

Crown Forestry Rental Trust

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INTRODUCTION

The Trust was set up under the Crown Forest Assets Act 1989 after the New Zealand Māori Council and Federation of Māori Authorities took court action to protect Māori interests in the Crown's commercial forests. The Act allowed the Crown to sell licenses for forestry, but prevented it selling the land itself until the beneficial owners of the land had been determined.

On 30 April 1990, Māori and Crown representatives signed a Trust Deed to establish the Crown Forestry Rental Trust, establishing the Trust as an independent agency (with equal numbers of Māori and Crown appointed Trustees) to support claimant groups prepare, present and negotiate claims that involve Crown Forest Licensed Land.

The Trust is not directly involved in negotiating or settling claims, that is the responsibility of Māori claimant groups and the Crown.

The Trust funds and supports eligible claimant groups by:

- Providing advice on matters concerned with Waitangi Tribunal inquiry processes, or the direct negotiation processes managed by the Office of Treaty Settlements.
- Funding settlement-related activities necessary for settlement negotiations with the Crown.
- Planning and funding research required to support the claimant's case.

The Government prefers that any negotiation with a claimant group covers all that group's historical claims against the Crown. Therefore, comprehensive claims often include issues that are not related specifically to land only.

Under current policy the Crown will not settle forest land claims separately from general land claims. Therefore the Trust considers and approves requests from claimants for comprehensive hearings or negotiations which include Crown forest licensed land.

HOW THE TRUST IS FUNDED

Land Information New Zealand transfers the annual rental fees it receives from forestry companies using the land on which Crown forestry assets are located. It holds these rentals in trust until the Crown and claimant negotiators have determined and agreed on the final ownership of the land, then delivers the relevant rental proceeds to the claimants' post-settlement governance entity once settlement is enacted.

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

Currently the Trust holds over \$570 million in trust. The interest earned on the accumulated annual rental fees is applied to assist any claimant to prepare, present and negotiate claims which involve or could involve licensed Crown forest land before the Waitangi Tribunal. Funding assistance is also provided to those mandated claimant bodies with interests in Crown forest licensed land that are in direct negotiations with the Office of Treaty Settlements. Administrative expenses of the Trust are supported by interest income generated from forest rentals proceeds.

FUNDING FROM CROWN FORESTRY RENTAL TRUST

The Trust has established criteria for claimants to be recognised as approved clients. These are set out in the Trust's *Claimant Assistance and Research Services* booklet available from the Trust offices or the Trust website www.cfrrt.org.nz. Claimants must meet these criteria before they can be considered for funding assistance for either the Waitangi Tribunal process or engaging with the Office of Treaty Settlements in settlement negotiations.

To be eligible for Trust funding an applicant must:

- (1) be Māori, and
- (2) have registered a claim with the Waitangi Tribunal or propose to register a claim which involves, or could involve, Crown forest licensed land.

In respect to Trust funding assistance to engage in negotiations and conclude a settlement, claimants must meet the following four requirements:

- grouped: the applicant group must be recognised by Office of Treaty Settlements as a large natural grouping (LNG)
- mandated and engaged: the claimant group's representative body must possess a Crown-recognised mandate to negotiate on behalf of the claimants or Office of Treaty Settlements has agreed to the claimant group's mandating plan
- capable: the applicant group must have the ability to manage the work and funds that will be required to get through settlement negotiations.

These requirements are set out in more detail in *Claimant Assistance and Research Services*.

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The applicant group is required to prepare a business plan setting out the intended work and a detailed budget. For claimants seeking Trust funding to prepare for Tribunal hearings or settlement negotiations, the Trust requires a sound, robust business case focused on progressing the settlement process to the next stage, and setting out eligible activities and costs for which the applicant is seeking funding.

Trustees have an approved range of activities the Trust is prepared to fund. Maximum costs are set for each activity; the lower range may apply to smaller groups with less complex needs.

The Trust will assess the entire plan to determine fair and reasonable costs required to support the work, and actual costs will be compared against previous claimant expenditure on these activities. While Trustees may occasionally approve costs above the maximum benchmark any such approval does not automatically set a new cost precedent for an activity.

The Trust may, at its discretion, consider other specific activities if the claimant group can demonstrate how an activity contributes to the achievement of its business plan. Such activities must still be within the Trust's agreed cost range.

Funding levels and eligible activities are at Trustee discretion and may change over time so it is essential that claimant groups talk with the Trust's relationship managers early in the business plan development.

The Trust estimates that it contributes between \$1.6 million and \$3.2 million to a claimant group's cost of settlement negotiations – from seeking a Deed of Mandate to ratification of the Deed of Settlement and post-settlement governance entity.

