in the New Zealand context, the Limited Partnership organisational form appears superior in most respects having regard to the particular situation of Māori forest land owners. The superior features of importance (compared with a company) are as follows:

- A legal structure that relates closely to the roles and responsibilities within the joint venture. The arrangement is a General Partner (manager) responsible for the day-to-day affairs of the joint venture and the Limited Partners contributing land use rights and capital for finance replanting.
- Tax transparency, i.e., there are no additional tax considerations beyond the separate tax status of the co-venturers.

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[19] The Limited Partnerships Act 2008 came into force on 2 May 2008 enabling registration of Limited Partnerships that have replaced Special Partnerships under Part 2 of the Partnership Act 1908. Special partnerships are now considered obsolete, as they do not provide the structure preferred by venture capital investors.
Limited Partnerships are a form of partnership involving General Partners, (who are liable for all the debts and liabilities of the partnership) and Limited Partners (who are liable to the extent of their capital contribution to the partnership). A Limited Partner may not be involved in the day-to-day management of the Limited Partnership.

- Self-regulation.
- Familiar structure to potential co-investors in subsequent forestry rotations.
- Only a single partnership agreement[20] is required making the limited partnership quite straightforward to implement[21].

Choosing an organisational structure must allow for the process of contributing land use rights in exchange for equity interest in the joint venture. On agreeing to enter the joint venture, forest land owners will be required to specify which tracts of forest land are being committed to the joint venture. "Committing" the forest land means that the land use rights are allocated to the joint venture, whilst the land ownership remains unchanged. In the case of the Rotoehu joint venture, this commitment is expected to cover the whole of the CFL land in Rotoehu Forest. Initially the forest land will be subject to an existing CFL, in respect of which a termination notice has been given. The joint venture will take over the management of the CFL, and pay the owner the licence fee (rent), less a small handling fee. When land is cleared and resumed by the land owners under the terms of the CFL, the right to use that land for replanting will transfer to the joint venture for a minimum period of 35 years.

This highlights a need for a process for allocating shares in the joint venture that relates to the value of the contributed land use rights, as the land becomes available to the joint venture. The allocation of joint venture shares is the *quid pro quo* for land use rights contributions. This process is usually called a subscription process because the joint venturers are subscribing for shares in the joint venture. In the case of the Rotoehu Forest owners, the discussion amongst them resulted in an understanding that the subscription process would be as follows:

- An initial allocation of 50 shares to each of the land owners on signing the joint agreement that commits them to contributing forest land use rights. This allocation means that each partner has an initial equal vote and right to representation.
- Valuation of the forest land use rights committed by each member at a consistent date.
- Establishment of an "exchange rate" for forest land use rights based on the relative value (per hectare) of use rights committed by each member.

[20] Under Section 9 of the Limited Partnerships Act 2008, a Limited Partnership must have a written partnership agreement. The partnership agreement is an agreement regulating the affairs of the Limited Partnership and the conduct of its business. On registration of the Limited Partnership, the partnership agreement has effect as a contract between the Limited Partnership and each partner, and between the partners themselves. A partnership agreement is also helpful as a way to set out the principles upon which the partners intend to run the business, deal with unforeseen circumstances and contingencies, and therefore minimise the potential for disputes, particularly where there is no majority partner.

[21] See the Appendix A for an outline of the commercial and legal issues need to be addressed in constructing a joint venture agreement.

- Allocation of shares based on the "exchange rate" multiplied by the hectares contributed (i.e., shares are allocated as forestland is actually made available for replanting by the joint venture). This recognises the value of the forest land use rights that is contributed.
- The process for withdrawing land from the JV follows the same core requirements as the CFL, i.e.:
  - The forest land owner (co-venturer) gives notice to the joint venture.
  - Land is returned once the standing crop has been harvested, but no later than 35 years after notice.
  - The terminating co-venturer relinquishes its shares to the joint venture at fair value (excluding land resumed).

Contractual Joint Venture

The main difference between a joint venture and a partnership is that the members of a joint venture have teamed together for a particular purpose or project, while the members of a partnership have joined together to run "a business in common". Each member of a joint venture retains ownership of its property and each member of the joint venture shares only the expenses of the particular project or venture.

If a number of land owners contracted with a single independent manager on similar terms they would give rise to an arrangement with many of the same characteristics as a joint venture.

Like a joint venture, the parties would team together for a particular purpose through bilateral contracts with a single forest manager, rather than through a multilateral arrangement. Under such an arrangement there is no need for the participants to deliberately collaborate with one-another, merely with the manager. Such a contracted arrangement has the potential to generate value enhancements on the same scale as a partnership. It may have the added benefit that it avoids the potential for messy hold out disputes in a multi-party joint venture arrangement.

The principal way in which a contractual joint venture differs from an incorporated one is in the allocation of net benefits between the participants. In the first instance it is the manager who accrues the net benefits, rather than the joint venture participants as a whole. The manager may share those benefits with the participants in a pre-determined way, such as a profit share, but the participants would not normally be in a position to dictate the terms of net benefit sharing. To do so they would need to achieve ownership of a controlling interest in the manager's business.

Thus a contractual joint venture is not substantively different from land owners making individual arrangements with forest managers. When one manager gains a geographical dominance, that manager is in a position to enjoy the value benefits scale, but does not have an obligation to share those benefits with the contributing landowners.

Conclusion

Fragmentation of ownership of forest lands through the Treaty settlement process has the potential to destroy value for Māori landowners. Value reductions could potentially result from higher administration costs of leases and licences and through loss of market power in rent negotiations. There are a range of ways in which land owners can act to minimise the potential for value to be lost. At its most basic level, co-operating with their neighbours to present a unified position in rent-setting negotiations, and by employing a single administrator are means of addressing the sources of potential value loss. Such arrangements need to be supported and credible but do not need formal long-lasting legally-binding commitments tying up the use of land. These approaches pre-suppose the land owners will continue to rent out the land to a tenant.

