

Maori Development Corporation Report

Appendix 1

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The Statements of Claim

Statement of claim by Whatarangi Winiata
and Te Aho o Te Rangi Ratema Te Awe Kotuku in respect
of the Maori Development Corporation (1.1):

We, Whatarangi Winiata of Ngati Raukawa and Te Aho O Te Rangi Ratema Te Awe Kotuku on behalf of the owners of Okawa Bay Resort, for ourselves and those Iwi of the National Maori Congress who elect to join herein, claim that we and the Iwi are likely to be prejudicially affected by the proposed action and policy of the Crown to dispose of the Crown's shares in Maori Development Corporation by open tender, and without prior settlement of a process with the Iwi, and that such action and policy would be contrary to the principles of the Treaty of Waitangi upon the following grounds:

1 That the action of the Crown in establishing the Maori Development Corporation and holding shares in the Corporation was an action of the Crown consistent with the Crown's obligations to protect and restore the rangatiratanga of the Tribes, and was a step especially necessary to restore the Tribes following historic Crown action that removed the economic base of the Tribes through excessive Maori land acquisitions and extreme land tenure rearrangements.

2 That included in the Crown's contribution of \$13,000,000 to the share capital of the Corporation were monies which were diverted from, and would otherwise have been expended on, Maori economic development and other programmes of the Department of Maori Affairs for the benefit of Maori.

3 That as part of the financing "package" of the Corporation the Maori Trustee, in concert with the Crown's involvement contributed \$7,000,000 from Maori unclaimed monies and uneconomic interests properly belonging to those Tribes from whom the incomes derived but never credited to those Tribes because of a law that simply vested those monies in the Maori Trustee. Some Tribes, especially those of the central island, contributed far more than any others to this fund.

4 That to adequately protect the interests of the Tribes as a whole the Crown must ensure an equitable apportionment of its shares amongst the Tribes, or that

the shares be held by some national trust, commission, or body for the Tribes generally and equitably apportioned to the Tribes if and when the Tribes wish that to happen.

5 That in the event that the Crown fails to ensure an equitable apportionment to Tribes, the Crown will cause more grievances and will cause more divisions amongst the Tribes by advancing the position of some and disadvantaging the position of others.

Such action would be inconsistent with the principles of the Treaty which assumes that the Crown will act fairly in the protection of the Tribes as a whole.

6 That the Crown's programme of settling with some Tribes ahead of others is in itself inconsistent with the Crown's Treaty obligations to treat fairly between the Tribes as a whole, and that it funds some Tribes ahead of others and gives them an unfair advantage in the acquisition of the Crown shares in Maori Development Corporation.

7 That the sale of the Crown's shares by public tender and outside of the Tribes would likewise be contrary to the principles of the Treaty and in particular the Crown's obligation to protect the rangatiratanga of the Tribes and to restore the economic base of the Tribes on account of past wrongful resource dispossession.

8 That some tribes have expectations of improving their financial capacities through Maori land rearrangements under the new Te Ture Whenua Maori Act 1993 and it is unfair and unreasonable for the Crown, if it insists on selling its shares in the Corporation, to tender its shares at this stage without giving these Tribes the prior opportunity to reorganise land interests under the new Act to enable them to acquire a fair proportion of the Crown's shares, in particular we refer to the central island Tribes who have already given so much to the unclaimed monies of the Maori Trustee.

9 The immediate relief sought is recommendations from the Tribunal as follows:

(a) calling upon the Crown to defer the disposal of its shares before a fair process has been settled and agreed between the Tribes through negotiations;

(b) reminding the Crown of its obligations to deal fairly and openly with the Tribes as a whole and not to go from one Tribe to another on an individual basis;

(c) the Tribunal is asked to give notice of this claim to the Prime Minister, Minister of Finance, Minister of Justice, Minister of Maori Affairs, Minister of State Owned Enterprises, and to all Iwi;

(d) the Tribunal is asked to convene an urgent hearing by way of a National Hui at a central island marae and to seek an undertaking that at least one of the above Ministers of the Crown will attend.

Professor Whatarangi Winiata
Te Aho o Te Rangi Ratema Te Awe Kotuku

Statement of claim by Te Runanganui
o Te Ika Whenua in respect of the Maori
Development Corporation (1.2):

Whereas:

A In 1840 the claimants had tino rangatiratanga over their rohe.

B In 1840 the claimants were spiritually, culturally and economically prosperous as the holders of assets including land, water and other natural resources.

C The Treaty of Waitangi guaranteed to the claimants the tino rangatiratanga and full exclusive and undisturbed possession of their lands, fisheries, forests and other treasure. Article III of the Treaty guaranteed equity between Maori and other New Zealanders.

D Maori people have been systematically deprived of their economic spiritual and cultural richness by breaches of Articles II and III of the Treaty of Waitangi.

E The Crown has at various times recognised that there is a significant gap between the position of Maori and Pakeha in New Zealand.

F One of the methods employed by the Crown to redress this balance was to hold the Maori Economic Development Summit Conference also known as the Hui Taumata. The then Minister of Maori Affairs (Hon Koro Wetere) in calling the Hui Taumata set the following objectives:

- o to examine the economic situation of New Zealand as it affects Maori people

- o to assess the economic strength and weaknesses of Maori people in New Zealand

- o to obtain a commitment from those attending the conference

- o to support policy changes necessary to obtain socio-economic parity between Maori and non Maori

G A Maori Development Bank had been discussed prior to Hui Taumata and at the Hui.

H The government accepted that a Maori Development Bank would assist in addressing the relative economic imbalance between Maori and Pakeha people.

I On or about 1 July 1987 the Maori Development Corporation Limited ("MDC") was incorporated under the Companies Act 1955 as a public limited company.