The Trust can fund claimant groups to support them through all phases of settlement negotiations. A broad range of costs and activities Trustees will consider funding are summarised below.

Early stages of claims preparation

Claimants who can be considered for assistance towards preparation for settlement negotiations may currently be:

- between the Waitangi Tribunal and Office of Treaty Settlements processes
- lower down the Waitangi Tribunal/Office of Treaty Settlements priority list, or
- in the early stages of claim preparation.

The Trust is able to provide limited funding to groups for early preparation work where the Trust considers that early funding will prepare the claimant group for later Waitangi Tribunal hearings or settlement negotiations.

The Trust will consider requests for initial research planning, internal communications and seminars explaining Waitangi Tribunal hearings and negotiation processes. These activities tend to be short and have a benefit beyond a specific group. The Trust may contract some directly, eg delivery of information on the claims settlement process, but assistance for example for claimant communication is more suited to a direct claimant group contract.

In some cases the Trust may provide funding for a project manager to coordinate these activities.

Deed of Mandate

The Trust will consider supporting a claimant group through to completing its Deed of Mandate once its mandating plan is formally recognised by the Office of Treaty Settlements. A Deed of Mandate will typically take six months of intensive activity before it is endorsed by the claimant group and submitted to the Minister in Charge of Treaty of Waitangi Negotiations for Crown recognition.

Commonly funded mandating activities are: communications costs (panui and hui advertisements), holding hui, establishing a beneficiary register, contributions to the chair and members of the governance board supporting the mandated body through the Deed of Mandate, funding individuals seeking the claimant group's mandate to negotiate their claim, project management (managing the process), and office support.

Terms of Negotiation

Terms of Negotiation should be relatively straightforward and take a few months. However, for a variety of reasons the Trust has found this takes a year or more to achieve.

Activities funded under this phase of negotiations are: the mandated body's negotiating team, project management, office support, hui and communications costs. Some specialist costs may also be considered, such as advice towards strategic negotiations and planning, and historical research.

Agreement-in-Principle

This is the start of negotiations proper with the Crown. Reaching Agreement-in-Principle (AiP) may take over

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twelve months and involve a considerable number of negotiation meetings requiring specialist advice and hui. Consequently the major and intensive work and activities the Trust funds are: support for the negotiations team, specialist advice for activities such as commercial business, property, land and forestry valuations, commercial and financial expertise, strategy planning, and historians.

Additional costs include: project management, office support, communications, and travel.

Deed of Settlement

A number of iterations of a draft Deed of Settlement may be prepared before the Crown and the mandated body can agree on the initialled Deed of Settlement to be presented to the claimant group for ratification. At this point (or earlier in the settlement process) the mandated body will have considered and developed the governance entity that will receive the settlement assets.

Activities funded by the Trust under this phase include the constitutional and structural arrangements of the post-settlement governance entity. This will involve specialist constitutional legal advice. In addition there are the costs of negotiations, specialist legal advice for drawing up the Deed of Settlement, additional advice on asset valuations, and advice on economic aspects of the settlement and tax structures.

Additional costs include: project management, office support, communications, and travel required up to the initialling of the Deed of Settlement.

Ratification

Both the initialled Deed of Settlement and the post settlement governance entity must be ratified by the

wider claimant group. The process involves an intensive consultation period, usually over several months, which follows and culminates in the claimant group ratifying, by postal ballot, the settlement package and the entity that will receive the assets following enactment of the settlement.

Activities funded at this time include: publications summarising the settlement package and structure of the post settlement governance entity, hui advertisements and hui, voting process and voting scrutineers, updating the registration database if required, and time and travel costs for members of the mandated body who negotiated the deal.

Additional costs include: project management, office support, communications, and travel required for the ratification process.

Implementation

All historical settlements are implemented by legislation. It can take two years before the settlement package can be transferred to the recognised post-settlement governance entity. The claimant group should monitor progress of the legislation and participate in the select committee process. In addition there are tasks the settlement entity must do to receive the assets.

Under the Trust's funding policy, ratification of the Deed of Settlement ends funding to the claimant group. This is because the Trust views the ratification of a Deed of Settlement as the point where ownership of Crown forest licensed lands has been resolved.

FURTHER READING

Crown Forestry Rental Trust. *Claimant Assistance and Research Services*, Wellington 2006

Crown Forestry Rental Trust. *Business Plan 1 April 2007–31 March 2008*, Wellington 2007

Crown Forestry Rental Trust. *Report to Appointors 2006–2007*, Wellington 2007