If instead, land owners wish to take an active participation in forest growing then it is necessary to look at formal options for the management of the land and crop of trees. Analysis indicates that at least 30,000 hectares under management is a minimum forest estate to be economically managed as an independent business unit. Combining smaller land areas to make up a minimum economic estate of this size that will invest in the crop of trees requires formal arrangement between the participating land owners. There are a number of approaches available. For example, land owners may choose to contract out forest and land management to an independent specialist firm. While the most straightforward option, as it only requires bilateral contracts between the land owners and the contract manager, contract management is unlikely to be the highest value option for landowners who are able combine to assemble an estate above the 30,000 hectare threshold.

For a forest land owning collective that are able to reach the 30,000 hectare threshold, the best available structure for combining is the Limited Partnership. Of the available structures, this is one that emerges as preferred. While a new structure is relatively untested in the New Zealand context, the limited partnership organisational form appears superior in most respects having regard to the particular situation of Māori forest land owners who wish to participate in a collective. The superior features of importance are a legal structure that relates closely to the roles and responsibilities within the joint venture, tax transparency, low cost and familiar potential co-investors. The limited partnership can readily accommodate the arrangements necessary for the subscription of shares in exchange for the contribution of land use rights by the co-venturers (Maori land owners).

Appendix 1: A Model Joint Venture Checklist

Introduction

The basis on which joint ventures (JV) are formed is always a commercial collaboration in which two or more parties pool some of their resources with a view to obtaining a mutual gain, while at the same time remaining independent business entities.

This checklist provides a basis on which to consider the issues in the formation of a JV and the co-venturers' ongoing legal rights and obligations. Much of this checklist relates to a limited liability partnership (LP) form of JV but many of the issues raised will be equally relevant to a corporate form. As this is a generic checklist it does not take into account any specific circumstances. There are tax and regulatory issues that will affect the structure and operation of the JV but they are not addressed in any great detail here. To the extent that the JV is international, overseas law may require additional considerations. So too will be industry specific issues particularly in the specific JV context if regulatory or competition concerns are raised.

Planning

1. Scope and purpose of the JV:
   - Identify scope/purpose of the JV, consider implications of such scope in connection with:
     - What activities does the JV expressly intend to do or refrain from doing?
     - Corporate opportunity issues, i.e., what are the existing and potential future conflicts with each party's non-JV businesses?
     - This will lead to a conclusion on the scope of the non-compete covenants and the confidentiality obligations of each party.
     - Is there any core technology or other intellectual property (IP) either to be transferred to the JV or to be granted by the parties to the JV?
     - Are there other inter-corporate arrangements that either will be required for the JV to operate or that are required to make the investment in the JV meet the business case?
     - What due diligence must be completed before the JV is actually effective, in this case the level of due diligence is generally no less than that required for an acquisition, and in many cases may need to be more thorough to ensure a comfort level with, for example, the corporate culture of the co-venturer.
2. Form of joint venture:
   - Identify form of the JV:
     - Jointly owned company or group of companies.
     - General partnership.
     - Limited partnership.
     - Contractual i.e., no equity contributions. The contractual or "non-equity" JV can either be a co-ownership model or simply a contract between the parties whereby they retain all their own assets and agree their separate rights and obligations. Most "partnering" arrangements, strategic alliances and outsourcing services arrangements fall into this category.
   - Issues affecting which form will be used include tax, limited liability, regulatory, banking, IP ownership, third party consents and exit strategies, among others.
3. Regulatory:
   - Identify current and any anticipated regulatory issues (including industry-specific regulatory issues, foreign ownership, competition and general business regulation issues) on:
     - Ownership and control of the JV, its assets or the operation of its proposed business.
     - Dilution, exit and liquidation rights.
4. Implications of the JV on existing operations and reporting requirements:

- Review accounting treatment of investment in the JV. Will the investment be consolidated? Consider the impact that particular control mechanisms proposed for the JV may have on the desired accounting treatment.
- Review existing contractual obligations to ascertain what third party approvals will be required for the implementation and ongoing operation of the JV, including debt covenants and other non-compete or confidentiality obligations.
- Consider whether any restructuring of existing operations is required before entering into the JV.

5. Tax considerations:
   - Begin consideration of tax consequences of the proposed structures. This exercise should be started as soon as possible to ensure both parties' tax objectives are met.
6. Internal Preparation:
   - It is always preferable to agree on the business plan at the outset of the JV. Work should begin early on the appropriate financial modelling so that the parameters of the business plan are thought through before negotiations commence.
   - Identify all other subsidiaries, as well as internal divisions and departments that may have a material interest in any particular aspect of the JV transaction and put in place processes to ensure appropriate flow of necessary information and ability to obtain required input in a timely fashion for negotiation and implementation of the JV.
7. Confidentiality agreement:
   - Consider whether a confidentiality agreement needs to be signed and if so what else it will cover; non-solicitation? Will it remain stand-alone or be superseded by the binding letter of intent or the JV agreement?
8. Letter of intent:
   - Binding or non-binding?
   - If binding:
     - Ensure all key provisions covered; may be difficult to introduce new points after signing.
     - Can be binding unless and until replaced by a definitive agreement agreed to by the parties within a specified time; no material changes without further board approval.
     - Consider use of arbitration if parties cannot agree on definitive agreement or if there is a dispute as to interpretation of letter of intent.

       Risk: matter in dispute may not be proper subject of arbitration and risk of uncertainty of outcome.
     - Consider whether to include clause to negotiate in good faith the definitive agreement.

       Risk: no clear guidance as to what negotiate in good faith means. May already be some duty in the context of a binding letter of intent to negotiate in good faith. Also, some risk attached because should negotiations fail one party may assert lack of good faith negotiations in order to revoke the binding letter of intent.
     - Ensure all appropriate approvals received before signing. This will include all approvals necessary to enter into a definitive agreement as this agreement will be binding regardless of whether or not a definitive agreement is entered into and would include such matters as co-venturers' approval, regulatory approval, third party contractual consents, etc. If approvals not obtained in advance, letter of intent could provide that it becomes effective once the necessary conditions precedent have been met.
     - Will it contain a no-shop provision? Consider whether to leave confidentiality agreement in place or replace it with confidentiality obligations in letter of intent. If the latter will need to ensure that letter of intent is in fact binding and that confidentiality covenants survive termination of the letter of intent.
     - Will the letter of intent require disclosure if a co-venturer is a public listed company?
   - If not binding:

- Can structure so that it becomes binding upon Board approval within a specified time and/or subject to signing a definitive agreement acceptable to both parties.
- Will need to ensure non-binding letter of intent cannot subsequently be found to be binding.
- If no separate confidentiality agreement, ensure that while most of letter of intent is non-binding, confidentiality and non-solicitation covenants are intended to be binding.