J The share capital of the company is \$50 million divided into 50 million ordinary shares of \$1.00 each.

K Not all of the 50 million shares have been issued.

L The annual return dated 27 April 1992 shows the following shareholders:

Holder Shares

Brierley Investments (No 1) Limited 2 million

Fletcher Challenge Limited 2 million

The Maori Trustee 7 million & 2

Minister of Finance 6.5 million

Minister of Maori Affairs 6.5 million

Georgina Manunui Te Heuheu 1

Waari Geoffery Ward-Holmes 1

Total numbers of shares subscribed for: 24,000,0041

M An advertisement appeared in the Dominion Newspaper on 21 May 1993 announcing that the Crown is considering the sale of its 49.9% shareholding in MDC.

N The claimants understand that if the Crown does sell its shares in MDC that the proceeds will be put in to the consolidated fund.

O The claimants understood that the provision of the Crown's \$13 million used to purchase its MDC shares was provided in recognition of the special relationship between the Crown and Maori embodied and/or evidenced in the Treaty of Waitangi.

P Further, the Crown shareholding, support and influence over MDC was to assist the development of Maori business thus in part addressing the Article III imbalances that had developed between the signing of the Treaty and recent times.

Q The Crown's shares in MDC may be used as redress in the settlement of Treaty breaches.

R The claimants believe that the provision of money for business and/or development funding to Maori is an obligation of the Crown arising from the Treaty and amounts to an action consistent with the Crown's obligations to protect and restore their rangatiratanga.

S The Crown's support, financial input and influence in and over MDC is in accordance with its obligations under the Treaty of Waitangi.

Urgent Claim - Particulars

The Claimants

1 This claim is lodged by Hohepa Joseph Waiti as the chairman of Te Runanga o Te Ika Whenua Incorporated Society ("Te Ika Whenua"). Hohepa Waiti claims on behalf of himself and on behalf of the hapu represented by Te Ika Whenua, those hapu are:

Ngati Manawa
Ngati Whare
Ngati Patuheuheu
Ngati Te Huinga Waka

The Claim

1.2 The claimants are or are likely to be prejudicially affected by the following omissions, policies and practices of the Crown that are inconsistent with the principles of the Treaty of Waitangi. The omissions, policies and practices are:

(a) The omission of the Crown to actively protect the Article III rights of Maori.

(b) The Crown's proposed sale of its shares in MDC.

(c) The Crown's proposal to sell its shareholding in MDC without making the sale proceeds available to Maori in order to partly satisfy the Crown's obligations to Maori and redress the breaches of Article III.

(d) The Crown's proposal to sell its shareholding in MDC without making the sale proceeds available to help meet the Crown's obligations to Maori and redress the breaches of Article II and III of the Treaty.

(e) The Crown's proposal to sell its shareholding in MDC would be contrary to the principles of the Treaty, in particular the Crown's obligations to protect the rangatiratanga of the claimants.

1.3 The said omissions, policies and practice will prejudicially affect the claimants by:

(a) representing a failure by the Crown to:

(1) actively promote Maori economic development; and

(2) actively address past Treaty breaches

(3) honour the terms of the understanding upon which the \$13 million was provided by the Crown and other funds provided on behalf of Maori by the Maori Trustee

(b) removing a source of possible Treaty redress without replacement by the Crown

(c) the Crown appropriating money from an activity which is consistent with the Crown's Treaty obligations to another non-Treaty use, ie the consolidated fund

Remedies

2.1 The claimants seek the following relief; a recommendation to the Crown that:

(a) it not sell its shares in MDC unless it applies the sale proceeds towards another Maori initiated and supported scheme to restore tino rangatiratanga and economic development to Maori

(b) consultation with Maori take place to establish another scheme to restore tino rangatiratanga and economic development to Maori

(c) no sale take place until the consultations referred to in subparagraph (b) have concluded

(d) any other relief the Waitangi Tribunal deems fit

Hohepa Waiti

Notice

The claimants consider that the following should be notified:

- o The Ministers of Finance and Maori Affairs
- o The Maori Trustee and the other MDC shareholders
- o All other iwi

This particulars of urgent claim is filed by Kathy Lee-Anne Ertel, Solicitor of Luckie Hain.

Statement of claim by Te Arawa in respect of the Maori Development Corporation (1.3):

Representatives of the combined groups of Te Arawa Kaumatua Council, Te Arawa Maori Trust Board, Te Runanganui o Te Arawa and Te Arawa Federation of Maori Authorities met on 27 May to consider amongst other matters, the proposed sale of Crown interests in the Maori Development Corporation.

The groups concerned believe that Te Arawa beneficiaries are likely to be prejudicially affected by the proposed actions of the Crown and that without prior settlement of a process with the iwi that such action would be contrary to the principles of the Treaty of Waitangi.

This statement is consistent with claim No 350 which Te Arawa believe has been lodged before the Waitangi Tribunal by Whatarangi Winiata of Ngati Raukawa and Te Aho o Te Rangi Ratema Te Awe Kotuku of Te Arawa.

In this respect, the above Te Arawa organisations endorse and support the above claim and call upon the Crown through the Waitangi Tribunal to defer the disposal of its shares in the Maori Development Corporation until a fair process has been settled and agreed between the Tribes.

We request that the Tribunal give urgent attention to this issue and to forward on this concern to any interested parties.

Kia ora

Chairperson, Te Arawa Kaumatua Council
Chairperson, Te Arawa Maori Trust Board
Chairperson, Te Runanganui o Te Arawa
Chairperson, Te Arawa Federation of Maori Authorities

References

1. It should be noted that this graph is incorrect. Infact DFC (or Poutama Trust) held 2 million shares too and the total of shares subscribed for is 26,000,004.

Waitangi Tribunal, Department of Justice, Wellington.