



ISSUES . 2



PHOTOGRAPH COURTESY OF TE URI O HAU SETTLEMENT TRUST

Minister of Treaty Negotiations, Hon. Margaret Wilson, and Sir Graham Latimer, Te Uri o Hau negotiator, sign the Deed of Settlement on 13 December 2002.

PRUDENT TRUSTEESHIP

One of the main issues that the Trustees considered was the effect of contingent liability on the way in which the Trust conducted its business.

After carefully considering advice on this matter the Trustees resolved to continue with business as usual, but move cautiously because of the unresolved tax issues.

To this end the Trustees delivered prudent leadership by:

- not allowing the potential negative retained earning to get any higher;
- budgeting for the current taxation commitment on the assumption that the Trust may lose its appeal (est \$7 million);
- taking legal advice that resolved that they were not in possible breach of the Trust Deed;
- instigating a planned programme to correct the potential negative retained earnings over an acceptable time period; and
- looking to create a positive situation in terms of the retained rentals and assets readily convertible into cash.

Trustees are continuing to maintain a watchful brief on this issue.

DISPUTE ABOUT TAX NEARS ITS CONCLUSION

The Trust is continuing to seek a resolution of its dispute with the Inland Revenue Department (IRD) regarding the Trust's tax status.

To recap on some of the background:

- In 1996 the IRD altered its position on the Trust's status and reassessed the Trust's tax returns over a number of previous years. Although the IRD is entitled to change its view of a taxpayer's status, this left the Trust with a very large tax liability. This is having a significant effect on the Trust's capacity to assist Waitangi Tribunal claimants.
- The Trust went to the Government of the day for help, and was encouraged to refer the dispute to the Courts, which it has done.
- The Trust's income is derived through investment of the rentals paid under Crown forest licences. The interest earned is used to assist Treaty claimants whose claims involve, or could involve, licensed land. The Trust has received a legal opinion that it meets the legal test for charities (and therefore qualifies for a tax exemption) because its income is derived "exclusively for charitable purposes".
- Both the High Court and the Court of Appeal agreed that the Trust's primary purpose of assisting Maori claimants is charitable. In the end, though, those Courts found against the Trust, for different reasons. The Court of Appeal focused on a provision in the Trust's deed that directs any income unused at the end of the Trust's life to be transferred to the Crown. The Court ruled that this provision gives the Trust a secondary purpose, of paying any surplus income to the Crown, and that this purpose is not charitable. As a result, the Court held that the Trust's income is not derived "exclusively for charitable purposes".
- Because the Court's decision is having a significant impact on the Trust's ability to assist claimants, the Trustees resolved, on advice, to appeal to the Privy Council.
- Over the last 12 months the Trust has been preparing for its Privy Council case, which is due to take place in November of this year.

In the meantime, the Trustees have continued to work towards a political resolution. The Trust's preference has always been to use political processes to settle on appropriate tax treatment for the Trust, rather than having to resort to the Courts.

The Court's decision leaves the Trust with a significant tax liability. The Trust has made provision in its budget to meet back-payments of tax, and has made voluntary payments of over \$25 million to limit the amount owed. If the Trust is successful in attaining tax-exempt status it will be reimbursed for those payments.

Maori Affairs Select Committee

In April 2001, the Maori Affairs Select Committee decided to inquire into the operations and performance of the Crown Forestry Rental Trust.

This decision came at a time when the Committee was scrutinising various Treaty settlement agencies, such as the Waitangi Tribunal and the Office of Treaty Settlements.

The central issues to be considered by the inquiry was an assessment of whether the Trust was fulfilling its purpose and what impediments existed to prevent the final determination of the ownership of the Crown forestry assets.

The terms of reference highlighted a lack of understanding as to the role of the CFRT in the settlement process and CFRT saw this inquiry as an opportunity to correct this misconception.

Furthermore, the Trust saw the inquiry as a vital opportunity to explain systemic process and policy failures within the entire settlement process. It is these process and policy decisions which have stymied attempts to have forestry assets returned quickly. None of these decisions are controlled by the Crown Forestry Rental Trust.

The inquiry travelled the length of the country and received approximately 100 submissions. The Trust was heartened by the number of inquiry submissions that were strongly supportive of the Trust and the role it plays.

On 11 June, the Trust provided a comprehensive response, which addressed all the issues raised in the submissions received by the Committee. Trustees and Trust management hoped to talk to this submission at the final hearing to stress that CFRT welcomed the inquiry as an important opportunity for putting our work in assisting Treaty claimants on the public record.

However, with the announcement of an early election and the rising of the House, the final Maori Affairs Select Committee hearing of the Trust scheduled for 13 June 2002 was cancelled and the inquiry was put on hold.

An unofficial working draft report was made public following the rising of the House and the Trust was pleased to see it vindicated CFRT's position and adopted a number of the recommendations originally advanced by the Trust, such as the need for Government to address forestry claims outside of the comprehensive

settlement policy and the need to adequately resource the Waitangi Tribunal.

Despite this positive news the working draft report had no standing.

Following the election, a new Maori Affairs Select Committee was constituted and the inquiry resumed. The new membership of the Committee essentially meant that the Trust was required to begin the inquiry anew and this presented opportunities to inform new members of Parliament.

The Trust is now well into the second year of the inquiry and awaiting the current Committee's final report.

The Trust believes that the Committee's inquiry has been useful in focusing Government attention on the difficulties inherent within the entire Treaty settlement process.

