



Te Kaunihera Māori o Aotearoa
New Zealand Māori Council

Second Report on Crown Forestry Rental Trust Issues

11 July 2014

The complaint

Council claims that CFRT has not been funding Māori claimants as the Trust Deed requires. CFRT funds what it considers Māori should have in terms of its funding categories and not what funding claimants legitimately prefer.

The Council objects to such paternalism and protests the limitation on Māori development capacity.

Background

The Trust was established to fund certain Māori Treaty claims following the Council's court action over Crown forest sales in 1989. The Crown and a "Māori Appointor" comprising the Council and the Federation of Māori Authorities (FoMA), were each to appoint three trustees.

Maanu Paul and Sir Edward Durie were made Maori trustees in 2011 and 2012 respectively. As Council co-chairs they knew of our district's views that the Trust was diminishing mana Māori. The previous domination of trustees with more skills in finance and business than customary group management was seen to be part of the cause.

Chronology

In December 2012 the Trustees sought to fund North Auckland hearings without an application from Māori. Sir Edward and Mr Paul considered this was contrary to the Deed and funding was postponed. Eventually the remaining trustees agreed, meetings with Māori were arranged, and as a result several groups were properly funded to manage the hearing of the claims in their districts.

In February 2013 the remaining CFRT Trustees, with Ms Foulkes as chair, held that Sir Edward could not sit further on North Auckland because of conflicts, refused him access to the papers to determine his conflicts and affirmed the chair's appointment of an alternate for him. In March the Council, Sir Edward and Mr Paul ("the applicants") applied to the High Court to review the decision and direct the appropriate steps forward. The remaining trustees ("the respondents"), opposed.

A Court appointed arbiter has since determined that Sir Edward is not in fact conflicted. Also, the applicant and respondent lawyers have since agreed that only the Māori Appointor can appoint an alternate for a Māori Trustee and that trustees cannot be refused access to sufficient information.

The respondent trustees also declined to discuss or mediate on other issues on the Trust's operations and its impact on Māori management. As a result the applicants had also to put these "wider issues" to the Court.

The issues on staff employment, delegations to staff and committees, claimant eligibility and funding criteria were argued before the High Court on 5 June. Those on conflicts, the chair's role, sponsorships and costs were heard on 3 July. Most are critical to how Māori are serviced by CFRT. A decision is awaited.

Also on 3 July, FoMA asked the Court to consider various Māori Appointor matters.

Māori Appointor Chronology.

Trustees are appointed for three years renewable. Alternates, the lawyers agree, are appointed as needed but may be drawn from an approved pool.

The Council nominated Hon John Tamihere as Sir Edward's alternate for the CFRT meeting in February 2013. The FoMA chair made no response. In the absence of a response, Ms Foulkes appointed another alternate instead. He was the former FoMA chair.

To avoid a repetition of such an outcome, Council representatives held several meetings with the FoMA chair but could not gain access to more than one other of the FoMA Executive. They also noted that the FoMA Chair had not disclosed the benefits she received from funding applications approved by CFRT trustees (or alternates), and would not produce the legal opinions which she said absolved her from any conflict.

In September 2013 the Māori Council and the FoMA chair agreed to mediate through Sir Harawira Gardiner. This led to a Māori Appointor structure of five representatives from each deciding by agreed criteria and principles.

In February 2014 the representatives appointed Mr Baker to replace Mr Haronga as a Māori trustee and appointed a pool of prospective alternates. Next day however, a 5:4 majority of the FoMA Executive revoked the decision at a teleconference called by the FoMA chair.

In April the Court (Williams J) determined that by its constitution only FoMA Executive could decide for FoMA. Council then sought to meet with the FoMA Executive but the FoMA chair declined. King Tuheitia then invited the parties to meet with his Council but this too, the FoMA chair declined.

Accordingly, Council sought a Court directed meeting with the FoMA Executive when the Court heard the matter on 3 July.

3 July Hearing on Māori Appointor

The Court (Kos J) noted that Mr Haronga's term had ended, declined FoMA's request for an extension and considered that CFRT could operate with five trustees.

The Court did not appoint four others proposed by FoMA but would consider directing a meeting of the Māori Council with FoMA Executive. The Court deferred FoMA's application to have its legal costs paid to await the outcome. In the Council's opinion conduct is relevant when determining costs.

While a written decision is pending Council continues to seek, in the beneficiaries' best interests, an early meeting by agreement.

Karen Waterreus
Secretary