9. Parties:
   – Consider which parties should be parties to the JV. If holding companies are to be used should parent entities be parties or simply guarantors? How far up the corporate chain is it necessary to go, not only to ensure performance of the obligations of the JV parties but to enforce non-competition covenants, etc?
   – Consider whether the JV entity should be a party. If the JV is a party, it may be able to enforce obligations of co-venturers in a bankruptcy situation where there is a receiver. On the other hand, if it is not a party, it will be difficult to get specific enforcement of obligations.

Governance Arrangements

10. The JV's governance structure will depend largely on the actual structure chosen. However whether it is a board of directors or, in the partnership context, either a managing board or simply representatives of the partners, there will need to be a management vehicle to direct the JV. In the context of the management vehicle, it will be necessary to consider:
   – The extent of the authority given to the management vehicle compared to reserving significant decisions to the joint venturers (co-venturers, members or partners).
   – The choice of appointees to the board or management committee and, where there are not already prescribed levels of accountability, setting out their accountability to the joint venturers.
   – The authority to retain and remove senior officers, including the Chief Executive Officer.
   – The scope of protection for each co-venturer on fundamental decisions and changes, particularly where one of the co-venturers has a minority ownership interest.
   – The substantive standards and processes for dealing with non-arm's length transactions and other conflict of interest situations involving the JV.
   – The process for developing, approving and updating the business plan and budget.
11. Management Board (or Board of Directors):
   – Proportionate board representation or formula. Consider whether representation should cease once ownership interest falls below certain level.
   – May have to deal with deadlock possibility. Giving chair a casting vote in 50-50 situation effectively results in unequal representation on board.
   – Any particular qualifications for members of management board, i.e., do parties want management board members to have certain skill sets or experience? Any particular prohibitions on who can act?
   – Removal and replacement of members on management board.
   – When and how often management board will meet.
   – Notice requirements.
   – Quorum for valid meeting.
   – Can management board members be represented by alternates?
   – Who can call meetings?
   – Can management board act without an in-person meeting, i.e., telephone meetings or signed consent?
   – Determine what powers and duties the management board will have. The JV agreement may specify that certain matters require approval of majority of management board and other matters require unanimity.

- Determine what decisions are not to be made by the management board but must be referred to the co-venturers.

12. Meetings of co-venturers:
    - When and how often the co-venturers will meet.
    - Notice requirements.
    - Quorum for valid meeting.
    - Who can call meetings?
    - Under what circumstances can co-venturers act without an in-person meeting; i.e., telephone meetings or actions by signed consent (the reality is co-venturers can always act by instrument signed by all of them).
    - Determine which decisions of co-venturers require approval of majority and which require unanimity (really only relevant where there are more than two co-venturers).
    - Whether chair has casting vote in case of tie.
13. Management:
    - Officers may include a Chief Executive Officer or general manager responsible for the day-to-day operations of the JV's business and possibly a Chief Financial Officer.
    - Consider whether one or majority of the co-venturers have the right to nominate officers or whether the management board has that right. Certain co-venturers could have rights to nominate certain officers.
    - Who has the right to remove and replace officers?
    - Limits on authority of officers, signing authority, etc.
14. Managers, Directors' and Officers' liability insurance
    - Verify existing coverage. Is the JV coverage to be under each individual co-venturers plan or will the JV have its own coverage?
15. Auditors:
    - Will auditors be appointed?
    - Who the will the auditors be? Auditors of one of the co-venturers or independent or all co-venturers?
    - Process for changing auditor?
16. Reporting and access to information:
    - Frequency of financial statements.
    - Nature and frequency of other reporting requirements.
    - Permitted access for co-venturers to books, records and employees, e.g., on period of notice, during business hours, etc.
    - Consider whether access to information rights should be removed if a co-venturer's interest falls below a certain threshold.
17. Actions requiring consent, either by management board or by co-venturers:

    Consider which of the following actions should require management board or co-venturer approval. List will vary depending on level of autonomy proposed to be given to the JV and level of decision-making already residing at co-venturer level:
    - Approval of annual business plan and budget or any change to any approved annual business plan or budget.
    - Transactions outside the ordinary course of business over a specified $ threshold.
    - Change of name.
    - Change in scope of the business.
    - Investments outside the scope of the business in excess of a specified $ threshold unless contemplated in annual business plan and budget.
    - Creation of subsidiaries.
    - Admission of new co-venturers (in the case of a corporate JV by issuance of shares).

- Any transfer of ownership interests unless contemplated in the JV agreement.
- Issue, sale or transfer of shares or rights to shares of subsidiaries of the JV company.
- Incurring debt, granting security or guarantees unless contemplated in annual business plan and budget.
- Payment of dividends (in case of a corporate JV) or other distribution or return of capital except as contemplated in the JV agreement or annual business plan and budget.
- Change in management board, establishment or change in board sub-committees or appointment or removal of officers except to the extent contemplated in the JV agreement.
- Insolvency-related actions.
- Certain types of contracts, for example those with competitors, contracts that contain change of control clauses, etc.
- Capital expenditure not contemplated in annual business plan and budget.
- Acquisitions, investments in third parties, strategic alliances or partnerships, either outright prohibition or subject to financial thresholds. In any event ordinary course acquisitions of assets would normally be excluded from prohibition if contemplated in business plan and budget.
- Disposals of assets in excess of a specified limit or unless contemplated in business plan and budget.
- Consider whether any approvals are required in connection with commencing litigation or other proceedings.
- Change in constitution, JV charter or other organising documents.
- In the context of corporate JVs, will also need to consider such matters as reorganisations, amalgamations, mergers, issue of shares and rights to shares in general or to third parties, including public offerings.
- May wish to consider removing certain minority venturer's veto rights if ownership drops below a certain threshold or if co-venturer is in material default. Define material default and consider whether such loss of rights should only be during the default or whether a "time to cure period" should be given.

