

Maori Development Corporation Report

Appendix 2

2.1 - The Crown's involvement in the MDC

Appendix 2

The Claim of Professor Winiata and Others

The following sections summarise the arguments made by Professor Winiata and the evidence presented in support of the claim.

2.1 The Crown's Involvement in the MDC

This claimant group submits that the Crown's investment in the MDC was made:

... in partial recognition of the economic devastation wrought upon Maori Society by Crown actions in breach of the Treaty. (A24:2)

In support, reliance was placed upon statements made in a submission of the foundation Chairman of the MDC, Waari Ward-Holmes, to the Parliamentary Select Committee examining the Bill which, when enacted, authorised the Ministers of Finance and Maori Affairs to subscribe for shares in the company. After outlining the background to the establishment of the company and its mission, Mr Ward-Holmes wrote:

The Maori Development Corporation therefore represents a joint approach between government, the Maori Trustee and major New Zealand business ventures to accelerate the development of Maori resources.

The Directors of the Maori Development Corporation Limited are firmly of the opinion that greater impetus needs to be given to the development of Maori resources. If we are to maintain a balanced community it is vital that a significant proportion of the community is not allowed to fall behind in the development and management of their resources. The willingness of government and the private sector to join together with the Maori Trustee in promoting Maori development gives a unique opportunity which will be strengthened by the Crown becoming a full shareholder in the Corporation. (A24:8-9 citing A1:160-161)

Unlike Te Ika Whenua, the claimants represented by Professor Winiata placed considerable emphasis on the source of the funds used to purchase the Crown's MDC shareholding. Relying on Cabinet papers produced by the Crown, Professor Winiata emphasised that \$5 million of the funds used to purchase the Crown's \$13 million

shareholding derived from capitalising, at approximately 10%, Vote Maori Affairs' business lending programme for the decade following the MDC's formation. (A24:12)

Witnesses called by Professor Winiata made larger claims about the source of the funds. Thompson Parore, a former director of the MDC and trustee of the Poutama Trust, and Maori Trustee from 1987 until the end of 1989, stated:

o The Maori Development Corporation was a creation of the Labour Government following the Hui Taumata in 1984 and was funded from money from Vote Maori Affairs, the Maori Trustee and three commercial interests, a total of \$26m. The Poutama Trust was created at the same time with a Government funding of \$10m.

o The Corporation and the Trust were instruments designed to facilitate Maori commercial development. It is my clear understanding that financial support for these two bodies by the Crown was in recognition of the Crown's responsibility to assist with closing the gap between the economic position of the Maori and that of the rest of the population. It was my understanding that the Crown recognised that the disadvantageous position of Maori was a function of land and other transactions of the Crown which had been detrimental to Maori.

o The creation of the Corporation and the Poutama Trust was used by the Government in succeeding years as justification for not continuing the funding provision for business lending. So Maoridom, although benefiting from the creation of these organisations, effectively was deprived funding that could otherwise have been available. And this is notwithstanding that Mana funds were subsequently made available.

o The selling of the Corporation and return of the proceeds to the Consolidated Revenue Account for use for general purposes, on top of discontinued funding as referred to earlier, [previous paragraph] ... would be a double deprivation in my view of development funds that should be used to help develop Maoridom. (A21:2)

In response to questions from the tribunal, Mr Parore elaborated on his view that the government's financial contributions to the MDC and Poutama Trust put a stop to other

Maori economic development funding. He said that if the appropriation for business lending in Vote: Maori Affairs had not been used in creating the MDC and Poutama Trust, there would have been a reasonable and justifiable expectation that the appropriation would carry on in future. He stated that while it is difficult to get the first

vote provision for a particular activity, once it was obtained a reasonable belief arose that it would continue in future years. Mr Parore also gave his view that the ongoing financial provision for Maori business development which, in his view, should have continued after the creation of the MDC, could have been used to build up the Corporation's funds so that, with leverage, it could have been more involved in the role

of an iwi banker. In his view, the cessation of government funding for Maori business development was another lost opportunity. (A35:46)

Tuwakairiora Williams, Chief Executive Officer of the National Maori Congress, explained that at a recent hui facilitated by congress and attended by 25 iwi groups, all iwi who had been sent a copy of Professor Winiata's claim had an opportunity to discuss its contents and register their support. He summarised the discussion that took place in these terms:

It was understood that Maori Development Corporation had been established to redress the disadvantageous economic position of Maori caused by Crown injustices of the past.

