

TE MANUTUKUTUKU

*Te Roopu Whakamana i te
Tiriti o Waitangi
Panui*



*Waitangi Tribunal Division
Department of Justice
Newsletter*

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Auckland Crown asset sales – Maori propose cooperative scheme

The Crown sale of Sylvia Park, Auckland, land for which there is currently a Treaty of Waitangi claim, has prompted claimant tribes in the area to call on the Waitangi Tribunal to report to Government on the tribes' proposed method of assisting the Crown to dispose of its Auckland assets that are under Treaty claim.

The proposal is that iwi and government consult on particular Crown properties in Auckland that claimants wish to be exempt from sale because of their special value to iwi.

The remaining properties would then be released for sale with the approval of iwi. The Tribunal's report emphasises the advantage that such a scheme would have for citizens who have purchased or are considering purchasing those lands. The memorial on the title that allows the land to be returned to Maori ownership, should the Tribunal so rule, would be removed permanently.

Sylvia Park was sold through the Department of Survey and Land Information, not through a state enterprise. This means that claimants are denied the protection offered by the Treaty of Waitangi (State Enterprises) Act 1988 which protects Waitangi Tribunal claimants by allowing for the return of land to claimants if the Tribunal finds in their favour.

Selling Crown assets in the way Sylvia Park was sold is entirely unsatisfactory to claimant tribes in the area. The iwi proposal, which is intended to avoid a continuation of that process, has been endorsed by the Tribunal who also recommended to Government that it negotiate an arrangement with claimants.

On the subject of selling land outside the state enterprises protective arrangement, the Tribunal says there is a time-honoured principle with general application at issue. 'It is a fraud by any fair law to so dispose of assets as to defeat a creditor's right of recovery.'

Because the Sylvia Park sale is now complete, the Tribunal has recommended to the Crown that the proceeds of the sale be held until claims for that particular property are resolved.

Te Roroa report released

The Te Roroa report, the culmination of an investigation which has taken nearly three years of hearings and report writing, was released on Friday 3 April. At a hui on the Waikaraka marae at Kaihu, just north of Dargaville, the Minister of Maori Affairs, the Hon Douglas Kidd, was presented with a copy of the report by Tribunal Presiding Officer, Maori Land Court Judge, Andrew Spencer. About 200 people attended the hui.

The diversity of the issues that the Tribunal has had to address in this claim is reflected in the report's recommendations and proposals.

Recommendations

On the basis of its findings, the Tribunal recommends the return to tangata whenua of all the land which should have been set aside from Crown purchases of Maunganui, Waipoua, Waimamaku and Wairau lands. The particulars are as follows.

- ▲ **Manuwhetai and Whangaiariki** The Tribunal adopts Judge Acheson's findings from 1942 when he said that the 'circumstances of this case . . . cry aloud for redress for the Natives. The two reserves are theirs and should be returned to them, no matter what cost to the Crown this may involve'.
- ▲ **Kaharau and Te Taraire** The Tribunal applies Judge Acheson's findings (see above) to Kaharau and Te Taraire.

The Tribunal recommends that the Crown take all steps to acquire these lands, which should not have been included in its purchases, and return them to tangata whenua as hapu estates.

- ▲ **Maunganui Bluff** The Tribunal recommends that Maunganui Bluff Scenic Reserve cease to be Crown land and be vested in tangata whenua in accordance with precedents set by the return of Hikurangi to Ngati Porou and Taupiri to Tainui.
- ▲ **Taharoa** The Tribunal recommends that the 250-acre Taharoa Native Reserve, granted to Parore Te Awha as from 8 February 1876, be restored 'as wahi tapu, papakainga and mahinga kai for tangata whenua' as originally intended.

continued

- ▲ **Wairau Wahi Tapu Reserve** The Tribunal recommends that the Crown return to tangata whenua that area of land omitted from the Wairau Native Reserve by survey on its southern boundary.
- ▲ **Kawerua** The Tribunal recommends that approximately 30 acres of land at Kawerua cease to be Crown land and, together with access, be vested in tangata whenua as a Maori reservation.

Proposals to help parties formulate submissions on remedies

Having reviewed all the evidence, there are findings upon which the Tribunal is unable to make informed recommendations. There will be a further hearing to receive submissions from the Crown and claimants on these findings. These submissions will assist the Tribunal in completing its recommendations.

