

Māori Fisheries Review

Appendix 11

**Te Putea Whakatupu:
summary of High Court decision**





DETAILS OF THE HIGH COURT DECISION IN THE MATTER OF NATIONAL URBAN MĀORI AUTHORITY AND TE WHĀNAU O WAIPAREIRA TRUST v TE OHU KAI MOANA TRUSTEE LIMITED AND OTHERS

What were the issues in the proceeding?

The National Urban Māori Authority (NUMA) and Te Whānau o Waipareira Trust (Waipareira) were challenging two matters relating to Te Pūtea Whakatupu Trust (Te Pūtea):

- The appointment of directors to Te Pūtea Whakatupu Trustee Limited (Te Pūtea Trustee) by Te Ohu Kai Moana Trustee Limited (Te Ohu). The key issue was the interpretation of s88(2) of the Māori Fisheries Act (the Act) with NUMA/Waipareira arguing that Te Ohu must ensure that all three directors of Te Pūtea Trustee must “have knowledge of, and are able to represent, the interests of Māori who reside in urban areas of New Zealand”. Te Ohu’s view has been that this requirement applied to the directors collectively, rather than individually. NUMA/Waipareira further sought declarations about the particular set of skills that should be required to show that this criterion had been met, including a history of advancing and advocacy on behalf of urban Māori interests.
- NUMA/Waipareira asked the court to set aside the Te Ohu Plan and the resolutions passed by iwi at last year’s Special General Meeting (SGM) insofar as they related to Te Pūtea.¹ NUMA/Waipareira argued that there should have been specific consultation with urban Māori interests during the Iwi Working Group (IWG) process and that the decisions made by iwi regarding Te Pūtea at the SGM were pre-determined. They also argued that it was not open for iwi to reject the recommendation from the Reviewer² and replace it with a different resolution, which they said was contrary to the purpose of the Act.

What did the High Court decide?

The decision of the High Court was, in Te Ohu’s view, helpful for all parties concerned. In summary, the Court found that:

- (a) Having particular regard to the purpose of Te Pūtea, the correct interpretation of s88(2) of the Act is that each director of Te Pūtea Trustee must meet the criterion contained in that section (namely, each director must “have knowledge of and are able to represent, the interests of Māori who reside in urban areas of New Zealand”);

¹ The resolution passed by iwi at the SGM increased the maximum number of directors on Te Pūtea Trustee from 3 to 5 and altered the quorum to a majority of directors, rather than all directors.

² The Reviewer’s recommendation in relation to Te Pūtea was to transfer control of Te Pūtea to the urban Māori authorities and Representative Māori Organisations along with a ‘yet to be determined’ iwi grouping, which followed on from the reviewer’s primary recommendation to wind up Te Ohu.

- (b) It would be unhelpful to be more prescriptive about the s88(2) criterion as that might unduly limit the available pool of directors for Te Pūtea Trustee who must also collectively meet the other criteria for appointments in the Act;
- (c) The process to consider the findings and recommendations of the Review was procedurally flawed because:
 - (i) those conducting the process (namely, Te Ohu and the Iwi Working Group) did not have proper regard to the purposes of Te Pūtea (see the further comment below) when assessing the merits of the Review; and
 - (ii) there needed to be, but was not, a proper and specific consultation process to present an opportunity for urban Māori views to be ascertained and considered before Te Ohu adopted the IWG paper as its Plan and presented it to the SGM.
- (d) Notwithstanding the view in (c) above, no relief should be given in relation to Te Ohu's Plan or the resolution of the SGM because:
 - (i) there is no issue in relation to the Te Ohu Plan and Te Ohu acted within its powers in this regard;
 - (ii) the outcomes at the SGM were not predetermined;
 - (iii) quashing the resolution regarding Te Pūtea Trustee would not advance matters;
 - (iv) the resolution was not inconsistent with the purposes of the Act;
 - (v) the resolution is a sensible one because it is clear that the current Te Pūtea Trustee structure is not working, particularly the requirement that all directors be available in order for there to be a quorum; and
 - (vi) leaving the resolution in place does not prevent a further consultation process with urban Māori taking place.
- (e) in relation to Te Ohu's forthcoming report to the Minister:
 - (i) Te Ohu is obliged to forward the resolution concerning Te Pūtea Trustee to the Minister; but
 - (ii) nothing prevents that resolution being accompanied by a report on the outcome of a fresh process that gives urban Māori a proper opportunity for input, and which responds to the Review recommendations having had regard to the statutory purposes of Te Pūtea; and
 - (iii) it is appropriate in the circumstances of the case (where Te Pūtea Trustee has not been functioning and court assistance was needed as to the correct interpretation of the governing legislation) for the reasonable costs and disbursements of both parties be paid from the assets of Te Pūtea.

