



HUI TAUMATA

Crown Forestry Rental Trust
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Crown Forestry Rental Trust and the Treaty Settlement Process: Realities for Maori Claimants

Introduction

The Crown Forestry Rental Trust (CFRT or the Trust) holds approximately \$395 million in trust, representing the accumulated rental proceeds from 400,000 hectares of Crown forest licensed land. These lands are the subject of hundreds of Waitangi Tribunal claims. When the disputed titles are finally resolved the assets the Trust protects will be returned to the confirmed owners. The Trust capital fund grows by approximately \$25 million each year.

Maori expectations of the Trust, and the settlement process generally, are high. Maori with claims to Crown forest licensed land increasingly look to the Trust to assist them in the prosecution of their claims. It is clear that many Maori are frustrated by the length of time it is taking to resolve the ownership of claims and frustrated with the process they must undertake to resolve those claims.

The settlement process is complex and demanding. It requires organisation, unity, and leadership. The Trust can only provide resources to assist groups; it is ultimately up to each tribe to settle its own claim with the Crown.

Purpose of CFRT

The main purpose of the Crown Forestry Rental Trust is the management and administration of interest earned from investment of rental proceeds from Crown forest licensed land. It uses this interest to assist eligible Maori claimants in the preparation, presentation and negotiation of claims involving Crown forest licensed land before the Waitangi Tribunal and Office of Treaty Settlements.

The Trust has been supporting claimants since it was established in 1990. We would like to see our work done, that is, the ownership of all Crown forest land resolved by 2015.

The Trust is not responsible for settlement outcomes, and yet the Trust's performance is judged by the New Zealand public on the number of claims settled which involve Crown forest licensed land. This is its conundrum. It relies on claimants and the Crown to reach agreement – the Trust cannot do that.

This is because the Trust does not have the power to negotiate or settle Treaty claims. Nor is it a Government agency. It is an independent organisation that has a responsibility to provide eligible Maori groups with financial and technical support so they can settle their claims with the Crown themselves. It is claimants and the Crown who must ultimately settle claims. The Trust provides appropriate resources to eligible Maori claimant groups and holds claimants accountable for what is achieved with those resources.

Many groups perceive the CFRT to be an organisation with limitless resources to assist Maori claimants. This is not right. While CFRT does hold this amount in trust, it has no authority to use this money. It has the responsibility to hold this capital in trust and can only be released once the beneficiaries are confirmed. It cannot use the capital.

In reality the CFRT has an annual budget of approximately \$20 million to assist Maori with claims to Crown forest licensed land. These funds must be used wisely if it is to assist eligible groups make material progress through the settlement process.

Settlement Process

The Treaty settlement process is based around the notion of comprehensive settlements. The Crown (via the Office of Treaty Settlements) seeks to settle the claims of large natural groups. The Waitangi Tribunal process hears claims on a district wide basis.

The Trust Deed specifies that we work to progress those claims that involve or could involve Crown forest licensed lands. However, no provision currently exists within the settlement process for the negotiation of forestry specific claims. The Trust has over the years played a considerable part in paying for the research and claimant settlement costs required to progress the settlement of historical land claims. It is through comprehensive Treaty settlements that the ownership of Crown Forest Licensed land and accumulated rentals can be finally resolved.

While the CFRT can supply eligible and organised claimant groups with resources to prepare for and undertake the process, claimants are dependent upon the preparedness and resources of the Waitangi Tribunal and Office of Treaty Settlements. These agencies have limited capacity and resources so they organise their work programme to make best use of the resources they have at their command to enable settlement progress.

The Trust recognises the resource constraints of the Waitangi Tribunal, and the Office of Treaty Settlements. We consequently align our work priorities with their respective work programmes. Our success is contingent on the ability of both these agencies and the ability of Maori claimants to perform their part of the process.

Funding applications must be realistic, achievable, and reflect an understanding of the requirements of the Treaty settlement process. The Trust needs to be satisfied the proposal will result in real steps towards the return of Crown forest licensed land. Effective organisation with strategic leadership and management ability are prerequisites for claimant groups navigating through the complex settlement process.

Over the years the CFRT has developed policies, funding criteria and assessment procedures that provide assistance to eligible claimants that also provide for robust accountability measures for any funds expended. A comprehensive policy and process manual completed in 2004 established the new compliance and monitoring function within the CFRT. This was supplemented by a series of information sheets on the eligibility criteria and how claimants can apply for funding assistance.

The three key areas that the CFRT measures a claimant group's eligibility for receiving funds are

- a) A governance board which provides the vision, leadership and direction for a settlement programme.
- b) A management structure that is arranged in a way that can provide the services and activities of the settlement programme.
- c) Financial management and systems that are transparent and account for funds that are allocated to the governance body.