The fact that the Crown used \$13 million of vote Maori and that \$7 million was also invested from the Maori Trustee to assist in the establishment of Maori Development Corporation supported the view that it is a Maori asset and, therefore, the right of the Crown to sell the asset without prior consultation with Maori has to be challenged. (A26:1)

Waitangi Tribunal, Department of Justice, Wellington.

Maori Development Corporation Report

Appendix 2

2.2 - Effect of the Sale Upon Maori

2.2 Effect of the Sale Upon Maori

Professor Winiata argued that the proposed sale of the Crown's MDC shares would have serious adverse effects upon Maori. He examined these under six headings:

- o Threat to the existence of the MDC
- o Threat of great inequality among iwi
- o Threat to the value of the Maori Trustee's holdings
- o Threat to the mana of non-participating iwi
- o Loss of liquid resources to the Maori community
- o Allocation of shares to iwi.

2.2.1 Threat to the existence of the MDC

The claimant argues that under the proposed arrangement for the sale of the Crown's shares, the highest and winning bidder could be a group, Maori or Pakeha, which desires to liquidate the Corporation. It is Professor Winiata's view that there will be very little competition for the shares and that there is a real possibility, if the sale goes ahead, of a consortium, or management, purchasing the Crown's total shareholding. Acknowledging that 13 million shares is slightly less than 50% of the company's capital, Professor Winiata said that such a large shareholder could successfully exert pressure to have the company dissolved. The outcome would be the disestablishment of the MDC notwithstanding, he submitted, that the need for the Corporation remains as high as at the time of its creation. (A24:13)

2.2.2 Threat of great inequality among iwi

The claimant's concern here is that if an asset stripper is Maori or a small number of iwi acting collectively, some Maori or iwi will benefit from the Crown's share sale while others do not. It was suggested that a further element of inequity would be involved if the capacity of a potential Maori or group to purchase the Crown shareholding was due to their having received settlements from the Crown or being otherwise advantaged compared to other Maori. (A24:13)

If a Maori purchaser did not liquidate the MDC's assets, Professor Winiata argued that prejudice could also be caused if that purchaser introduced lending policies designed to accommodate the particular aspirations of its iwi. Summarising this concern by the

expression "the rich get richer and the poor get poorer", Professor Winiata said it had also been expressed in 1986 by the committee which investigated and reported on the acceleration of Maori economic development. In that committee's interim report, in the context of discussing its preferred option of establishing a Maori Resource Development Corporation which would be, in effect, a subsidiary of the Maori Trustee, it was stated:

These [Maori] authorities could be invited at some stage to participate in the Corporation as shareholders. This would need careful consideration as tribal authorities can differ markedly in their asset bases and the wealthier authorities may expect to exercise a certain degree of leverage as significant shareholders. (A24:14; A1:13)

2.2.3 Threat to the value of the Maori Trustee's holdings

Arguing that the Crown and Maori Trustee shareholdings in the MDC are inter-dependent (A24:14), Professor Winiata stated that their combined presence gave the MDC a national perspective and a dominant influence from that vantage point.

If the Crown, or some national body stepping into the shoes of the Crown, is not present then, in terms of a National viewpoint, the Maori Trustee is in a minority position with respect to any aspirations to bring a pan iwi and national perspective to the affairs of the Corporation. (A24:15)

2.2.4 Threat to the mana of non-participating iwi

Following on from the argument that the MDC presently has a national perspective by virtue of the Crown and Maori Trustee shareholdings, Professor Winiata stated:

Iwi are prepared to be part of a national co-operative but there is deep concern about an unwillingness toward being subject to the control of a small number of iwi. Iwi based organisations which have borrowed from the Maori Development Corporation would face this threat. It is unacceptable to some iwi to have their loans administered by another iwi or waka with a dominant shareholding. (A24:15)

He added that this threat would be worse if there was default by an iwi which had borrowed from the Corporation and it then faced the prospect of its land being taken by the lending iwi.

