

New Zealand Māori Council Claim Dismissed by Supreme Court

Specialist lawyers Jen Crawford and Will Jennings provide comment on the 27 February decision, in which the Supreme Court unanimously dismissed the claim by the New Zealand Māori Council against the Crown's proposed restructuring of Stated-owned enterprise Mighty River Power.

The dispute was over whether the Crown proposal to partially privatise and sell some of the shares of Mighty River Power through mixed ownership companies was inconsistent with Treaty principles. It was common ground at the hearing that the Crown proposals would be inconsistent with the principles of the Treaty if they were to materially impair the ability of the Crown to act on recommendations of the Waitangi Tribunal relating to Treaty breaches.

The Supreme Court was of the view that the proposed sale of the shares was reviewable for consistency with the principles of the Treaty. However, after analysis the Court concluded that the partial privatisation of Mighty River Power will not impair "to a material extent" the Crown's ability to remedy any Treaty breach in respect of Māori interests in the Waikato River. Essentially, the Supreme Court was satisfied that the transfer of companies from the state enterprise regime to the mixed ownership model regime (in which the Crown retains majority control) does not alter the Crown's obligations to act in accordance with the Treaty. The appeal points based on breach of the Settlement Act and inadequacy of consultation also failed.

Overall, the appeal failed because the Crown is able to remedy any Treaty breaches in relation to water. The Prime Minister has stated publicly that this now clears the way for the proposed assets sales, a topic that has generated much interest around the country. While the appellants failed as to the ultimate result, the Court did note that they had succeeded on a point of principle that the Crown was bound to comply with the principles of the Treaty before deciding to sell the shares.

In terms of the current reforms involving resource management and water law, the Supreme Court decision is certainly not the last word. The Government has acknowledged that Māori have interests and rights in relation to certain waters. The Waitangi Tribunal will, in due course, conclude its *Freshwater* inquiry and the Crown will be expected to respond to those recommendations. The future of freshwater management (and the Resource Management Act) has been under active review as part of the *Fresh Start for Fresh Water* programme, and this has included extensive consultation with Māori. In the Canterbury setting, hearings have recently commenced on the proposed Land and Water Regional Plan with Ngāi Tahu playing a central role in that process.

The Supreme Court decision provides some interesting comment on the water debate. The Court noted in its decision that "recognition of Māori interests in water is clearly still a work in progress". The journey towards achieving sustainable solutions for managing the freshwater resource can be expected to continue for some time yet.

Prepared by Jen Crawford and Will Jennings.



Jen Crawford, Partner Owner

P: 03 335 1265

M: 027 436 6040

E: jen.crawford@andersonlloyd.co.nz



Will Jennings, Solicitor

P: 03 471 5493

E: william.jennings@andersonlloyd.co.nz