

Maori Development Corporation Report

7 - Analysis of the Issues

7.1 - Introduction

Chapter 7

Analysis of the Issues

7.1 Introduction

From the information summarised so far, we believe the issues to be considered are:

- o Should the Crown sell its shares in the MDC at this point in time?
- o If there is to be a sale, should it be to Maori or on the open market?
- o Insofar as the sale is to Maori, should the Crown contract with a small number of iwi?
- o What would be the effect of a sale on the use of the Poutama Trust by Maori?

We consider these in turn.

Waitangi Tribunal, Department of Justice, Wellington.

Maori Development Corporation Report

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7.2 - Should the Crown sell its shares in the MDC at this point in time?

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7.2.1 Summary

For convenience, we will summarise our answer to this question at the outset.

First, we consider that the MDC was created as a Treaty settlement mechanism for the benefit of all Maori and that the Crown's involvement as the principal shareholder was a vital means of achieving the company's Treaty-based objectives. From the inception of the MDC, the Maori Trustee was to be a significant shareholder and, as both the Crown and Maori Trustee are pan-Maori institutions in the sense that they represent the

interests of all New Zealand Maori, their domination of the company ensured its pan-Maori character. Since it is clear, in our view, that the MDC has not met those goals and, indeed, has turned away from them, we consider that the Crown would be in breach of the Treaty obligations which it sought to honour upon the formation of the company if it were to sell its shares before taking all possible steps to ensure that the company resumes its original Treaty-based objectives.

In light of our view that the MDC is a Treaty settlement mechanism, we also consider that the proposed sale of the Crown's shares would be inconsistent with the Treaty principle, earlier identified, whereby the Crown must act fairly and impartially towards

all Maori. This conclusion rests upon our view that the likely outcome of a sale at this time would advantage a few iwi and disadvantage the majority, thereby creating a new prejudice.

Moreover, we consider that even if the proposed sale of the Crown's MDC shares is viewed in isolation, the Treaty principle requiring the fair and equitable treatment of Maori by the Crown would be breached. Thus, even if the MDC were not a Treaty mechanism, the Crown's obligation to conduct its business in such a way as to be fair to all Maori and not create fresh prejudice entails that the proposed sale of its shares at this time would be in breach of the Treaty.

We now elaborate upon these reasons.

7.2.2 The MDC as a Treaty settlement mechanism

We are in no doubt that the Crown's purpose in establishing and investing in the MDC was to promote the economic development of Maori - all Maori - in accordance with the Treaty of Waitangi. We consider the same purpose was the genesis of the creation of the Poutama Trust.

While the government of the day did not expressly identify these initiatives as flowing from the Treaty, that is unsurprising for Treaty jurisprudence in this country was nascent at the time. It is clear, however, that the government's actions stemmed from an awareness of the need of Maori for positive economic assistance in the form of development banking services and a commitment to providing that assistance.

Today, we believe, the relationship between that need and the commitment to supplying it would be expressed unequivocally in Treaty terms. The Crown's duty of active protection, inherent in what we have referred to as the Treaty principle of reciprocity, has been said to amount to an assurance that "despite settlement Maori would survive and because of it they would also progress".¹ Post-Treaty history, however, reveals an inordinate loss of resources by Maori and an accompanying inability to participate fully in the national economy.

It appears likely to us, from our own knowledge of the various Crown actions leading to tribal losses and the recorded outcome of the extent of lands remaining in tribal ownership, that there is not a tribe in the country without some legitimate claim to economic restoration. It follows then that the disparity between the rate of economic progress of Maori compared with other New Zealanders can clearly be attributed in some measure to breaches of the Treaty. As a result, we consider the Crown's promotion of Maori business by means of the MDC and the Poutama Trust to be consistent with the Treaty and that those institutions are properly regarded as measures by which the Crown sought to honour its Treaty obligations.