In response to questions from the tribunal, Professor Winiata elaborated upon his written submissions under this head, saying that the Crown's involvement in the MDC confers upon the company a neutrality which would be lost if anything other than a pan-iwi body took over that shareholding. He also expressed his view that if one iwi, or a consortium of iwi which was not representative of all, acquired the Crown's shares, there would be reluctance on the part of those iwi not represented to take advantage of the MDC's facilities thereafter. In the case of a management buy-out, Professor Winiata said there would also be reluctance to use the MDC's facilities in

future but for the reason, in that instance, that there would be a belief that insiders had exercised a monopoly position on knowledge. (A35:55)

Pursuing Professor Winiata's contention that a purchase of the Crown's shares by a limited number of iwi would cause divisiveness and apprehension, the tribunal asked him which would be preferable from a Maori point of view: a limited Maori buy-out or a Pakeha buy-out? Professor Winiata replied:

Well, I think a passive Pakeha buy-out would be a nice way of having some capital there and without the kind of responses and reactions that I have indicated here. I think that's probably unrealistic. Even with their small shareholdings Fletchers and Brierleys and the DFC and its successor would have influenced the Board and I think in favourable ways as the chairman indicated yesterday. I think the worry with a Pakeha presence in any organisation is the influence that they inevitably bring to bear and so that's a difficult one. Money without any strings attached and no influence is a desirable situation to have but difficult to achieve. (A35:56)

The evidence of Te Aho Te Awe Kotuku focused on the claimant's concern at the prospect of non-participating iwi losing mana. In an oral statement, she told the tribunal

of the history of the Okawa Bay Resort and how the owners, Ngati Pikiāo, came to borrow funds from the MDC secured by mortgage on Ngati Pikiāo lands. She expressed her repugnance and distress at the prospect of continuing to be indebted to the MDC should the company lose its present pan-iwi character and become dominated by a small number of iwi. While focusing on the untenable position that she

would regard herself as being in, as a Maori borrower, should the MDC undergo such a change of shareholding, Te Aho Te Awe Kotuku also indicated that the loss of the MDC's pan-iwi character would, for her, destroy the attractiveness of investment via the company's facilities. In sum, she made it clear that the sale of the Crown's shareholding would destroy the MDC's Crown-Maori partnership character and that if anything other than a pan-iwi body took over the Crown's shareholding, she would then perceive the MDC as a company serving its shareholders' interests. Since her iwi were not intending to purchase shares, she would not choose to use any of the MDC's facilities in such a situation.

The evidence of Mrs Piri Fenwick, on behalf of Te Arawa Kaumatua Council and the other Te Arawa claimants, was also directed to the issue of loss of mana by iwi as a result of the sale of the Crown's MDC shares. She referred to the "peculiar attitude" which Maori have and explained, again with reference to Ngati Pikiāo's Okawa Bay Resort situation:

We don't mind borrowing from our own but it's very difficult to borrow from someone else and find that one's status is, I suppose, repressed to a degree - lost to a degree. (Tape of evidence)

Having referred to a lack of courtesy amongst Maori, Mrs Fenwick also said:

It's significant, more so after yesterday, that we listened to the very sterile commercial aspects of commercial investment and I wonder whether we in Maoridom have actually been able to accept that commercial sterilised world negating our social feeling and attitudes. (Tape of evidence)

Mr Parore expressed a similar concern in cross-examination by Crown counsel. Explaining his view that the Maori Trustee's MDC shareholding might be more fragile if the Crown was no longer involved in the company, Mr Parore said:

... I think there is a danger if the Crown shareholding goes out just to some iwi and not to all iwi, that the confidence to be able to deal with the corporation, the support that [it] needs to have for Maoridom, I think may not be there and there will be tribes, and I understand there might be some evidence on it, who would be hesitant to go to a corporation that was owned by x number of tribes for assistance. Whereas if there was an organisation such as the government or an organisation that represented all iwi, I think there would be the confidence to carry on. So I think the Maori Trustee shares would be more fragile in that kind of structure with a relatively small number of iwi and from the activities than it would if it was a national coverage. (A35:43-44)

2.2.5 Loss of liquid resources to the Maori community

Professor Winiata stated that if the successful bidder for the Crown's shareholding is Maori and the Crown puts the proceeds of the sale into the consolidated fund, there will be a loss of liquidity to the Maori community and/or an increase in indebtedness. The loss of liquidity would result from Maori cash being used to purchase the shares; Maori indebtedness would increase if funds were borrowed to purchase them. As well, the proceeds of the sale would, upon being paid into the consolidated fund, be available for the general purposes of the nation. (A24:16)