These difficulties are responsible for the delays in settling forestry claims involving Crown forest licensed lands. The Trust is firm in its belief that the Committee's deliberations can assist in creating the political will needed to expedite the return of Crown forest licensed lands to their rightful owners.



PHOTOS: NEIL MACKENZIE



LEFT: Left to right: Coby van Rijswijk, Robyn Stoddart, Trevor Leahy, Denise Reynolds, Duncan Tamati, Janet Dobbie.

RIGHT: Back: Lil Anderson, Jonathan Dick, Keri Turuhenua. Front: Karen Waterreus, Tania Gerrard, Jacqui Ngapera, Dion Tuuta.

INCREASE IN ADMINISTRATION EXPENSES

The Trust embarked on several emergent projects to improve internal systems including an internal audit programme, records management system review, Intranet development and communications programme, all contributing to higher expenses. The Trust completed a major computer systems upgrade and continued the systems development for the Land History Alienation Database, contributing to higher-than-budgeted depreciation costs and IT support costs.

Legal services sought for media issues such as the Maori Affairs Select Committee inquiry contributed to greater-than-expected expense this year.

KAIPARA INTERIM REPORT

On 12 September 2002 the Waitangi Tribunal released the Kaipara Interim Report. The Tribunal was constituted to hear claims in the Kaipara district but, before it was able to report its findings and recommendations, Te Uri o Hau chose to enter into negotiations with the Crown.

The Waitangi Tribunal has offered Kaipara claimants the option of expediting the settlement process by issuing an interim report that encourages the claimants and Crown to commence the negotiation process. This methodology takes into account the wider settlement process and the aspirations of the claimants to create a viable future.

The impact for the Trust is that this pathway creates the potential for the return of Crown forest licensed lands and accumulated rentals as part of an overall settlement. The Trust is extremely supportive of any moves that will create an avenue of opportunity that will bring about settlement.

The Waitangi Tribunal has also offered to complete a full Kaipara report in its normal fashion should the claimants desire. Report writing is expected to take approximately 18 months from June 2003.

→ 1860

First Taranaki War commences following Waitara dispute



→ 1863

Second Taranaki War. Imperial troops invade Waikato – fighting rages throughout large parts of central North Island until 1872, followed by extensive confiscation of Maori lands

→ 1865

Native Land Court established, facilitating extensive alienation of Maori land





Maurice Takarangi, Lil Anderson and Anita Jo Foley in attendance at a Wairarapa ki Tararua hui.

COSTS OF GETTING CLAIMS HEARD

Established Crown policy is to negotiate only with “large natural groupings”. Settlements have been reached with large natural groupings at a rate of fewer than two a year for the last three years. Given present conditions, it appears likely that this will be the current rate of settlement in the short term.

The Office of Treaty Settlements estimates that there are between 40 and 80 “large natural groupings” whose claims have still to be settled. If the midpoint of this estimation is used, i.e. 60, then it can be projected that it will be at least 2030, or even beyond, before all historical claims are settled.

The following table sets out the projected hearing costs by district, indicating past expenditure by the Trust of \$34,657,963 and likely expenditure of \$82,273,308 to complete hearings in all districts.

A conservative estimate of the cost associated with the historical settlements process is that Crown agencies and the Trust together invest approximately \$45 million a year. This figure does not take into account costs borne directly by claimants themselves or the unrealised economic opportunities for Maori and for New Zealand as a whole.

RETAINED EARNINGS

There is still uncertainty over the issue of the Trust’s tax status, thus Trustees continue to ensure that they budget for an income tax expense equivalent to what they would need to account for should they lose the tax case and be treated as a Maori Authority for income tax. Retained Earnings as at 31 March 2003 are \$27.9m, which is about \$500,000 less than the extra tax liability if the Trust is treated as a Maori Authority. This level of negative retained earnings is budgeted to be managed out of current operating income and therefore avoiding the Trust going into negative retained earnings.

DISTRICTS IN PROGRESS

	Funding expended to date on each district \$	Anticipated total cost to complete programme \$
Te Tau Ihu	4,236,008	6,770,683
King Country	784,169	3,190,169
Urewera	1,494,123	4,329,823
Whanganui	1,389,145	3,166,645
Wairoa	999,826	2,580,026
Hauraki	4,211,304	4,585,537
East Coast	1,192,310	3,576,347
Gisborne	2,481,385	2,616,385
Wairarapa ki Tararua	1,759,225	4,182,725
Tauranga	3,374,218	3,391,218
CNI	12,736,250	14,540,250
Totals	34,657,963	52,929,808

DISTRICTS YET TO BE ASSISTED

	\$
Hokianga	2,529,000
Whangaroa	2,044,000
B01	2,944,500
Whangarei	2,976,000
South Auckland	1,950,000
Hawkes Bay	3,150,000
Central Auckland	2,150,000
Waikato/Raukawa	2,100,000
North Eastern BOP	2,150,000
Taihape	1,950,000
Wellington Coast	2,950,000
Mahurangi/Hauraki	2,450,000
Total	29,343,500
TOTAL:	\$82,273,308

→ 1877

Wi Parata v Bishop of Wellington – Chief Justice James Prendergast declares the Treaty a “simple nullity”

→ 1881



2,000 troops invade and destroy Taranaki settlement of Parihaka and arrest the prophet Te Whiti-o-Rongomai

→ 1884



King Tawhiao travels to England to seek redress for Maori grievances – he is denied a meeting with Queen Victoria