The only alternative explanation, offered by the Crown, is that while it was motivated by "social" considerations in establishing the Poutama Trust, it acted purely commercially in investing in the MDC. On the basis of the evidence of the events and the official analysis which preceded the establishment of the company, we firmly reject this suggestion. We note that Dr Mahuta, the Crown's witness, also rejected it when he expressed his view that the Crown's investment in the MDC was based on its Treaty obligations. Finally, we give credence to the evidence that, at the time of its creation, there was uncertainty as to the potential of the MDC to succeed as a commercial institution.

Our finding that the MDC and Poutama Trust were created as Treaty mechanisms is at odds with the Crown's submission that Treaty principles are irrelevant now that it proposes to sell its MDC shares without making an alternative commitment to the objectives for which the company was formed. Stated simply, having formed the MDC because of the Treaty, the Crown cannot ignore that fundamental fact in its

subsequent
conduct affecting the company.

Moreover, we consider that the involvement of the Crown as the principal shareholder in the MDC, with 49.9% of its shares, supplies further evidence of the Crown's commitment to the Treaty objectives which the MDC was created to promote. This is in turn bolstered by the fact that, when the Crown committed itself to its substantial investment in the company, it was known that the Maori Trustee would also be a sizeable investor. As we have said, both the Crown and the Maori Trustee have a pan-Maori character in the sense that they represent the interests of all Maori in New Zealand, not the more particular and, inevitably, sometimes competing interests of the Waka, iwi and hapu to which all Maori individuals belong. In light of these facts, it is our firm view that the original shareholding of the company, which secured its control by pan-Maori institutions, was designed to ensure the promotion of the company's Treaty objective of advancing the economic position of all Maori.

Further, we do not accept that it is beyond our jurisdiction to examine the operations of the MDC. Despite the Crown's argument that it is a minority shareholder, the fact remains that, with 49.9% of the company's shares, it is extremely well-placed to exert influence over the MDC if it so chooses. The tribunal's clear jurisdiction to assess acts of the Crown against the principles of the Treaty therefore requires us to examine the Crown's performance as the principal shareholder in the MDC. It is purely by virtue of the fact that the Crown has always held such a significant proportion of the MDC's shares that our examination necessarily entails an assessment of the performance of the company itself. But that does not mean the tribunal will be directing any recommendations to the company. Insofar as our recommendations to the Crown relate to the operations of the MDC, they are founded upon the Crown's ability to exert influence over the company's operations.

The Crown also submitted that it would be unwise for the tribunal to attempt to examine the MDC's operations on the evidence before it and that a commercial study would need to be undertaken by the MDC. However, we regard our own assessment of the company's fulfilment of the Treaty objectives which inspired its creation as being logically prior to the type of study mentioned by the Crown. Exploring the ramifications of the Treaty origins of the company will, in effect, set the boundaries for any other study of its operations. As for the evidence before the tribunal, we record that, at the hearing and afterwards, the tribunal called for and was supplied with additional information from the Crown relating to the MDC and Poutama Trust. We are satisfied that the information before us provides a thoroughly sound basis for our task.

We have earlier provided an overview of the MDC's activities since its inception (see chapter 4). From this it is plain that while the company is operating successfully from a commercial point of view, it is certainly not fulfilling the functions for which it was

founded. The MDC was charged with the responsibility of operating as a Maori Development Bank, providing a diverse range of financial services including term finance, term and table loans, working capital and bridging and seasonal finance. Because of the problems with some of the loans (in this regard the MDC was certainly not on its own) and other difficulties, the directors, following consultants' advice, withdrew from the finance market preferring to concentrate on investment packaging and, partly on behalf of the Poutama Trust, undertaking investigation, assessments and advisory services on a fee basis.

These functions are of course important and the decision to make some change in the company's direction was no doubt appropriate at the time. However, there is no indication that in making the policy change, the Crown, as the sponsoring and dominant shareholder - or any other shareholder for that matter - gave much thought to the purpose for which the company was established or the obligation it accepted in so doing. As has been indicated, we regard the Crown's obligation in this regard to be that of a Treaty partner. It is our view that, had the company's purpose and the Crown's obligation been borne in mind at the time the company changed direction, a less draconian change may have been made than that which involved the almost complete withdrawal from the lending market. For example, the introduction of more cautious lending policies would have minimised risk yet allowed a market presence to be maintained pending an improvement in the economy.