18. Business plans and budgets:
    - Set out process regarding preparation of business plan and budget. Who prepares and what time frame and to what extent do others participate in the process.
    - Consider what happens if approvals for business plan and budget are not forthcoming. Does prior plan continue? Can some third party mediate or arbitrate or does it go up the chain in each co-venturers organisation before something happens?

      This is often a difficult area as co-venturers may have different views during the life of the venture as to what the business should look like and to what extent they are prepared and able to invest more funds or leave funds in the JV.
19. Dispute resolution:
    - Mediation, litigation or arbitration.
    - Define mandate of arbitrators, i.e., is it any dispute between the party or only specified types of disputes or under specified clauses. Certain types of disputes may not be able to be arbitrated. Ensure arbitrator has right to order specific performance and/or consider preserving right to go to court for certain types of breaches, e.g., breach of confidentiality, non-solicit or non-compete.
    - Set out rules or cross reference to specific set of rules e.g., NZ Society of Accountants.
    - Location.
    - Arbitrators, number and how chosen.
    - Costs. Who pays what: consider providing that loser pays in claim involving breach of the JV agreement. In the case where there is not a dispute but a determination of a particular value or payment is being made, may need different approach.
    - Consider whether to set parameters around how arbitrators are to act.

Business of the Joint Venture

20. Scope of the business:
    - The definition of the scope of the business is often critical in terms of the ongoing operations of the co-venturers, particularly as the JV develops. It is difficult to know at the outset of a venture what businesses the co-venturers will be in five years later.
21. Distributions:
    - A fundamental decision will have to be made as to what extent it is proposed that profits be reinvested to grow the JV or to be distributed out to the co-venturers. Often it is provided in any event that there will be a period where no distributions will be made. It is useful to agree on a formula as regards distributions, subject always to change by the co-venturers.
22. Financing:
    - Agree philosophy as regards financing. Is the intent to use mainly third party debt to the extent available?
23. Third party debt financing:
    - Generally the co-venturers will prefer that any third party JV financing be through non-recourse third party borrowing but in start-up situation this is almost never possible.
    - If guarantees are to be given, the agreement may provide that to the extent possible they will be subject to an agreed limit and will be given severally pro-rata to the percentage interest in the JV.
24. Financing provided by the co-venturers
    - Pro rata to interest in the JV. Consider what happens if third party borrowing not possible. Does it always go to co-venturers? Is it optional i.e., renounceable or a required capital call? What if one co-venturer does not have the necessary funds?
    - Agreement should specify maximum amount either in actual dollar terms or based on some formula. This ties back into business plan and budget.
    - Agreement should also specify who can initiate capital call and who determines what type of capital call it will be, debt or, if applicable, equity.
    - Consider fixing in advance all relevant terms of debt, including repayment terms, ranking of obligation to repay, etc.
    - What happens if default in providing moneys once call has been made?

      On a default by one co-venturer, can the non-defaulting party withdraw its commitment? Or can it optionally take up the defaulting party's obligation on terms either more favourable as to, for example, interest rate, or causing dilution of the defaulting co-venturer's interest. At what point does failure to provide financing lead to exit rights, liquidation rights or rights to bring in third party investors?

      These provisions will always be hotly negotiated — especially if one of the co-venturers is not as well established or creditworthy as the other.
25. Co-venturer support:
    - Consider to what extent each co-venturer is going to provide support or services to the JV. Whether such support and services will only be for a start-up period or whether it will be ongoing. Pricing for such support and services should be determined at the outset and not left to be determined after the JV has been formed. Consider whether benefits can be obtained by using the purchasing power of the co-venturers.
26. Intellectual property and proprietary technology:
    - There is almost always some IP or proprietary technology to be transferred to the JV, generally by license rather than transfer.
    - Consider whether license should be exclusive or non-exclusive, and royalties.
    - Consider whether practical restrictions such as territorial restrictions will be enforceable.
    - License must deal with improvements and who gets ownership of other rights in those improvements.

- Consider what happens to IP and improvements on termination of the JV or on exit of one co-venturer. This is absolutely critical.
- Licences will need to be considered in conjunction with any non-compete.
- On what basis is license terminable? If IP or technology is core to business this area will be very hotly negotiated. Unfair leverage may be obtained if the IP owner can pull the plug on the JV.
- Value to be attributed to IP being contributed to the JV is generally hotly negotiated.
- Consider any competition issues related to licensing.

27. Corporate opportunity:
    - Generally a co-venturer will be required to offer to the JV business opportunities within the scope of the JV's business.
    - Consider, if the JV turns a business opportunity down (whether a new business or an acquisition) permitting the other co-venturer to take up on the same (or no more favourable) terms than those offered to the JV.
28. Non-compete and non-solicitation:
    - Consider whether the JV and/or the co-venturers should be subject to a non-compete and whether there should be any restraints on employing JV personnel during the JV and for some period after one co-venturer has exited.
    - To what extent can the JV enter into arrangements with a competitor of one of the co-venturers?
29. Breaches:
    - Consider what acts or omissions should be classified as material defaults. It may be appropriate to have different classifications of breaches, maybe classified by consequences, e.g., dilution, liquidation, puts, calls, etc. The following is a list of some of the types of acts or omissions to be considered:
        - Failure to honour a capital call contemplated in the business plan or budget or agreed between the co-venturers.
        - Failure to honour a put or call right.
        - Breaches that are material to the JV of:
            - Restrictions on disclosure or use of confidential information the non-compete or non-solicitation listed material inter-corporate agreements including licences.
            - Breach of the corporate opportunity covenants in the agreement.
            - Change of control of the co-venturer.
            - Transfer of ownership of interest in the JV in a manner not permitted by the agreement.
            - Insolvency.
    - Possible remedies for a material default include:
        - Loss of management board representation.
        - Dilution.
        - Imposition of mandatory call.
        - Discounted puts, calls and buy-sell valuation amounts.
        - Termination of licenses and other inter-corporate arrangements.
    - Consider whether non-material breaches when aggregated or continuing should constitute a material breach and whether and which types of breaches should benefit from a cure period.

