



5 August 2014

Ki a FOMA, te Kaunihera Māori, me ēra ātu tāngata katoa

Tēnā koutou

### **Report on CFRT High Court judgment**

We are the current Māori Trustees on the Crown Forestry Rental Trust. This communication provides our summary of the issues and findings following the High Court judgment on 29 July of which many of you will already have had notice from Crown Trustees Wilson and Foulkes. Our focus is on the issues as raised by Māori with the Māori Council or with us direct.

#### **Te tiro whānui (overview)**

As advised in letters of 30 July, we consider the judgment provides a solid base on which the trustees can at last move forward as a united team. We are committed to that end. The trustees have a duty to work together, as one, and not as representatives for our constituencies or Appointors. There are passages in the judgment that support that position.

The judgment clarifies matters that have been in doubt. While the clarification necessitates changes to the Trust's practices and procedure, most changes reflect our views. The changes are considered below.

As a result of the judgment, the reform will be undertaken by a revised team. It has been found that Trustee Haronga has reached the maximum term for which he was appointed and Ms Foulkes' term as chair has expired. The Council and FOMA who jointly appoint the Māori Trustees and alternates must now consider the appointment of a replacement for Mr Haronga and Trustees will need to consider whether to appoint a chair (the position is optional in the Trust Deed).

In the event that FOMA and the Council are unable to agree on a replacement for Mr Haronga, the Court will appoint. We therefore urge the Council and FOMA to examine the blockages and commit to working as a team as well. We suggest that most needed is a person of proven leadership who can bring the trustees together in accordance with the Law of Trusts.

#### **Ngā nawe o te iwi (the people's issues)**

Our focus in reporting is on the issues raised with us by beneficiaries.

##### *'Rangatira ki te rangatira'*

Probably the main concern has been that applications are mediated through staff and Trustees do not get to know what the claimants really want. There has been a call for a 'chief to chief' relationship or a direct line between claimants and trustees.

The judgment shows the need for significant change. Previously, the Trustees saw only the staff assessment of what is sought or is able to be provided. The Trustees must now



see, in addition to the staff assessment, the claimants' application, business plan, and funding proposal. The Court has left it for the Trustees to decide if the claimants should be able to reply to the staff assessment. As we see it, the trustees will now be informed of the claimants' aspirations and the claimants can learn from the trustees themselves whether the Trustees can accommodate those aspirations and if so, on what terms. We see in this the basis for a chief to chief relationship.

*'Mā pango mā whero kua oti te mahi'.*

It is said 'the task is done when workers and chiefs combine' but some have asked, in respect of CFRT, how is the work divided, what are the staff's tasks and what are the tasks of the trustees. The Court has given a clear direction which again should change the way the Trust operates.

The Court has clarified that the Trustees set the policy and the staff implement it. The task for the staff calls for special skills but the task is not one which involves the exercise of a discretion. Matters of discretion are for the Trustees.

Most especially, the Trustees decide the particular applications. The staff role is not to influence that which is sought but to independently assess what is sought bearing in mind that the Trustees should be prepared to receive direct requests for an exception where this can be considered without unfairness to others.

In making an assessment the staff are guided by the criteria set by the Trustees but here again staff cannot pre-empt the discretion of the Trustees. As the Judge noted "I have found it legitimate for the trustees to adopt criteria provided that they are open to also considering exceptional cases that do not fall within those criteria."

We consider that relationships between staff and claimants will considerably improve to mutual advantage when staff become accustomed to these directions.

*Nā wai te mana o ngā kerēme?*

Another concern has arisen when researchers have been commissioned to work to the trustees rather than to those with the mana or the authority over the claim. The judgment explains that researchers may lawfully be commissioned by the trustees but there is room for consultation over the terms of engagement. Since that involves a discretion that again is a matter for the Trustees but the relationship between researchers and claimants may be addressed by Trustees through appropriate provisions in the funding proposals.

*Ngā hapū ngā rangapū, ngā rōpu ngā māpu, mē ēra ātu awheawhe.*

The judgment embraces another concern about inappropriate bundling for funding purposes. It notes the need for discretion on the part of trustees and the prospective need for applications for exceptional arrangements. It calls for strong emphasis on natural groupings and customary authority structures and calls on staff to work with groups to find common ground and accommodate different strategies.

It is not clear whether minority interests can also be the subject of an exceptional arrangement for funding purposes but leave has been granted to seek additional guidance from the Court.

*Registered claims and mandates*

Two other concerns have been expressed. The first is when the Trust deals with those who have registered the claim rather than the customary groups for whom the claim was brought. The second is when the Trust deals only with those with a Crown recognised



mandate for negotiations and not with those who challenge the propriety of that mandate or who still wish to be heard before the Tribunal. The Court has determined that the Trustees are entitled to impose conditions that claimants for funding must have a registered claim or that it will deal only with those with a Crown recognised mandate once such a mandate is obtained. This will disappoint some prospective claimants although it remains open for the trustees to consider appropriate variations of the current criteria.

### **Internal matters**

We briefly mention further matters which are critical for the trustees' operations but which may not be so important for those seeking funding assistance.

The Court has given clear directions on what constitutes and who determines a conflict. It is also clear now that trustees are entitled to full information where there is a potential conflict. There were also significant agreements between the parties on these issues and that only the Māori Appointor can appoint a Māori alternate.

It is established now that staff can be appointed notwithstanding that the Deed refers only to a secretary and that unless otherwise agreed by trustees, chairs retire from that office when their terms as trustee expire. There are useful observations that the role of the chair is probably limited to chairing meetings and to fixing meeting agendas unless further powers are conferred by the trustees.

### **In conclusion**

While these outcomes have been achieved only after lengthy court proceedings with considerable costs, at all times we have urged that the issues could and should be resolved by good faith discussions amongst the trustees.

Kia māia



Nā Maanu rāua ko Taihākurei  
(Maanu Paul and Sir Edward Durie)  
Māori Trustees