The need for a development bank to provide banking services to "commercially viable Maori enterprises in a culturally sensitive way"², was clearly apparent when the MDC started operations as it built a lending book of \$30 million in its first full year of operation. From this previous experience, the frequent applications through the Poutama Trust for assistance with feasibility studies and the evidence of Mr Fitzgerald of Westpac, we consider it beyond doubt that the need is still there but is not being fulfilled. Indeed, the growth in the Maori financial market as a result of recent Treaty settlements has increased the need.

We recognise that the Crown has never held the controlling interest in the MDC. As a result, the most practical course would have been for it to collaborate with at least one other shareholder (for example the Maori Trustee or, more recently, the Poutama Trust) in order to influence the direction of the company. While we have received no evidence that the Crown has endeavoured to ensure that the Corporation resumed the function of debt financing originally intended, the very fact that that function has not been resumed would seem to indicate the lack of such efforts.

Against that is our view that the Crown is obliged as a Treaty partner to actively promote the MDC's original mission. As we have stated, the need of Maori - all Maori - for development banking services has not lessened in the few years since the company was established. Further, we do not accept Crown counsel's argument that the commercial orientation of the MDC divorces the Crown's role in the company from

its role as a Treaty partner. As we have also said, a less draconian shift in company policy in the difficult times of the late 1980s could have satisfied commercial goals without losing sight of the Treaty objective of providing development banking services to Maori.

We observe too that the economy has now improved, the lending environment changed and the Maori commercial market widened (A2(c)) 11), all of which factors provide a highly favourable context for the achievement of the MDC's original mission. For example, the improved financial position of a large number of Maori authorities and trusts could provide an improved source of funds for the company, allowing the margin required for it to be a commercial lender. As well, the current MDC balance sheet would allow significant borrowing against a debenture trust deed from either the public or Maori authorities. In short, we are convinced that the resumption of the MDC's original mission could be implemented without impairing its profitability commensurate with the risk involved.

For the reasons given, we believe that if the Crown were to sell its MDC shares before the company is once more committed to its original mission, the MDC's potential to achieve the Treaty goals for which it was created would be extinguished. This would occasion a breach of the Treaty obligations which the Crown sought to honour in forming and investing in the company as its principal shareholder and would be to the detriment of those Maori, including the claimants, whose legitimate expectations of the company's character and services are in accord with its original Treaty-based design.

As a result, we are firmly of the view that, before the Crown divests itself of its MDC shareholding, it must take all steps possible to ensure that the original mission of the MDC is reaffirmed. To this end, it will need to use its influence on the company's Board of Directors, in conjunction with the Poutama Trust if necessary.

We note here that our conclusion that the Crown is obliged to actively promote the MDC's original mission means that we have not pursued Te Ika Whenua's submission that the Crown's Treaty obligations would be met by its commitment of the proceeds of the sale of its shares to a pre-arranged alternative market mechanism which would deliver development finance to Maori. In our view, the merit of that submission is outweighed by the fact that the MDC is a Treaty mechanism already in existence which is well-run and profitable and which requires only a change of direction to fulfil the Treaty goals for which it was established. Against that background, the difficulties involved in the establishment of a new mechanism to perform the functions originally agreed for the MDC seem to be unnecessarily burdensome and to be required only as a last resort.

As explained at the outset, it follows from our view that the MDC is a Treaty settlement mechanism that we believe a sale of the Crown's shares at this time would also be inconsistent with its Treaty duty to act fairly and equitably towards all Maori.

We examine this principle now in the narrower context of considering the impact of such a sale.

7.2.3 The impact of the proposed sale

In our discussion of Treaty principles, we identified a duty on the Crown to act fairly and impartially towards all Maori, a duty which is to be performed to the strict standard required of a fiduciary. It is our firm view that were the Crown to sell its MDC shares now, it would fail in its performance of this duty by giving one or more iwi an unfair advantage over others.