Share Transfer Restrictions and Related Provisions

30. General:
    - Agreement will usually provide that no transfers are permitted except as provided under the agreement (usually to related party affiliates) and that any transferee must become party to the

agreement. Often the agreement will provide that under certain circumstances (particularly transfers to affiliates) transferor to remain liable on a joint and several basis with the transferee.

31. Transfer to related party affiliates:
    - Consider definition of affiliate if affiliate transfers to be permitted.

      For example, if transfers permitted to partially owned affiliates, concern will be under what circumstances can the ownership of that affiliate change. May wish to provide that permitted transfers only to special purpose wholly owned subsidiaries, i.e., wholly owned subsidiaries (wholly-owned all the way up the chain) that cannot do any other business.
    - Consider providing that if affiliate ceases to be an affiliate must transfer back interest to parent or another wholly-owned affiliate of the parent.
    - Avoid using the undefined term "affiliate." Make sure that definition works, for example, definition will go all the way up the corporate chain and may include an entity above the entity that has executed the agreement.
    - Consider requiring any permitted transfer to be only of all the interest of the co-venturer. The agreement may need to be renegotiated if there is a partial transfer to ensure that there is block voting, etc.

32. Pledge of shares (e.g., by way of granting security):
    - Consider whether there should be the ability to pledge interest in the JV. The issue is that the beneficiary of the pledge may end up being in the shoes of the co-venturer and usually will have right to sell the interest.
    - If pledge permitted, consider limiting it to certain financial institutions.
    - Will generally provide that the beneficiary of the pledge must agree to be bound by certain specific provisions of the JV agreement, e.g., any call right, drag-along, rights of first offer and first refusal and other transfer restriction to which the interest in the JV are subject.
    - Consider requiring interest to remain in pledging the co-venturer's name and confirming that beneficiary of the pledge has no veto, management board or other rights except right to sell.
    - May wish to include that realisation by the beneficiary of the pledge is an act of insolvency for the purposes of the JV agreement. Depending on the consequences of the insolvency provisions of the agreement, this will make interest less valuable for purposes of pledge.

33. Exit and termination rights:

    Agreement will generally make provision for the termination of the JV and/or the exit of one partner from the JV. If the JV is for the purpose of establishing and operating a particular business, consider whether in fact there should be any exit or termination provisions. Even if it is acknowledged that the JV may not succeed, the circumstances of the failure will be impossible to predict at the outset and the parties may wish to take the position that reasonable co-venturers will be able to negotiate a satisfactory termination at the time and in the circumstances. However if one co-venturer is clearly stronger than other, then the weaker co-venturer will undoubtedly prefer to have exit rights clearly delineated in the agreement.

34. Determination of triggering events and exit and termination provisions:
    - Consider what appropriate triggering events are. Usually two categories, default and non-default. Examples of default events would include those material breaches set out above, i.e., a default by one of the co-venturers in the performance of its obligations under the agreement or by the occurrence of specified events that have the same consequences, such as a change of control of a co-venturer.
    - No-default events may include such matters as:
        - Events that reflect a frustration of the business intent such as the failure to achieve certain business/sales/operational targets, etc.
        - Management deadlocks.
        - Third party offers for the interests of one or both of the co-venturers.
        - A change in business strategy or key personnel of one of the co-venturers that has the effect of that co-venturer wanting to liquidate its interest in the JV.

- In the case of both a non-default event and a default by one of the co-venturers, the usual remedies are dissolution of the JV or a buy-out of the defaulting co-venturer's interest by the non-defaulting co-venturer. The negotiation of the remedies in each of these situations will result in a determination of who may chose the applicable remedy and the way in which that remedy is accomplished in both default and no-default situations.
- Consider whether there should be a period of time at the outset of the venture during which no transfers or exit rights (except on default) are permitted.

35. Put option right:
    - If one party is in a minority position, it may wish to negotiate a put option right in certain circumstances. A put option may be negotiated if there is a concern about a certain circumstance occurring, such as a change of law or regulation that materially adversely affects a co-venturer. If such provision is included, it is usually coupled with obligation on both parties to take all reasonable commercial efforts to remedy the event giving rise to the put option right, including reorganising the JV in an attempt to restore the party adversely affected to the position it would have been in had the change not occurred. The quid pro quo for a put right is often a matching call option right (see below) in favour of the majority co-venturer.
    - Put option pricing can be based on:
      - A fixed price.
      - Fair market value with no minority discount.
      - Some discount from fair market value.
      - A formula price.
    - Specify date at which price is to be calculated.
    - Put options can be used as a remedy as can cancellation of a put or a reduction in the price at which the interest can be put.
36. Call option right:
    - Ability to purchase the other co-venturer's interest at a price based on:
      - A fixed price.
      - Fair market value with no minority discount or majority premium.
      - Some discount from or premium to fair market value.
      - A formula price.
    - Specify date at which pricing is to be calculated.
    - Often given to a majority party to enable it to get rid of a minority partner no longer desired.
37. Right of first offer and right of first refusal:
    - A right of first offer (ROFO) generally refers to the right of a non-selling co-venturer to receive an offer from a selling party to sell all of the latter's interest in the JV and if such offer is not accepted by the non-selling co-venturer, the seller can offer for a specified period all of its JV interest for sale to a third party at a price equal to or better than that offered to the non-selling co-venturer.
    - A right of first refusal (ROFR) is a right of the non-selling party to require the selling co-venturer to sell its interest in the JV to the non-selling co-venturer under the terms of a third party offer that the selling co-venturer is otherwise prepared to accept.
    - A right of first offer is less favourable to the non-selling co-venturer than a right of first refusal because the pricing will be higher, the non-selling co-venturer will not have a third party offer to confirm value and the non-selling co-venturer will not be able to control who its new co-venturer is if it passes on the selling co-venturer's initial offer.
    - From a selling co-venturer's point of view, it is difficult to name an acceptable price in advance of being able to negotiate it with a third party and under a right of first refusal, the selling co-venturer will find it difficult to obtain a good price from a third party who knows its offer is subject to a right of first refusal, particularly as there may be substantial costs involved in doing the necessary due diligence to enable the pricing of a firm offer.
    - Need to consider these rights in the context of default exit/termination rights.