2.2.6 Allocation of shares to iwi

Following on from the points (d) and (e), the claimant argued that, to avoid disadvantage to some iwi, the Crown should ensure a better sharing of the advantages associated with the holding of shares in the MDC than is likely to occur as a result of the proposed sale process. (A24:17) Professor Winiata stated that unless the Crown's 13 million shares are held by a widely representative group on behalf of all or most iwi, a national identity for Maoridom will be lost and the potential of a pan-iwi and nationwide Maori presence in the finance and capital markets will be set back. (A24:16)

He gave two examples of a "widely representative group" which could hold shares on behalf of all or most iwi: the Crown and National Maori Congress. (A24:16) In response to questions from the tribunal however, Professor Winiata added that either the Poutama Trust or the Maori Trustee could, if they took over the Crown's shareholding, be regarded as representative of Maori generally. (A35:58) This was consistent with his submission that the Maori Trustee's present holding of 7,000,004 shares and Poutama Trust's 2 million could, after a sale of the Crown's shares, provide

a national presence in the MDC but from a minority position. (A24:16)
On the matter of how it was envisaged that the Crown's shareholding might be allocated, Professor Winiata drew attention to the assets distribution system presently being sought by the Treaty of Waitangi Fisheries Commission. He submitted that, although it would not be part of a settlement, a similar task could be undertaken for the allocation of the Crown's shares in the MDC. (A24:17)

In his evidence for the claimant, Mr Parore suggested a strategy for allocating the Crown's MDC shareholding which would, in his view, fulfil the original intention behind the establishment of the company. Mr Parore's proposal would involve increasing the authorised share capital of the MDC to 36 million \$1 shares and would result in the National Maori Congress Endowment Fund Inc and the Poutama Trust each holding 16 million shares (44.4% each) with the remaining 4 million shares (11.1%) being held, as at present, by Tainui and Taharoa C. Under the proposal, the Crown's 13 million shares would be vested in the National Maori Congress's Endowment Fund and the fund would purchase 3 million of the Maori Trustee's shares. The Poutama Trust would retain the 2 million shares it presently holds, purchase the remainder of the Maori Trustee's shares (4 million) and otherwise secure the further 10 million shares allocated upon the increase of the company's share capital. (A21:3-4)

Mr Parore explained:

The justification for the vesting of the Government shares in National Maori Congress is its wide representation of iwi (45) and the confidence arising therefrom that all iwi will be treated on a fair and equitable basis. The \$13m was voted for Maori development and should not be lost to general Government purposes which would advantage the Crown to the detriment of the Maori Treaty partner. The Government has recognised in the case of the Mana programme, that funds provided to iwi should remain with iwi. It is submitted that the same policy is appropriate for the MDC shareholding. (A21:4)

Elaborating upon the increased MDC shareholding that he envisaged for the Poutama Trust, Mr Parore stated:

Although there is a difference in priority between MDC (commercial) and Poutama Trust there is already a close working relationship which I believe can be further developed. Already a major part of the Trust's financial assistance is to MDC for non-commercial aspects of projects. An external review in 1990/91 raised the question that the trust should be included in the MDC balance sheet. The administrative servicing of both organisations is already done on a joint basis. (A21:4-5)

Crown counsel questioned Mr Parore about his acknowledgment that the Poutama Trust has quite a different focus from the MDC and Mr Parore explained further that he believed it would be possible to harmonise the two functions of the two organisations. He stated his belief that the very close working relationship of the

MDC

and the Poutama Trust could be developed if they were a combined operation in fact rather than de facto, as at present. Emphasising that he thought both the MDC and Poutama Trust had done "a marvellous job" in helping to develop Maoridom, Mr Parore continued by explaining the "two main thrusts" of the Trust's activities as he understood them while he was a trustee:

... one of those is to assist the corporation itself so that in arrangements that it's dealing with, that it's part of the packaging component and assistance is given. Because they're dealing in some cases with projects that, just in the normal commercial process, might not be able to progress. But because the Poutama Trust is alongside it can help the Corporation to go through and process those claims and help package them in a way that is going to give benefit to the people that are involved with those deals. So that's a major part of the Poutama Trust activities.