The Trust does not have a preferred governance structure. It is up to the claimant group to construct a governance body that has all the desired attributes of an inclusive and transparent decision-making body. Generally the Trust finds the governance entities claimant groups most frequently use are committees-in-common, incorporated societies, trusts or companies.

By requiring claimants to have good governance structures in place before the Trust provides funding, claimants are in a very good position to manage assets released to them after settlement.

Tribal Authority and Settlement Policy

As more Maori groups become involved with the direct negotiations process, many find that Crown expectations of how the settlement process should proceed do not necessarily match their own.

Debates over the appropriate level at which to settle Treaty claims (iw or hapu) continue unabated despite the Crown being very clear that it will not negotiate with hapu. The level at which the Crown wishes to settle Treaty claims may not always accord with the Maori definition of tribal organisation, or there may be disputes as to who has the authority to represent the group in negotiations. This usually manifests itself in protracted mandate disputes before the Waitangi Tribunal and Parliamentary Select Committees.

These are questions of tribal authority and representation that the CFRT cannot and should not be involved in. However, they remain a major issue confronting all groups seeking to interact with the Crown and in progressing tribal affairs generally.

Politics and Economics

The settlement of Treaty claims is a political process, where tribes must engage with the Government to negotiate the return of property or compensation for historical breaches of the principles of the Treaty of Waitangi.

While the settlement process is political in nature, its ultimate outcome is an economic package. The skills needed to negotiate a settlement to Treaty Claims are largely political while the skills needed to manage those assets once they have been returned are commercial or economic in nature. The two skill sets are not necessarily compatible.

While Treaty settlements can make a contribution to Maori economic development, they should be viewed in their proper context. Treaty settlements, including those involving the return of Crown licensed forest land, will not restore everything that a tribe has lost and will not be the solution to long-term Maori economic security. That kind of romantic and naïve thinking ignores the cold economic realities.

Treaty settlements should be viewed as seed funding for future tribal development. The future success or otherwise of that tribe will depend on the skill and expertise it can bring to bear to protect the asset for future development.

Value of Treaty Settlements: Maori Expectations and Reality

A number of groups view Crown forest licensed land, and the capital it generates, as theirs as of right. Some groups believe that they must prove that they have been prejudiced by the Crown in order to have assets returned. The Trust must maintain objectivity in this regard. The Treaty settlement process is the CFRT's business environment and all assistance the Trust provides must be directed towards seeking the return of Crown forest licensed land within the current settlement policy framework.

The Trust Deed is clear that until claims involving Crown forest licensed land are settled, claimants are potential beneficiaries only. The Crown is also a potential beneficiary of the Trust. Until a determination is made in either party's favour neither the Crown nor Maori have any claim over the accumulated forest rentals or any interest generated thereof. Trustees are given full discretion as to how the interest income is to be applied in assisting Maori claimants.

This is a reality that Maori must face. The settlement process is not a Maori process. It is guided by rules and policies that require compliance if progress is to be made. Tribes considering undertaking the settlement process should consider this before deciding whether to participate.

The most important decision a tribe can make is whether it even wants to participate in the Treaty settlement process or whether it should devote its energies elsewhere. Should a tribe decide to undertake Treaty settlement, then it needs to accept that the process has limitations.

Every tribe views their historical grievance as being the most serious breach of the Treaty imaginable. Every tribe believes their Treaty settlement is of a magnitude comparable to the Ngai Tahu or Tainui settlements. Maori expectation concerning the value of Treaty settlements is high due to the scale of what has been lost. Unfortunately, the Crown does not provide full compensation for tribal losses.

Forest land claimants' expectations have the potential to be further influenced by the accumulated capital held by the Trust. The Trust fund of \$400 million, combined with Maori expectations as to the value of their Treaty claim, can serve to inflate Maori expectations as to the value of their Treaty claim.

It is important for Maori to understand that the accumulated rentals held by the CFRT do not give an accurate reflection of the settlement value of any particular group's historic claim.¹ The Crown is very clear that Treaty claims are valued against the severity of the Treaty breach and not what assets are available for settlement within any particular district.

The accumulated rentals held by the Trust can serve to skew perceptions of the value of forest claims, when this value is actually influenced by Crown settlement policy and existing precedent.² It is important for Maori to understand that the accumulated rentals held by the CFRT are a commercial rental, and not a Treaty claim value.

The ultimate financial 'value' of a particular group's claim is a matter for negotiation between itself and the Crown. The negotiations themselves are a fine balance between the interests of the two parties. The Crown balances its interests in terms of preceding settlement packages and the acceptability of the proposed package not only to the claimants but also to the general public. The mandated body representing the iwi is naturally looking to maximise the value of their settlement package.

¹ The Crown generally categorises Crown actions into three broad headings of Raupatu (Confiscation), Pre-1865 Alienations (Old Land Claims), and Post-1865 Alienations (Native Land Court). In general these categories reflect the main themes of Crown action that led to Maori land alienation during the 19th century.