- These rights and the interplay of the various default and non-default rights can become very complicated. Note that if the third party offer is for anything other than all cash, it becomes very difficult to match. If the third party proposes non-cash consideration can the non-selling co-venturer "match" with cash? If so, how does valuation work? Who values?
- The non-selling co-venturer has a right to receive copies of all relevant agreements entered into between selling co-venturer and third party as soon as possible after they are entered into.
- Consider timing, both for period of time during which the right of first refusal can be accepted, and also the permitted sale period following the time when the non-selling co-venturer turned down the offer.
- Consider whether sale to third party should include drag-along or tag-along rights.
- Prohibit sales to third parties who are competitors?

38. Tag-along rights:
    - Right of a co-venturer, especially a minority co-venturer to tag along on any sale by the other co-venturer, or only on a sale of a control block which would result in the majority party ceasing to have control.
    - Another variant is a provision giving co-venturers the right to participate in any sale on a pro rata basis.
    - Tag-along rights raise a number of issues, but especially if a co-venturer is permitted to sell less than all of its interest.
    - Again, consider interplay of tag-along and drag-along rights with other exit/termination provisions, particularly if the minority co-venturer is in breach.
    - Request for tag-along often results in request for drag-along from other co-venturer.
39. Drag-along rights:
    - Right of a co-venturer, under certain circumstances, to require the other co-venturer to sell its shares into a third-party offer.
    - Minority investor will always resist this unless there is a tag-along right.
    - Consider precedence of various rights.
40. Buy-sell "shotgun" rights:
    - Each co-venturer has the right to offer to buy or sell the interest of the other co-venturer at a named price. Because the recipient of the offer can buy or sell, the theory is that the pricing at which the buy-sell will be issued is a fair price.
    - However, this is generally disadvantageous to any co-venturer in a weaker financial position if the enterprise value is large and also to a co-venturer (often the minority co-venturer) who may not be interested in being a buyer.

      In both of these cases, the co-venturer that wishes to sell may take the risk and issue the buy-sell offer at a lower price.
    - Becomes very complicated where it is not a 50-50 joint venture. Can be included where the co-venturers are in an equal ownership position and are matched financially as a way of providing a mechanism to break a deadlock or, depending on the facts, to provide an incentive to resolve disputes because the stakes are so high.
    - As these buy-sell rights are considered draconian, there is often a period of time at the outset of the JV when they may not be used.

Other Issues in Exit Rights

41. Treatment of JV debt:
    - Where co-venturers have financed the JV by debt or by guaranteeing debt, consider whether the purchasing party (co-venturer or third party) should be required to purchase the debt of the exiting co-venturer.
    - Issues may arise in context of non-pro rata debt, e.g., if one co-venturer failed to pay up on a capital call and the agreement provides that the other can put up the "defaulting" co-venturer's

share so under certain circumstances, it may be appropriate to provide that the third party or the buying co-venturer is not required to purchase the exiting co-venturer's debt.

42. Regulatory aspects of exit transactions:
    - All exit transactions must be subject to regulatory compliance conditions.
    - Timing issues may arise where regulatory approvals are required to complete an exit transaction.
    - To the extent there may be conditions on the sale imposed by the approval agency, cannot force acceptance but consider requiring third party buyer or buying co-venturer to act in commercially reasonable manner.
    - Consider impact of any known (at time of entering into agreement) regulatory approval requirements on each type of possible exit scenario.
43. Pricing and valuations:
    - Pricing can be based on:
        - A fixed price.
        - Fair market value with no minority discount.
        - Some discount from fair market value.
        - A formula price.
    - Consider the effect of any applicable termination of inter-corporate support and other agreements and licences on pricing.
    - Set out whether any valuation should take into account the effect of breaches and defaults by either co-venturer on the pricing.
44. Closing process:
    - Need to put into place clear closing process so that rights and obligations under agreement as regards sale of interest can be enforced.
    - Selling co-venturer's nominees on the JV management board should deliver resignations.
    - Third party or co-venturer buyer acting on selling co-venturer's behalf should have the right to apply the proceeds of the sale to pay down indebtedness of the selling co-venturer to the JV.
    - Make provision for guarantees given by the selling co-venturer.
    - The selling co-venturer should warrant good title free of all claims, encumbrances and security interests in relation to the JV interest being sold.
    - May need same representations from third party as from original co-venturer.
    - Need provision to deal with situation where selling co-venturer defaults.
45. Termination:
    - The JV agreement should specify under what circumstances the JV will be dissolved and whether the commencement of the process is automatic or at the option of one of the parties.
    - It is risky to provide for automatic dissolution in case some unintended situation arises where the parties would not want the dissolution to occur, particularly in the context of a contractually based JV.
    - Triggering events for termination often include insolvency of one of the co-venturers, material breach or default to covenants, failure to meet certain critical targets or other situations which result in the original purpose of the JV being frustrated.
    - Consider what post termination confidentiality covenants should be included (unless already included in separate stand-alone confidentiality agreement).

See also www.marketnewzealand.com/common/files/auerbach-jointventure.pdf for an example of an export joint venture checklist prepared for New Zealand Trade and Enterprise.

Appendix 2: Memorandum of Understanding

BINDING MEMORANDUM OF UNDERSTANDING dated 2010

PARTIES

[**Name of parties to the MOU**]

DESCRIPTION

1. [**Name of forest**] is subject to a Crown Forest License with a total area of [**number**] hectares.
2. [**Name of forest**] is divided in [**include details if forest is divided in blocks**].
3. [**Name of forest**] formed part of the Crown's settlement with [**name of party**] in [**year**] ([**number**] hectares).
4. Areas of the [**name of forest**] have been set aside for [**number**] claimant group(s). Settlement was reached with [**name of party**] in [**year**] ([**number**] hectares). Land is set aside for settlement with [**name of party**] ([**number**] hectares).
5. Provide details if further fragmentation is possible [**name of parties**].
6. The forest has been subject to a single forest management regime by a single licensee, [**name of licensee**].