Even before the outcome of the recent High Court proceedings between the proprietors of Taharoa C Block and the Maori Trustee³, we considered it highly likely that the Crown's proposed sale would cause unfairness amongst iwi. The very proposal to sell to whichever iwi or other groups were in a position to make the most attractive bids at the present time, without concessions to interested Maori parties beyond the Crown's agreement to consider offers for 5% parcels of its shares would, in view of the differing financial strengths of iwi, have considerably limited the field of prospective Maori purchasers.

However, in the High Court proceedings, specific performance was ordered of a contract between the Maori Trustee and the proprietors of Taharoa C Block for the sale to the latter of the Maori Trustee's 7,000,004 MDC shares. As a result, save only for the possibility of an appeal, Taharoa C, a Tainui incorporation, will within a month own a total of 9,000,004 shares in the MDC. The Tainui Maori Trust Board owns a further 2 million shares. If the effect of the High Court's decision is achieved, therefore, within one month the only other shareholders in the MDC will be the Crown, with 13 million shares, and the Poutama Trust, with 2 million. Evidence presented to the High Court clearly indicates that both Taharoa C and the Tainui Maori Trust board remain interested in acquiring MDC shares⁴ and simple mathematics reveals that the acquisition of a further 2 million shares would secure to Tainui the control of the company.

While the prospect of one iwi or a small number of iwi gaining control of the MDC as a result of the proposed sale of the Crown's shares was always in our mind as we considered the impact upon Maori of such a sale, that prospect has clearly now been heightened to a very considerable degree. We regret that the actions of the Maori Trustee have precipitated the present situation for, as we have suggested, we consider his shareholding in the MDC contributed to the pan-Maori character of the company and, as we will elaborate later, to the perceived neutrality of its operations to date as amongst the various iwi.

Crown counsel submitted at the reconvened hearing that the sale of the Maori Trustee's

MDC shares has no bearing on the Crown's proposed sale. That submission was based upon the Crown's consistent stance that Treaty principles are entirely irrelevant to the present claims. Quite apart from our earlier conclusion that the MDC is a Treaty

mechanism, with which Crown counsel's submission conflicts, our present narrower focus on the impact upon Maori of the proposed sale of the Crown's shares also leads us to reject the Crown's argument.

In our view, the prospect of one or a small number of iwi gaining control of the MDC as a result of the Crown's sale - a prospect which now happens to be greatly heightened - is highly likely to result in the promotion of the interests of a few to the detriment of the majority of Maori, thereby causing new prejudice. Whether or not the MDC is a Treaty settlement mechanism, our earlier conclusion that all tribes have suffered economic disadvantage since 1840 still stands. So too does the Crown's interest in promoting the goal of economic recovery for all Maori. Focusing purely upon the likely impact of the proposed sale then, we consider it will prejudice the achievement of that goal by enabling a select group of Maori to capture control of the assets and services of a company which was previously neutral in its delivery of economic assistance to Maori.

As we later elaborate, one reason for our view that the shift of control of the MDC to a select group of iwi will further limit the access of many Maori to much needed economic services, derives from the vigour of tribal rivalries. We consider the fact of tribal competitiveness to be no mere trifling impediment which may reasonably be expected to be subjugated to the need of Maori for economic assistance. Rather, we see rivalry amongst iwi as the inevitable consequence of what it means to be Maori. From our own knowledge, we confirm that to be Maori means to belong to a tribal group with an ancestry and heritage that guides the group's present and future conduct.

Consequently, the identity of and with an iwi is of paramount importance to Maori: it has ensured the survival of Maori as Maori and, by definition, must continue to dominate Maori life.

As a result of the foregoing discussion, we conclude that the Crown should not sell its shares in the MDC at the present time.

As this conclusion does not involve the Crown remaining a shareholder indefinitely, we proceed to consider the remaining issues. We do so, however, on the basis that the original mission of the MDC will be reinstated prior to any sale of the Crown's shares. As will become apparent from our discussion of the further issues, we consider that this is not the only limitation upon the Crown's sale of its MDC shares required by the Treaty of Waitangi.

7.2.4 If there is to be a sale of shares, should it be to Maori or on the open market?

For the purpose of considering whether a sale of the Crown's shares should be to Maori or, instead, on the open market (thereby inviting non-Maori contenders), we can

put to one side the outcome of the recent High Court proceedings.