² See *Healing the Past, Building a Future*.

In reality, many Treaty settlement quanta are likely to be smaller than many tribes expect, yet each will require separate governance entities to receive and manage them. Maori may wish to consider collective arrangements for managing settlement assets. While the dictates of tribal mana will undoubtedly demand each iwi maintain its own separate administrative organisation, the economic reality may force neighbouring iwi, particularly those receiving smaller settlements, to explore more cooperative approaches to managing their economic affairs.

Conclusion

With effective Maori organisation and ability, supported by Trust resources, and Crown willingness and engagement, Maori and the Crown can truncate the lifespan of the Trust. This will enable the full economic utility of the accumulated forestry rentals to be released for the benefit of the rightful owners of these assets.

The sooner the ownership of these assets is resolved the sooner the owners can take control of their economic destiny. It will take hard work, commitment, vision and strong leadership not just by the claimant groups but also the Trust, agencies of the Crown and government Ministers alike.



CROWN FORESTRY RENTAL TRUST

What is the Crown Forestry Rental Trust?

The Crown Forestry Rental Trust (the Trust) is an independent organisation with equal numbers of Maori and Crown appointed Trustees.

The main purpose of Trust is the management and administration of interest earned from investment of rental proceeds from Crown forest licensed land. It uses this interest to assist eligible Maori claimants in the preparation, presentation and negotiation of claims involving Crown forest licensed land before the Waitangi Tribunal and Office of Treaty Settlements.

The Trust is not directly involved in negotiating or settling claims. That is the responsibility of Maori claimant groups and the Crown through direct negotiations.

The Trust provides funding and support to eligible claimant groups by:

- providing advice on matters concerned with the Waitangi Tribunal inquiry processes, or the direct negotiation processes managed by the Office of Treaty Settlements;
- funding specific settlement-related activities necessary for these processes; and
- planning and funding any research that is required to support the claimant's case.

Why was the Crown Forestry Rental Trust Established?

In 1988, the Government announced the sale of the 90 State-owned forests. However, the ownership of much of the land under the forests was under dispute. This led the New Zealand Maori Council and the Federation of Maori Authorities, on behalf of all Maori, to take legal action against the Government to stop the sales.

The Court ruled that the Crown and Maori should negotiate a solution. The two parties soon reached an agreement on a process where the Government could sell the trees, but not the land. The land was to be set-aside in a trust to protect Maori claims relating to that land. This became known as the 1989 Forestry Agreement.

The Forestry Agreement was formalised through the Crown Forest Assets Act 1989. This Act allowed the Crown to sell licences for forestry, but prevented it from selling the land itself until the Waitangi Tribunal recommended who has ownership of the land – Maori or the Crown. On 30 April 1990, Maori and Crown representatives signed a Trust Deed³ to establish the Crown Forestry Rental Trust. Thus the Trust was established as an independent agency to support claimant groups seeking to prove their ownership of Crown forest licensed land.

Progress to date

In the early years, the Trust funded groups with claims to specific Crown forest licensed lands. Research and mapping assistance was directed as far as practical towards Crown forest licensed land only and claimant support was based around specific forests.

³ The Trust Deed states that the Trust will:

- Receive the rental proceeds from the Crown forest land upon which Crown Forest Assets are located; and
- Make the interest, earned from investment of those rental proceeds, available to assist Maori in the preparation, presentation and negotiation of claims before the Waitangi Tribunal which involve, or could involve, certain Crown Forest Land.

Since 1989, the Government has undertaken periodic reviews on the way that it addressed the Treaty settlement process. One of the key changes was the establishment of the Office of Treaty Settlements. Following the establishment of this special-purpose agency, the Government introduced a comprehensive Treaty settlement framework in 1995, as it wanted all Treaty breaches to be heard and dealt with in one overarching settlement package. This shift in Government policy caused the Waitangi Tribunal to reorganise its work programme towards a more comprehensive approach to hearing claims. Inevitably this resulted in a broader scope of matters heard within inquiries and therefore the scope of research required to support alleged Treaty breaches and their subsequent effects to the claimants.

Out of the 90 forest lands initially under dispute, the ownership of some 54 Crown forest land remain to be resolved. A number of claimant groups are currently in direct negotiations with the Crown and the Trust anticipates that the ownership of several Crown forest licensed lands will be determined over the next year or so.

The change to comprehensive settlements has impacted greatly on the claimant funding and research demands of the Trust. It is now very rare for the Trust to fund research specifically focused on Crown forest licensed land alone. Indeed it would be very difficult to distinguish and separate research and claimant funding for Crown forest land alone to the more comprehensive research and claimant funding requests that it receives.

The Crown generally categorises claims into three broad headings of Pre-1865 Alienations, Raupatu (Confiscation), and Post-1865 Alienations.