AGREED THAT

FORMATION OF JOINT VENTURE

7. The Parties to this Agreement recognise that fragmented land ownership produces inefficiencies as it is difficult, time consuming and expensive for forestland owners to independently manage relatively small amounts of land for optimal benefit. The Parties wish to form a Joint Venture in order to maximise the value of the investment through management of their forestry interests in the [**name of forest**] Forest on behalf of the Parties. This will be achieved through scale economies together with improved coordination and management, giving higher returns as well as sustaining a local workforce.
8. The Parties will retain ownership of the land and will license a Joint Venture Company to become the occupier of the land for a proposed period of 35 years in return for an annual rent or dividend.
9. The key principles underpinning the structure of the Joint Venture are:
   a. The Parties agree to form a Limited Partnership.
   b. The Parties will be Limited Partners in the Limited Partnership.
   c. The Partnership Interest of any Limited Partner will reflect the value of the forestland contributed by each Party.
   d. A General Partner will manage the Limited Partners' forestry interests in the [**name of forest**] over a minimum of at least one forestry cycle of 35 years.
   e. If any Party to the Limited Partnership wishes to opt out then the venture may be dissolved.
   f. The Limited Partnership will expressly cater for the possibility of merging with other such entities over time.

PURPOSES

10. The Limited Partnership will undertake the following purposes:
   a) Representation of the Limited Partnership's commercial interest in the [**name of forest**].
   b) Forestry management including;
      i) Development of forest management plans for future rotations,

ii) Available land in [**name of forest**] for forest management purposes on fair and reasonable basis,
iii) Replanting, tendering, pruning, thinning and harvesting trees planted on resumed land areas,
iv) Fire Protection,
v) Marketing and Distribution of timber milled in the Forest.

c) Administration of existing Crown Forest Licenses, leases, forestry licenses and forestry rights including termination and any succeeding licensing arrangements including;
i) Management of rent reviews,
ii) Collection of rent and payment of expenses,
iii) Negotiating terms of renewal of licenses (if applicable),
iv) Negotiating and managing termination of licenses.

d) Land management including;
i) Wai tapu and other sites of cultural significance,
ii) Watercourses and waterways,
iii) Management of fencing, roading, drainage and other improvements to land,
iv) Pest control,
v) Public access arrangements.

e) Management of commercial relationships with neighbouring forest land owners and [**name of any other large forest owner interests**].
f) Management of compliance with Climate Change legislation in the best interests of the Parties.
g) Financial and risk management (including co-investment by institutional investors in future rotations.
h) Representation of local forestry interests in national policy making.
i) Other activities as agreed by the Parties from time to time.

INTENTION TO FORM WORKING PARTY

11. The Parties agree to form a Working Party to negotiate:

a) The Limited Partnership Agreement covering items that would normally be covered in a Company Constitution.
b) The licenses required to procure forestland.
c) The arrangements for the establishment of a General Partner responsible for the management of the Limited Partnership.

12. The Working Party will consist of one representative from each Party and an independent Chairperson. All decisions of the Working Party must be unanimous and subject to the Parties' Agreement. The Working Party will use best endeavours to report back to the Parties within six (6) months.

13. The Working Party will develop the business case to support the Purposes identified in this Memorandum of Understanding.

TERMS OF REFERENCE OF WORKING PARTY

14. **Name of Limited Partnership.** The Working Party will propose a name for consideration by the Parties.

15. **Limited Partnership Structure**. The Parties consent to be equal initial Limited Partners' in the Limited Partnership structured under the Limited Partnerships Act 2008 (Act). The Working Party will determine:

a) The principles upon which the Parties to the Limited Partnership intend to run the business, deal with unforeseen circumstances and contingencies, and therefore minimise the potential for disputes particularly given there will be no majority partner.
b) The matters to be covered in the written Limited Partnership Agreement as set out in Sections 9 and 10 of the Act including assignment of interests, entry and exit from the Limited Partnership, meetings, and entitlement to distributions. The requirements include:

i) The nature of any restriction on the ability to assign or otherwise dispose of a partnership interest.
ii) The nature of any restriction on the business activities that the Limited Partnership may undertake.
iii) The entitlement of Limited Partners to distributions.
iv) Whether a General Partner may compete with the Limited Partners and in what circumstances.
v) When a meeting of Limited Partners must be held, and the procedure for conducting such a meeting.
vi) Whether the financial statements must be audited.
vii) How a Limited Partner may leave the Limited Partnership, including whether a Limited Partner may be expelled, and how a new Limited Partner may be admitted.
viii) When and how the Limited Partnership terminates.
ix) Whether the Limited Partnership has a conflict of interest policy, and the nature of that policy.

c) The provisions relating to taxation of the Limited Partnership as set out in the Taxation (Limited Partnerships) Act.
d) The requirements for Registration of the Limited Partnership with the Registrar of Companies.
e) Any other regulatory approvals required to form the Limited Partnership.

16. **Partnership Interests**. An initial allocation of 20 Partnership Interests to each Party will be made once the Party has signed the Limited Partnership Agreement committing each Partner to contribute forestland.

17. The Working Party will determine the mechanism for determining the valuation of forestland committed to the Limited Partnership but it is anticipated that:

a) A valuation of the forestland committed by each Party to the Agreement will be undertaken on a consistent date. An "exchange rate" will be established for forestland based on the relative value (per hectare) of forestland committed by each Party.
b) The relative value will recognise the area and quality of forestland committed to the Limited Partnership by each Party.
c) The allocation of additional Partnership Interests will be based on the "exchange rate" multiplied by the hectares contributed (i.e. Partnership Interests are allocated as forestland is actually made available to the Limited Partnership). This recognises the value of the forestland that is contributed.

18. **Calls on Partnership Interests**. The Working Party will determine:

a) The Initial Capital contributions required to establish the Limited Partnership.
b) The consideration for which the initial allocation of Partnership Interests are issued.
c) The requirements for subsequent calls on Partnership Interests in relation to capital requirements of the Limited Partnership.