Just as the Crown recognised the value of involvement by the original corporate shareholders, we also agree that a similar commitment by non-Maori corporates could be to the benefit of a refocused MDC. We do not believe, however, that non-Maori ownership of all the Crown shares would be appropriate. Indeed we consider it would be adverse to Maori interests because a further purchase of a minimal number of shares

would deliver control of the company. Quite apart from the possibilities which control always brings, the prospect of non-Maori control of the MDC would, we believe, plainly be at odds with the company's original mission.

An entirely separate matter relevant to the question whether the sale of the Crown's shares should be to Maori or on the open market, is the source of the funds used to purchase the Crown's MDC shareholding. We do not accept the argument made by some claimant witnesses that the Crown's shareholding is, in its entirety, rightly regarded as belonging to Maori. From the evidence before us, however, we believe that some \$5 million of the Crown's cash contribution of \$13 million to the MDC is properly distinguished from the balance. We refer to the amount of \$807,000 voted to Maori business lending each year from 1982/83 until 1986/87, which the Minister of Maori Affairs of the day, in seeking Cabinet approval for the commitment of funds to the MDC, offered to capitalise over a ten year period thereby foregoing future provisions for that purpose.

On this matter, Crown counsel submitted that it was false to conceptualise funds as being diverted to the MDC from Vote Maori Affairs after 1987 because there would have been no guarantee after the 1986/1987 year of future allocations for Maori business lending. We accept that there can be no guarantee of continued funding but note that, when assessing the proposals relating to the MDC, nowhere did Cabinet or any government official deny the validity of the Minister's offer.

Crown counsel also pointed to the changes which occurred between the time the government committed itself to what became the MDC and the time the company was actually established, submitting that the capitalisation approach may not have been pursued in the end at all.

On the evidence, we believe that funds earmarked for Maori business lending were affected by a theoretical capitalisation over a ten year period and that the resulting \$5 million was, and should continue to be, considered as distinct from and of a different character to the balance of the Crown's contribution. We cannot say how much the offer to forego future grants to Maori business lending influenced the Crown, but observe that, right up to the time final Cabinet approval was given to the MDC, the offer was part of the funding proposal.

As a result, we believe that the Crown is holding 5 million shares in the MDC as a fiduciary, or something analogous, for all Maori. We consider then that 5 million of the

Crown's 13 million shares should not be sold either on the open market or to Maori but

should be transferred immediately, without consideration, to an appropriate recipient. We later identify the most appropriate presently existing recipient of those shares.

Maori Development Corporation Report

7 - Analysis of the Issues

7.4 - Insofar as the sale is to Maori, should the Crown contract with a

small number of iwi?

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Our previous discussion envisages Maori and non-Maori purchasing the 8 million MDC shares which we consider the Crown is entitled to sell. Here, we focus only on potential Maori purchasers.

We have already explained our view that the MDC is a creature of the Treaty of Waitangi with the Crown's shareholding at its heart. If that Treaty partner sells its shares before the company achieves its original goals, we see only one way in which the MDC can continue to act as a Treaty mechanism: by the shareholding continuing to be dominated by pan-Maori interests in the sense in which we have earlier used that term.

In reaching that conclusion, we accept the evidence of the claimants that the Crown's dominant shareholding is the key to the MDC's present neutrality as amongst iwi. As they explained, the current credibility of the company as a Treaty mechanism for the assistance of all Maori derives from the substantial involvement of the Crown and is further supported by the shareholding of the Maori Trustee. We would add that the shareholding of the Poutama Trust also supports the company's credibility as an institution representing pan-Maori interests and note that Professor Winiata also acknowledged the pan-Maori character of the Poutama Trust.

We also accept that, for many current and potential clients of the MDC, their perception of the company as being neutral amongst iwi is a critical factor influencing their existing and possible future use of its services. Nowhere is this more important than in those areas of the company's present or future operation where Maori land may

be used as security for the provision of finance. As we heard, were the MDC to be or to be perceived as being dominated by specific Maori interests, it would be unacceptable to many non-shareholding Maori that their land, mana and rangatiratanga

be placed at risk of being surrendered to those other interests.