What is the purpose of Te Pūtea?

As noted above, the High Court made certain comments regarding the purpose of Te Pūtea and observed that, in the court's view, this purpose had been misunderstood. In this regard, the court considered not only the provisions of the Act, but also the origins of Te Pūtea and previous views expressed by the courts when the model for allocation was challenged in the late 1990s and early 2000s.

Section 81 of the Act provides that the purpose of Tē Pūtea is to hold and manage its trust funds for and on behalf of the beneficiaries under the Fisheries Deed of Settlement for the purpose of

promoting education, training and research, including matters that relate to fisheries, fishing, and fisheries-related activities. Section 82 of the Act then provides that the benefits of Te Pūtea must be made available as widely as possible to all Māori, but having regard to:

- (a) the extent to which MIOs are providing, or are able to provide, benefits for members of their iwi that are the same or similar to those that are able to be provided by Te Pūtea; and
- (b) the interests of Māori who do not associate with their iwi, or do not receive benefits from a MIO.

The High Court commented that while it is correct to say the Fisheries Settlement was for all Māori and that all Māori are entitled to access Te Pūtea, those responsible for administering Te Pūtea must remember that Te Pūtea was the method by which the duty to ensure the Settlement reached those who cannot or do not affiliate with iwi was to be discharged.³ The court further stated that:⁴

The primary purpose of Te Pūtea was to provide access to settlement proceeds to those who do not associate with their iwi, and do not receive benefits. ... Even if individual Maori are reconnecting with their iwi, that does not diminish the purpose of Te Pūtea to provide for those who cannot or who choose not to. At the very most, any reconnection with iwi might diminish the number of Māori needing and eligible to access Te Pūtea, but that ... does not negate the need to ensure Te Pūtea meets its statutory purposes.

In the court's view, this primary purpose was misunderstood in that those Māori who did not associate with their iwi or did not receive benefits from them, ought to receive primacy of consideration when decisions on the distribution of benefits from Te Pūtea are being made. In the context of the Review, the Court observed that there was undue emphasis on Te Pūtea being open to all Māori at the expense of recognising Te Pūtea's particular role in the Settlement process and its statutory purpose. These views of the Court provide important guidance for all when considering the role and direction of Te Pūtea into the future.

What happens now in relation to the directors of Te Pūtea Trustee?

Prior to the hearing Richard Jefferies, Rikirangi Gage and John Tamihere each resigned as directors of Te Pūtea Trustee. This was a pragmatic decision by them to allow fresh appointments to be made by Te Ohu. Te Ohu now intends to develop a process for the appointment of new directors to Te Pūtea Trustee that reflects the court's decision. Pending the completion of that process, Te Ohu will ask the court to install interim directors to ensure that Te Pūtea can continue to operate.

What are the implications of the decision for the Review process and Te Ohu's report to the Minister?

In order to address the procedural flaws the court identified in the previous review process, Te Ohu intends to engage with NUMA/Waipareira and other urban Māori interests and develop an appropriate consultative process regarding the Reviewer's recommendations in relation to Te Pūtea. Importantly though, the court indicated that the Review process should continue, including Te Ohu delivering the resolutions passed by iwi at the SGM and its accompanying report to the Minister for Primary Industries. However, at that time Te Ohu will also provide the Minister with a copy of the High Court's decision and include in its report the outcomes of any further consultation to be undertaken with urban Māori groups regarding Te Pūtea.

³ High Court Decision, para 30.

⁴ High Court Decision, para 86.

Te Ohu Kai Moana Trustee Limited

Level 4, Revera House
48 Mulgrave Street, Thorndon

PO Box 3277
Wellington, New Zealand

Phone 64-4-931 9500

Fax: 64 4 931 9518

Email: tari@teohu.maori.nz

Web: www.teohu.maori.nz