Each of these categories also contains different issues that often require detailed research and may or may not involve Crown forest licensed land. There may also be additional or ancillary claims that fall out of the main land claim that can also become key planks of a comprehensive inquiry or negotiation.

This can include matters such as environmental and social impact reports. While these issues are not necessarily about land, they often form a core part of a claimant group's comprehensive claim and require detailed historical research. The funding of the Tongariro power scheme research proposal is an example of the Trust funding a comprehensive claim rather than a specific claim involving Crown forest licensed land.

In practice, the Trust considers and approves requests from claimants regarding comprehensive hearings or negotiations. The only principle criteria for funding support from the Trust are that the claimant has Crown forest licensed land within its claim or Waitangi Tribunal hearing district.

How the Trust is funded

Under the Deed, the Trust receives rental proceeds (in the form of annual rental fees) from forestry companies using the land upon which Crown forestry assets are located. The rentals levied are based on the "best use" value of the licensed land. Land Information New Zealand is responsible for setting the fees and the collection of rentals in terms of section 29 of the Crown Forest Assets Act. It reviews the rentals every three years.

The Trust invests the rental proceeds in accordance with the Trust Deed. It requires that the rentals be invested in either New Zealand Government-issued securities or in short-term interest-bearing deposit accounts with registered banks.

The interest earned on the accumulated annual rental fees is applied to assist any claimant in the preparation, presentation and negotiation of claims before the Waitangi Tribunal, or in direct negotiations with OTS which involve or could involve licensed Crown forest land and against the administration expenses of the Trust. The Trust holds these rentals in trust until the Crown and claimant negotiators have determined and agreed on the final ownership of the land. The relevant rental proceeds are distributed to the beneficiaries when the settlement is enacted.

Research Assistance and Mapping Services

Groups entering into direct negotiations with the Crown or wishing to have their claim heard by the Waitangi Tribunal, are required to provide evidence to support their claim. In effect this means that claimants are required to arrange evidential research reports prepared by professional historians (and other specialists), which will be heard together with tangata whenua evidence and legal submissions from claimant lawyers in support of the claim.

Research for any district will fall under one of three board categories:

Claimant perspective evidence.

This kind of evidence (often referred to as oral and traditional evidence) is undertaken by claimant-appointed researchers. Evidence of this type informs the Tribunal and the Crown of how a group established interests in a particular area and how these have been maintained to the present day. This evidence complements rather than replaces written evidence.

Land alienation - relationship reports

Most historical claims against the Crown have as a primary focus the loss of ancestral lands. Often, however, it is impossible to separate the issues of land alienation from broader questions concerning the group's relationship with the Crown. All too often, what the Crown considered as merely a real estate transaction was viewed from the Maori perspective as a significant step in building a relationship of mutual benefit and reciprocity.

Different categories of land alienation that might be researched within the context of these broader questions include: old land claims, early Crown purchases, raupatu, land taken for public works, land taken for non-payment of survey liens and rates, Native Land Court transactions, land development schemes and so on.

Social, economic and environmental impact reports

For a claim to be successful, it is necessary to prove not only that the Crown committed a breach but also that it had harmful consequences for the claimant group concerned. These reports explore issues such as health, housing, education, employment, environmental degradation, and consider the links between land alienation and consequent socio-economic marginalisation.

Mapping services

Maps assist with the presentation of quite complex information about a claim and the claimant group. Thus maps provide spatial and temporal depiction of raupatu areas, Crown and private land purchases, land development activities and historic land block ownership. Maps also illustrate the role of the claimant group, wahi tapu, land that remains in local ownership, and so on.

Working with claimant groups

The Trust employs 30 staff with expertise in relationship management, mapping and historical research management, and project and contract management. The Trust is primarily based in Wellington with small offices located in Rotorua and Whangarei.

The Trust does not have the staff to work with all claimant groups in 2005/06 and for this reason has established priorities based on the anticipated work programme of the Waitangi Tribunal and Office of Treaty Settlements and the Trust's own assessment of the readiness of claimants in engaging in the process.

The Trust provides assistance in four key areas.

1. Relationship Managers provide up to date *information to claimants* on the settlement process, the key requirements of both the Waitangi Tribunal and the Office of Treaty Settlements.
2. They *broker relationships* between the claimants and the Crown.
3. They provide advice on the requirements of the Trust to access *funding*. They also provide the interface between the Trust and its clients ensuring that the Trustees are informed with 'on the ground' intelligence.
4. The final and key area that the Trust provides assistance with is *research facilitation and funding*. The Trust works with claimants, claimants' counsel and Waitangi Tribunal or Office of Treaty Settlement staff to agree on a programme of research that best reflects claimant needs and is robust under scrutiny.

Further information about the Trust can be found on www.cftr.org.nz