As a result, we have the most serious reservations about the possibility of the MDC becoming dominated by anything other than pan-Maori interests. That possibility would preclude the continuation of the current neutrality of the company and, therefore, the perception of that neutrality in the eyes of potential clients.

We are aware that some might argue that continued pan-Maori control of the MDC would not be conducive to maximising its growth and efficient operation. We do not accept this view. The MDC has operated well to date, with its substantial pan-Maori ownership and there is no reason why this should not continue, particularly with

appropriate management incentives.

We believe that when the Crown and its advisors discussed and approved the sale of its MDC shares, it may not have been aware of some of the factors which have led to our conclusion that continued pan-Maori control of the company remains essential. If this is so, it would appear to reveal a failure on the part of the Crown to sufficiently inform itself, by means of consultation, of its Treaty partner's views on this vitally important matter which impinges on the mana and rangatiratanga of all iwi.

Nevertheless, the very fact that the sale process presently in train makes no provision for ensuring the continued neutrality as amongst iwi of the company's shareholding is itself, we consider, evidence of the Crown's policy and actions to date being in breach of Treaty principles.

Should the proposed sale process continue now, or should the same process be adopted in future, the way would be left open for a small number of Maori interests to gain control of the MDC. As has been noted, the prospect of this occurring has been heightened considerably as a result of the decision of the High Court in the proceedings between Taharoa C and the Maori Trustee. In our view, the prejudice that this would very likely cause consists in the extinguishment of the company's potential to continue, as a Treaty mechanism, in the task of providing development finance to all

Maori and the consequent promotion of the interests of specific Maori groups to the deprivation of others.

To our mind, the question of how to ensure that the company retains its actual and perceived pan-Maori character requires the most careful consideration by the Treaty partners. Without intending to pre-empt the consultative process designed to reach consensus on the matter, we record here our own thoughts upon the entities which might be regarded as fitting recipients of the pan-Maori mantle currently worn by the Crown in the MDC.

We explored first the possibilities of a new entity arising out of the tradition that all Maori must, if they are Maori, belong to a Waka. It is commonly assumed by Maori that there were seven Waka in the great Heke from Hawaiki: Aotea, Kurahaupo, Mataatua, Tainui, Takitimu, Te Arawa and Tokomaru. For many, their tupuna reached these shores on one or more of those Waka in ancient times.

But there are some iwi who claim descent from other Waka; Mamari and Mahuhu for example. Whether their journeys were planned for the same period of time as the Heke

is not clear but in the context of this consideration it should not matter.

Further, Elsdon Best described in great detail Te Tini o Toi who inhabited the "Mataatua district" before the advent of the Mataatua "immigrants".⁵ While reservations may be expressed today about some of Best's information, the existence of

Te Tini o Toi does not appear to be in dispute. The manner of their arrival to Aotearoa is relevant to this discussion

Then there is the matter of Takitimu and Horouta. In 1950 Sir Apirana Ngata stated: The traditions of the two canoes are so intertwined as regards personnel that it's a real puzzle to sort them out.⁶

Therefore, it seems that the issue is extremely complex and that the use of Waka as the

basis of a new entity representing all Maori would require substantial consultation amongst iwi.

We then considered the potential of existing Maori organisations to supply the vital

neutrality in the MDC in future. Most of those we considered, however, including the National Maori Congress, the New Zealand Maori Council, the Federation of Maori Authorities and the Associated Maori Trust Boards, did not appear to us to represent all Maori, although we consider that a combination of those groups, together with the Maori Women's Welfare League, could well claim to be so representative .

We therefore returned to the two existing institutions, other than the Crown, which we believe do possess a pan-Maori character: the Poutama Trust and the Maori Trustee.

We observe that the recent High Court proceedings cast grave doubt upon the likelihood of the Maori Trustee playing any role in the MDC in future. The Poutama Trust, however, as we have outlined earlier (see chapter 4), owns 2 million shares in the company and is successful in its own, closely related, activities.