The other major activity, of course, is providing assistance to people who approach them directly for assistance - feasibility studies for putting projects together and also, I think, some of the ongoing loan management. That quite often is a problem; that a loan is granted to an organisation and then twelve months down the track they are starting to have difficulties and the Trust is able to go in at that stage and give them management support just to get them through until they can get onto a profitable basis. (A35:42)

The tribunal asked Mr Parore whether the Poutama Trust had the funds to buy the MDC shares which his proposal envisaged it should acquire. He replied that he had deliberately not used the word "buy" in his proposal and that the detail would have to be worked out by others but that he was suggesting a restructuring whereby the Trust's additional shares would be put into the balance sheet. (A35:44)

Mr Parore was also asked by the tribunal where the funds had come from that were used to purchase the Maori Trustee's original shareholding in the MDC. Mr Parore explained that the money was a mixture of cash and assets from loans and came from the Trustee's general purposes account, not from common fund money. The latter, he explained, belongs to particular trusts rather than to Maori generally, although he said there was some blurring as to the extent to which the profits belonged to the particular beneficiaries or Maori generally so that some of the money that bought the Maori Trustee's 7 million shares could have been from Maori. (A35:45-46)

Waitangi Tribunal, Department of Justice, Wellington.

Maori Development Corporation Report

Appendix 2

2.3 - The Sale Process

2.3 The Sale Process

In his overview of the claim, Professor Winiata asserted that because Maori economic interests are closely involved, the sale process should be consistent with those interests.

In particular, he said that there should be consultation with the tribes but that this has not occurred. He continued:

Emphasis has been placed upon the sale being a commercial one, Crown memorandum paragraph 12, with the various ritual observances which follow from that, including, neutrality, conflict of interest, openness and contestability, and due diligence. And the object is to extract the maximum price (from, inter alia, Maori bidders).

There is recognition of the significance of the sale to Maori - by providing 5% lots. There are problems, however, for an aspirant for such a lot undertaking 'due diligence', to enable the Crown to have a clean sale, of being able to offer advice, and so forth. (A24:2-3)

Professor Winiata then listed four issues which he submitted required attention in the claim, even supposing that a sale was appropriate. Two relate to the sales process:

Apparently, information will be supplied only to those with the financial capacity to conclude a sale. This requirement is unlikely to be met in any conventional sense by many Maori bidders. The short time frame for advertisement to cut off for expressions of interest is an example.

The communal decision making across hapu and iwi and to aggregate resources and responses do not fit this pattern

Maori Development Corporation is one of the few substantial financial entities with an emphasis on Maori investment and economic development. Sale of the Crown's shareholding is full of risks to those objectives.

Consultation between the Crown and tribes about the sale, and the sale process, is essential before it can be determined that a sale should proceed, or that the process is one which is tailored to the needs of Maori. (A24:3-4)

It requires mention that Professor Winiata acknowledged, when presenting his submissions, that the "short time frame" referred to in (a), quoted above, had been extended.

In elaboration of his submission that consultation is required, Professor Winiata relied on the same 1987 Memorandum to Cabinet that Te Ika Whenua claimants had highlighted in this regard. He noted that the then Minister of State Services had commented there upon the importance of "extensive consultation and consensus seeking" in regard to matters Maori. (A24:17; A1:40-41)

Also relevant in this regard is information supplied by Professor Winiata about the two letters written in February and October 1992 by the National Maori Congress to the Minister of Finance. Professor Winiata explained that, in response to those letters in which the congress expressed interest in acquiring the Crown's shareholding in the MDC, the Crown stated that it had not resolved its policies concerning its shareholding. He added that on 19 May 1993, concurrently with the lodging of the present claim with the tribunal, congress sent the two shareholding ministers a copy of the claim and expressed a desire to soon meet with them to consider the future of their shareholding. However, Professor Winiata stated, congress has received no reply to that letter. (A24:4-5)

Waitangi Tribunal, Department of Justice, Wellington.

