



Te Kaunihera Māori o Aotearoa
New Zealand Māori Council

Report on Crown Forestry Rental Trust Issues

29 October 2013

On Thursday, 24 October 2013, Hon Sir Bruce Robertson reported, in terms of a Court appointed inquiry, that Māori Council Co-chair, Sir Edward Taihākurei Durie, a trustee of the Crown Forestry Rental Trust, was not conflicted in relation to the Paparahi o te Raki Inquiry. This report provides the context in which that decision was made.

What is the Trust?

The Crown Forestry Rental Trust is a body established as a result of the Māori Council's action over the sale of Crown forest assets in 1989. The Council sought and obtained a trust fund to assist Māori groups to present their claims to forests. This is the Crown Forestry Rental Trust.

What is our role?

As part of the agreement, NZ Māori Council and the Federation of Māori Authorities appoint three of the six trustees to the Trust. The Federation was engaged because some member trusts and incorporations had claims to the forests. The joint body is called "the Māori Appointor".

In addition the Māori Appointor:

- appoints an alternate on each occasion that a Māori Appointor trustee is conflicted or is unable to sit;
- reviews the Trust's funding eligibility criteria;
- monitors its appointed trustees and may remove them from office.

What is the problem in relation to the Trust?

Two Māori Appointor trustees (now called "the applicants"), questioned whether trustees were following the Trust Deed. The remaining trustees (now called "the respondents") declined to discuss the issues. When asked, they also declined to mediate on them. They required instead that the applicant trustees take the issues to Court. The applicant trustees are Sir Edward and Maanu.

The applicant trustees did not take the issues to Court, but did seek Court directions on another process issue. On 8 February 2013 the Trust chair, who is a Crown appointee, received notice of a complaint from a lawyer that Sir Edward was conflicted in relation to the northern Paparahi o te Raki inquiry. She arranged for a staff investigation and in the evening before the Trust meeting on

12 February 2013, sent an email advising Sir Edward that he was conflicted and that she had arranged for an alternate to stand in his place the next morning.

The applicant trustees sought directions as to the proper process for managing conflicts. When they did so however, the respondent trustees replied that the Court should hear all of the issues on compliance with the Trust Deed. The Māori Council has argued that this will add considerably to legal costs and that all matters should be mediated.

What are the immediate issues?

1. Is Sir Edward in fact conflicted in Paparahi o te Raki? This is now resolved. On Thursday 24 October 2013, Hon Sir Bruce Robertson determined he is not. However, it has cost half a million dollars to reach this point, and the question for the Māori Council now is how to bring an end to ongoing legal spending. The Council continues to stress mediation.
2. Was a fair process followed, to determine a conflict, and if not, what is the fair process? Sir Bruce noted that the process was "wrong and set this matter off on a bad foot" but the ultimate decision is for the High Court. That issue has still to be determined. However lawyers for both sides, concerned with the growing cost, have agreed upon a fair process and have put that for the approval of both sides. The Māori Council considers this is sensible mediation in practice and supports the proposals which will end this part of the litigation. A reply is awaited from the respondent trustees.
3. Was the chair able to appoint an alternate? The Council says that the Trust Deed is clear and only the Māori Appointor can appoint an alternate. The Chair, who is a Crown Trustee, usurped the Māori Appointor function. However, if the respondent trustees agree to the proposal approved by the lawyers for both sides, the problem will be resolved.
4. Did the Māori Appointor fail to appoint an alternate and if so how can the position be cured? Prior to the meeting the Māori Council had nominated an alternate for Sir Edward in case there was a conflict in Paparahi o te Raki, but the FoMA chair did not respond until after the meeting had been held. There was a failure as a result although the Council had done all that could be done. The Māori Council has since held ongoing meetings with the FoMA chair but without an agreement. Council has therefore applied to the Court to appoint trustees and alternates and has sought to meet with the full FoMA Board. The Board has now agreed to meet with the Māori Council and the Council is looking forward to the prospect of a good working relationship with FoMA which will end the proceedings in relation to alternates.
5. What will now happen in Paparahi o te Raki? The Māori Appointor trustees, Durie and Paul, will continue to seek the speedy resolution of outstanding claims, and will propose to the Trustees that they attend in the North to consider any outstanding concerns with the people. They wish also to add to this report, that contrary to a view conveyed to the

people of the North, they have never opposed funding for the Paparahi o te Raki inquiry.

What are the additional issues on compliance with the Trust Deed?

1. Can staff bring claims for funding? This too has now been resolved. The answer is 'no'. The Māori Council has opposed the practice whereby funding requests are made by staff since the Deed requires that the trustees respond only to claims by Māori. The Council's concern is again, that trustees are instructing staff to act in ways that take the claims away from Māori. The applicant trustees were outvoted by the respondents when this issue arose but a subsequent legal opinion upheld the claimant trustees and the chair and the respondent trustees have now recanted from their previous position.
2. Can trustees manage resource centres? These are centres run by staff where claimants can gather and receive staff advice. The Māori Council contends that trustees **can fund Māori claimants** to run such centres, but the Trust Deed does not permit trustees to run them themselves. Their task is only to fund Māori. That position has also been upheld by subsequent legal advice and the chair and respondent trustees have again recanted.
3. Can staff assist Māori to make applications? Currently, staff assist applicants to the point of completing the applications for them and paying others to assist them. They then advise the Trustees on the applications. The Māori Council is conscious of rivalry for funding. Council considers staff may advise prospective applicants by reference to settled policy but must go no further. For trustees to be impartial, there can be no predetermination, personally or vicariously through staff, and therefore staff assistance must be constrained.
4. Who commissions claimant research? Presently the trustees decide the research required and commissions the research to be done. The Māori Council says this too removes the case from the claimants. Under the Deed, Māori manage their own cases and the trustees' task is only to fund eligible Māori groups to undertake such work. The Māori Council notes also that trustees must consult with the Māori Appointor on the criteria and that this has not been done.
5. Who is eligible for funding? Present practice is that only persons with registered claims may apply for the purposes of Tribunal inquires, and only large natural groups may apply in the case of negotiations. However, any person or group is eligible in terms of the deed provided they meet agreed criteria or standards. The Māori Council considers the criteria conflict with the Trust Deed and should be reviewed. In terms of the Deed this requires the active participation of the Māori Appointor.

Presently, Māori Council and FoMA have agreed to meet to consider a pathway forward.

Karen Waterreus
Secretary