It is our view then that, should consultation fail to produce or identify an alternative pan-Maori entity to take up sufficient of the Crown's shareholding to ensure the MDC's future neutrality amongst iwi, the Poutama Trust is the only existing institution,

apart from the Crown, capable of fulfilling that role. Naturally, we appreciate that we cannot, as a consequence of this view, make any recommendation to the Trust.

At this point, we would observe that it seems probable that the dearth of pan-Maori bodies able to fulfil the vital role required in any Treaty settlement intended to benefit all Maori will continue to hinder the efforts of the Treaty partners to effect such settlements. In our view, this is not to be regarded as a "Maori problem". As we have attempted to explain, tribalism is the essence of Maori life. Further, it was recognised as such by the Crown in its Treaty guarantee of rangatiratanga. Therefore, the matter is

properly one for conscientious exploration by both Treaty partners. We would suggest that while Maori must be ultimately responsible for determining the basis for and identity of any novel pan-Maori entity, the Crown's part in facilitating that determination is equally vital.

Our view of the Poutama Trust's pan-Maori character and general suitability for playing a larger role in the MDC, leads us to conclude that it is, at present, the most appropriate recipient of the 5 million MDC shares held by the Crown on behalf of all Maori. We therefore recommend to the Crown that 5 million of its MDC shares be transferred immediately to the Poutama Trust without consideration, but with provision

for the further transfer of those shares, also without consideration, from the Trust to any preferred pan-Maori body identified by or formed as a result of the necessary consultation process.

Maori Development Corporation Report

7 - Analysis of the Issues

7.5 - What would be the effect of a sale on the use of the Poutama

Trust by Maori?

7.5 What would be the effect of a sale on the use of the Poutama Trust by Maori?

We have previously stated that we consider the Poutama Trust to be a Treaty settlement vehicle created to provide particular economic assistance to all Maori. We have also noted that while the Trust is performing a valuable role, the present direction

of the MDC has put the Trust in the position of being unable to observe its first three objects (see chapter 4). It is our view that, upon the MDC reverting to its original mission, the Poutama Trust is readily capable of fulfilling all of its functions and that the already flourishing and successful relationship between the two institutions will be further enhanced.

If, however, the MDC loses its present pan-Maori character, we would regard it as essential to the Trust's own Treaty-based and pan-Maori purposes that the special relationship now existing between the Trust and the company⁷ be dissolved and the Trust Deed modified accordingly.⁸

Insofar as the Crown, in proposing the sale of its MDC shares, may have given insufficient consideration to the sale's likely flow-on effects to the ability of the Poutama Trust to remain, and to be seen to remain, as a Treaty-based, pan-Maori institution, we are of the view that it has overlooked the likelihood of new prejudice being caused to Maori.

References

- . Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim (Wai 22), (Waitangi Tribunal, Wellington 1988), p 194
 - . The words used in the Interim Report of the Committee to consider accelerating Maori economic development and the case for a Maori Development Bank. (A1:3)
 - . The Proprietors of Taharoa C Block v The Maori Trustee CL 41/93, 30 September 1993
 - . Letter of 2 August 1993 from secretary of Taharoa C to Chairman of Tainui Maori Trust Board, CL 41/93, pp 8-9; letter of 11 August 1993 from secretary of Tainui Maori Trust Board to the Maori Trustee CL 41/93, PD 13-14
 - . Elsdon Best, Tuhoe (Wellington A H & A W Reed, 2nd ed 1972) p 15
 - . D R Simmons, The Great New Zealand Myth (Wellington Sydney London A H & A W Reed 1976) p 132
 - . For example, as discussed in objects 3.1(a), (b) and(c) and Schedule 1 "Constitution of Board of Trustees"
- The Tribunal has noted the comment in the Trust's 1992 Report regarding the External Consultants' Review (A25:27). It would view with concern any significant changes strengthening the relationship between the Trust and the MDC (particularly regarding

the balance sheet of the latter) until the question of the Crown's shares in the MDC is decided.

Waitangi Tribunal, Department of Justice, Wellington.