Maori Development Corporation Report

Appendix 2

2.4 - Analysis of the MDC's Operations and the Continuing Need for

Maori Economic Development Funding

2.4 Analysis of the MDC's Operations and the Continuing Need for Maori Economic Development Funding

The claimant's written statement deals with the matter of the MDC's change of focus since its establishment (A24:9-12) and, in presenting the claim to the tribunal, Professor Winiata expanded orally upon this matter. His purpose in so doing was to support the claimant's request that the tribunal recommend not only that the sale of the Crown's MDC shares be stopped but also that the MDC be restructured, or refocussed, to perform the serious purpose of development banking for which it was established. (A24:4) The evidence of Mr Arama Kukutai (A27), Mr Horimatua Evans (A28) and Mr Ian Fitzgerald (A29) is also relevant in this regard.

After outlining the initial objectives of the MDC and its close links with the Poutama Trust (A24:7-8), Professor Winiata compared its asset and financial structure as at 31 March 1988 with the position as at 31 March 1992. He concluded that, had the MDC "stayed on the track" as a development institution and achieved the gearing of four to one which officials had estimated as being both conservative and possible after its second year of operation, an extra \$118 million of capital would have been made available through the company to Maori. (A24:9-10) He added orally that this would have been an attractive outcome from the Crown's standpoint as the private sector would have been providing those funds, not the government. A study of the 1992 Annual Report and Accounts of the MDC, Professor Winiata stated:

... reveals a range of activity and size which is different from what was envisaged in 1987. With term liabilities of \$1.7 million (page 19), there is no gearing to speak of; loans and advances are in decline - on purpose, and investments in shares in five companies (page 11) which cost \$8.3 million (page 19) represent 25 percent of Maori Development Corporation's assets. (A24:10)

He concluded that the emphasis of the MDC now appears to be on portfolio investment for the MDC itself and for Maori investors, except "small Maori investors".

(A24:11) He explained orally that this meant the MDC had moved from development banking to being an investment banker with the result that the Crown has become a passive investor, not directly involved in Maori development.

As for the success of the MDC and of the continuing need for development banking, Professor Winiata stated:

It is fair to say that the Maori Development Corporation is having success in its current operations. It has been able to package funding arrangements of various enterprises and has attracted Maori investors. Its activities, however, appear to be largely different from what was intended. What is still urgently required is development banking. (A24:11)

He added that there is still plenty of scope to change the focus of the MDC to give greater emphasis to development banking. The Crown, he submitted, should exercise its influence over the affairs of the Corporation to achieve this renewed focus. (A24:11)

The written evidence of Arama Kukutai, a principal of Stratcom Ltd and consultant to National Maori Congress on a project to investigate the development of business and retail banking options, was received by the tribunal in the absence of the witness. He noted the original objectives of the MDC and observed that its structure and operating principles have become closer to that of a merchant banking/investment institution with conglomerate leanings than of a Maori development oriented financier. (A27:2) In his view:

The Crown's intention to sell its shares in the MDC can be seen as an inevitable conclusion to the decision, conscious or otherwise, to shift MDC's operating focus away from Maori development. Consequentially the Crown has assumed a passive investor's role in an organisation which has its principal commercial interest in large scale transactions that are beyond the scope of the majority of Maori business dealings and which has become a market-driven investor with an interest in developing Maori investment in general business opportunities. (A27:2-3)

Mr Kukutai contended that the transaction size set as a threshold by the MDC, its physical inaccessibility and its inability, as a "finance company" equivalent, to take advantage of the higher gearing ratios available to a development bank, makes its operating focus and structure inappropriate to its original goal of Maori development. Acknowledging, however, that the Corporation is a viable operation, he argued that it should retain its current merchant banking function but expand its operation to include Maori development banking. That latter function, he said, is still relevant as is evidenced by the market-driven demand for such an institution, signalled by interest from both iwi and banking institutions. Mr Kukutai added that an appropriate Maori development vehicle would need to identify, by means of consultation, Maori organisations' needs and then target its development and investment banking accordingly. (A27:3-4)

Mr Kukutai also contended that the Crown is obligated to ensure that its investment in Maori development is maintained:

First, the Crown, under the Treaty, should act to improve the conditions for Maori to realise their economic potential and improve their contribution to

economic goals of national importance, by retaining the MDC as the nucleus for Maori Development Banking.