19. **Payments to Limited Partners.** The Parties recognise that income can flow through to the Parties via dividend payments or through rental payments net of management fees. The Parties agree that the principle of dividends better supports the longer term objective of the Limited Partnership to generate returns from Forestry investment rather than just leasing of forestland. The Working Party will consider the relative merits of both options and advise the Parties for their consideration including the following:

a) Whilst recognising that the Dividend policy is ultimately the responsibility of the Limited Partnership Directors, any requirements in the Limited Partnership Agreement regarding Dividend Policy at start up as a fixed proportion of income, and/or a minimum dividend agreement as well as frequency of payment.
b) Rental setting including mechanism to determine rentals, review periods and valuation principles.

20. **Evergreen License.** The Parties agree to the granting of 35 year right to occupy and use land for plantation forest and associated purposes. The Limited Partners have the right to give notice to terminate their land contribution with 35 years notice or on cut of trees (which ever comes first).The

licenses will be renewed annually unless notice is given. The procedure for removing land from forestry management is as follows:

a) The Party holding forestland gives notice to the Limited Partnership.
b) The Limited partnership gives notice to the occupier of the land.
c) The land is returned once the standing crop has been harvested or no later than 35 years, which ever happens first.
d) The terminating Party relinquishes its Partnership Interests to the Limited Partnership at fair value which is defined as the Limited Partners share of net assets.

21. The Working Party will determine:
    a) The circumstances and conditions precedent to giving notice of termination of land contribution.
    b) The conditions for surrender of Partnership Interests in such situation.
    c) The principles for trading Partnership interests based on a Co-operative model.
22. Any improvements transfer to the forestland owner without compensation.
23. The Working Party will determine the obligations of the Limited Partnership to replant land with specific reference to the implications of the Emissions Trading Scheme.
24. **Restrictions on Shareholdings.** The Limited Partnership will have the right to approve Partners' nominated transferee. The other Parties in the Limited Partnership will have the first right to purchase the Partnership Interests. The Working Party will determine provisions of the Limited Partnership Agreement to ensure pre-emptive rights do not apply if a change in ownership is simply to reflect a change in the Trustee holding the Partnership Interests in the Limited Partnership rather than a change in the underlying Trust holding the Partnership Interests.
25. **Takeover or merger**. It is expressly contemplated that the Limited Partnership may at a future time be merged with one or more other similar entities. The Working Party will determine the conditions to be included in the Limited Partnership Agreement to facilitate such a merger including:
    a) The "drag along rights" of majority Limited Partners' to force minority Limited Partners' to join in the sale of the Joint Venture Company on the same price, terms and conditions.
    b) The "tag along rights" if majority Limited Partners'' sell, then the minority Limited Partners' have the right to join the transactions on the same price, terms and conditions.
    c) Fair value provisions to ensure all Limited Partners' are treated equally.
26. **Termination of the Limited Partnership.** Termination provisions for the Limited Partnership will follow standard company procedures as follows:
    a) If five (5) percent or more of Limited Partners' demand a special meeting it must be held within 20 days.
    b) A special resolution to liquidate requires a 75 percent majority vote by Limited Partners' to be passed.
27. The Working Party will determine any special provisions such as any sunset clause to be included in the Limited Partnership Agreement to allow the Limited Partners to put the Limited Partnership into liquidation.
28. **General Partner**. A General Partner will be responsible for the management of the Limited Partnership. The Parties anticipate that the Limited Partnership may contract out the management and/or service provision of forestry operations to the General Partner or that the General Partner may be a shareholder in a commercial venture that manages the forestry operations. The Working Party will develop a business case for consideration by the Parties including the arrangements for:
    a) The performance of executive functions (full or part time as necessary).
    b) The development of a high level business model, business plans, budgets and operational plans including mechanism for Limited Partners' approval.
    c) The pre-requisite qualifications, skills and experience of those performing executive functions.
    d) The risks and their mitigations necessary to be built into the Limited Partnership Agreement.
    e) The governance, management and operational arrangements of the General Partner.

29. **Board of Directors of Limited Partnership**. Each Party will appoint one Limited Partner director and one alternative. An independent Chairperson will be appointed by the Board. No fees will be paid to Limited Partner directors. A fee will be paid to the independent chairperson. Expenses and set travelling allowances will be paid to all directors. The Working Party will determine:

a) The mechanism to be included in the Limited Partnership Agreement to determine fees and allowances.
b) The Powers of Directors.
c) The Proceedings of Board Meetings.
d) The procedures for appointment of Directors.

30. **Administration**. The Working Party will determine and include in the Limited Partnership Agreement details of:

a) The powers, functions and duties of the Company Secretary.
b) The procedures for Meetings of Limited Partners' including quorums, voting rights, proxies and business conducted at Annual General Meetings and Special Meetings.
c) The exercise of powers reserved to Limited Partners' by ordinary and special resolutions.
d) Appointment of Auditor.
e) Delegations of powers.
f) Reporting requirements to Limited Partners'.
g) Treatment of Intellectual Property transferred to the Limited Partnership or developed by the Limited Partnership (if any).

31. **Financial Policies**. The Working Party will determine the policies for inclusion in the Limited Partnership Agreement relating to shareholder approval of:

a) Limitation on indebtedness including key gearing ratios.
b) Risk and insurance.
c) Dividend Policy including the Powers of Directors to determine Dividends.

32. The Working Party will determine policies for inclusion in the Limited Partners' Agreement relating to:

a) Reporting requirements to Parties.
b) Disputes procedures including mediation, arbitration and termination of the Limited Partnership.

33. **Due Diligence**. The Working Party will undertake due diligence on the proposal to form a Limited Partnership as the vehicle to maximise the value of the Parties forestry investments and provide that advise to the Parties for their respective consideration.

34. **Confidentiality**. The work of the Working Party including the Business case, all analysis and advice provided to the Parties is confidential to the Parties and is not to be shared with any third parties without the express permission of all Parties.

35. **Other**. The Accumulated Rentals obtained in Treaty Settlements and future allocations of tradeable entitlements from the Emissions Trading Scheme such as New Zealand Units are the property of the Parties.