Secondly, the Crown should allow the market to operate effectively and efficiently by removing impediments to iwi and financial institutions' participation. (A27:4)

Horimatua Evans, farmer, registered valuer and a foundation director of the Rural Bank, gave evidence focusing specifically on the unmet financial needs of rural Maori landowners. While acknowledging that the MDC's purpose did not include providing assistance to Maori land owners, Mr Evans stated that this fact, together with the sale of the Rural Bank and the demise of the Board of Maori Affairs, meant the Crown had abandoned its Maori land portfolio. As a result, he said, many Maori farmers have been left in need of assistance beyond the lending criteria of trading banks. (A28:2-3)

Ian Fitzgerald M.Ec, a senior executive with Westpac Banking Corporation responsible for business development, gave evidence of a feasibility study, being conducted by the bank in conjunction with the National Maori Congress, on the development of a joint banking/cultural relationship. The study had commenced six to eight weeks previously and would take a further six weeks or so to complete. Mr Fitzgerald stated that a number of working concepts were being developed which would require full consultation before being finalised. He listed the major issues being addressed as:

- o Viability of structural options;
- o Cultural development/skills transfer needs for both organisations;
- o Investment and ownership by Iwi;
- o Priority of development finance versus banking services; and
- o Use of the Maori Development Corporation as a possible vehicle to provide development finance and banking services for Maori. (A29)

Mr Fitzgerald presented an illustrative working concept of a development funding and banking vehicle that had been developed by the Westpac/Congress working party. He emphasised that it was one of a number of such working concepts that Westpac had before it and that the feasibility study, when completed, would supply the presently unknown or uncertain factors therein. One such factor was the number of iwi who would provide equity contributions for the vehicle. The working concept assumed that seven iwi would provide capital, a number which, Mr Fitzgerald explained, had been selected to indicate that not all iwi would choose to join.

Another uncertain factor was the total amount of equity contributions required for the development funding and banking vehicle under consideration. The illustrative working concept gave \$80 million as the total amount and assumed a 12% gearing ratio potential, giving the potential for the vehicle to raise \$640 million. When asked by

the tribunal whether there was a need for a \$640 million resource for Maori development funding and banking purposes, Mr Fitzgerald responded:

Again, at this stage our initial impressions are yes, but [in] the feasibility study, one of the difficulties we've found is lack of information which is readily available in the market to identify the opportunities, the worth of assets and land holdings. One of the exercises of the feasibility study is to identify what are the opportunities, what are the value of the assets which are there but under-utilised and there is just a great lack of information at the moment and part of the feasibility studies don't address that. I suppose my reaction is yes, there would be opportunities to quickly identify that. (A35:53)

Another feature of the illustrative working concept presented by Mr Fitzgerald was its inclusion of the MDC as a contributor of \$20 million equity. The working concept listed that contribution as deriving from the Crown (\$13 million) and the Maori Trustee (\$7 million). Mr Fitzgerald explained that there had been no discussions with the MDC about this concept and made it plain that there had been no discussions with the Crown either. (A35:49-53)

In response to questions from Crown counsel, Ellen France, Mr Fitzgerald confirmed that the development funding and banking vehicle being investigated had to be a commercial proposition from which Westpac would derive a financial return. Ms France then focused on the working concept's inclusion of only seven iwi equity contributors and asked whether he would describe it as a concept designed to represent all Maori.

Mr Fitzgerald responded that the concept's structure was not designed to represent all Maori and that it had been chosen because of the need for commercial viability. He also said that more iwi would join if the development funding and banking vehicle was both commercially viable and culturally sensitive and that the intention was to gain the participation of as many iwi as possible. He acknowledged that one cultural issue which had yet to be resolved was the question of how to distribute the vehicle's resources, whether through individual iwi or otherwise. (A35:48-49)

Ms France also asked whether Mr Fitzgerald foresaw any difficulties in terms of the reaction of iwi who were not represented in the vehicle. Mr Fitzgerald replied that it was envisaged at this stage that, initially, the iwi who were shareholders in the vehicle would receive most of the funding. He emphasised, however, that the concept was still in the feasibility stage as to whether or not it was commercially viable and indicated that any issue concerning the importance to iwi of ownership or any sense of their being excluded would need to be examined and understood at a later stage. (A35:49)

Ms France then focused on the working concept's inclusion of the Crown as a contributor of equity, through its involvement with the MDC, and asked what would happen if "a little bit further down the line" the Crown chose to exit from the role envisaged by the concept. Mr Fitzgerald replied that from a commercial point of view there may be no difficulty with that but that there were other issues, beyond the scope of Westpac's view, as to whether it was important for the Crown to be involved. On the commercial side, Mr Fitzgerald went on to say that the Crown's involvement in the new vehicle would certainly assist it in terms of standing and would enhance the ability of the vehicle to quickly gather the necessary deposits to gear up. (A35:49-50)

Ms France also asked Mr Fitzgerald whether it would be possible for someone else to come into the MDC, in place of the Crown, and then carry out the sort of proposal contained in the working concept. Highlighting the status of the Crown or of any "large player" providing equity to the new vehicle and thereby assisting it in raising deposits, Mr Fitzgerald acknowledged Ms France's point that an institution other than the Crown might inject further money, beyond its original equity contribution, into the new vehicle. He explained that there were a number of working concepts before Westpac and suggested that in each case they would be assessed for commercial viability on the basis of the Crown being included and on the basis of it being excluded. Mr Fitzgerald also confirmed that it was not envisaged that the Crown would provide any guarantee of the vehicle's operations. (A35:51)

In the working concept, Westpac was envisaged as providing half the equity contribution and Mr Fitzgerald had earlier emphasised that the bank's involvement might very well not be long term. Ms France's final question to Mr Fitzgerald was whether, in the working concept, it was envisaged that the Crown would have the same rights as Westpac. Mr Fitzgerald responded:

I think this is an area in which essentially Westpac doesn't have a view as to whether the Crown should or shouldn't undertake this role but on the assumption that the Crown chose to have involvement quite clearly it would assist the vehicle. Westpac would enter its arrangements with a commercial basis and would be wishing to be free to exit at a future date if that was possible. As to the Crown, whether the Crown comes under a commercial basis or another basis because of a development profile, you would deal with the concepts. It's not critical in terms of this paper. (A35:51)

In response to questions from Ms Ertel, counsel for Te Ika Whenua, Mr Fitzgerald acknowledged that prior to the relationship that had been formed with the National Maori Congress, the specific cultural issues that face bankers and Maori people had not been addressed as strongly as they should have been by Westpac. (A35:51) Ms Ertel then asked whether it was fair to say that mainstream financiers have not been providing culturally appropriate financial facilities to Maori people up to the present time or until quite recently. Mr Fitzgerald responded that he believed that was a fair point and attributed the absence of such facilities to the prohibitive cost involved for a financial institution in identifying the relevant issues and bringing its staff up to speed.

When Ms Ertel then asked whether it was fair to say that, until the liaison with Congress, there were some cultural needs in the market which were not being met by mainstream financiers, Mr Fitzgerald replied that he believed that was true. (A35:52)

Waitangi Tribunal, Department of Justice, Wellington.

Maori Development Corporation Report

Appendix 2

2.5 - Findings and Recommendations Sought

2.5 Findings and Recommendations Sought

In the overview of the claim given by Professor Winiata (see chapter 5) it was stated that the claimant sought to stop the sale of the Crown's MDC shareholding and urged the restructuring of the company. (A24:4) At the conclusion of the claim statement, however, under the heading "Remedy", it was submitted:

If the Crown is insistent on selling the shares [or even if it is not insistent²] it holds in the Maori Development Corporation then conditions as to the nature of the sale and as to the uses to which the funds may be put should be prepared following wide consultation with iwi. (A24:18)

This last quoted statement is consistent with the recommendation sought by Russell Feist, counsel for Tuwharetoa Maori Trust Board, in his oral submissions to the tribunal. His written submission stated that the Board:

Supports the claim of Whata Winiata, and seeks a recommendation that the Crown retain its shareholding in the Maori Development Corporation. (A22)

Mr Feist elaborated orally, however, that the recommendation sought was not that the Crown retain its shareholding forever but that it retain it until such time as an acceptable alternative has been resolved. (Tape of evidence)

References

1. The multiplier applied to capital to assess borrowing potential.
2. This phrase was added orally by Professor Winiata at the hearing.

Waitangi Tribunal, Department of Justice, Wellington.