The Tribunal's proposals take into account the present social and economic climate and, in particular, the need to resource and promote the development and welfare of Te Roroa.

- ▲ **Return of Waipoua No 2** The Waitangi proposes that the Crown enter into negotiations with the claimants for the return of lands alienated in Waipoua No 2 block in its entirety to provide an economic base for the rebuilding of the Waipoua settlement.
- ▲ **Waipoua Forest headquarters** The Waitangi Tribunal proposes that the Waipoua Forest headquarters be vested in tangata whenua as compensation for the purposes of promoting Te Roroa's economic and social development.
- ▲ **Requirements for development** The Tribunal proposes that the Crown provide financial resources for the following purposes:
 - to provide legal and adequate access from Katui to the Waipoua settlement and Kawerua; the question of whether it should be private or public access should be a matter for tangata whenua to decide
 - to install a reliable method of radio telephone communication for the residents of the Waipoua valley
 - to meet the special educational needs of children in the Waipoua valley
 - to meet the special community health service needs of the people in the Waipoua valley
 - to reactivate the Waipoua archaeological project
 - to initiate an environmental training scheme for young tangata whenua to help them acquire skills in environmental and conservation management
 - to train and employ tangata whenua in fisheries protection work
 - to provide resources for the labour required for community-based employment schemes
 - to settle all unpaid rates within the Te Roroa claim area. To obtain remission by the Kaipara district council until access by private or public road is provided to the Waipoua settlement.
- ▲ **Control and protection of wahi tapu** The Waitangi Tribunal proposes that the Crown re-affirm the traditional and Treaty rights of tangata whenua to control and protect their own wahi tapu. The Tribunal also requires the Department of Conservation and other agencies concerned in the management of national and cultural resources to give practical effect to this commitment.

- ▲ **Resource management** The Waitangi Tribunal proposes that:

- the Crown take urgent action to amend the procedural provisions of the Resource Management Act 1991 to ensure that all Maori with interests in multiply-owned Maori land have the right to be informed on all matters affecting their land
- the Crown resource an advocacy service to represent all Maori with interests in multiply-owned Maori land and provide advice to Maori in relation to resource management and conservation issues
- the Historic Places Trust Bill 1992 should not be proceeded with until the Tribunal has had the opportunity to study it in accordance with s 9 of the Treaty of Waitangi Act 1975 and in the light of the Tribunal's findings and recommendations in respect of this claim.

- ▲ **Management of public reserves** The Waitangi Tribunal proposes that:

- the Crown direct the Kaipara and Far North district councils to ensure that proper provision is made for effective participation of tangata whenua in the management of any reserves in their districts
- the Crown direct the Department of Conservation to ensure the effective participation of tangata whenua in the management of the Waipoua Forest Sanctuary and other conservation estates.

If necessary, the Tribunal has agreed to reconvene in about six months to consider progress with the recommendations.

The report can be purchased from
Brooker & Friend Ltd, PO Box 43, Wellington.
Tel: 0-4-385 6683 Fax: 0-4-385 7300

Legal aid for claimants

Since February of this year, a new legal aid scheme has been in place that allows claimants to get legal assistance for their claims through normal legal aid channels.

Up till now the Waitangi Tribunal has been the sole provider of legal aid to claimants.

The new system has the following features:

- ▲ applications pass through the normal channels for civil legal aid
- ▲ applicants must provide information about their claim
 - the financial resources of the people bringing the claim, and the financial resources of any incorporated groups like trust boards or section 438 trusts which might help the applicants with legal costs
- ▲ all applications are dealt with by a Wellington committee of lawyers
- ▲ all applications are referred to the Waitangi Tribunal, which gives an opinion as to when it is likely to hear the claim, whether the claim is to be grouped with other claims for hearing and other matters
- ▲ if the committee makes a grant of legal aid, this will be a fixed sum, that is, the lawyer appointed must work for a set amount.

Unfortunately, although this system came into effect in February, the procedures for considering applications and providing legal aid are not yet in place. However, the Legal Services Board and the Wellington committee should be fully operating from 1 July.

Whanganui ki Porirua: exploratory report completed

A report entitled 'Exploratory report on early crown purchases: Whanganui ki Porirua' has been written by a Tribunal-commissioned researcher. The report deals largely with Crown purchases in that area *before* the Native Land Court investigations of customary land title. One exception is the Rangitikei-Manawatu purchase, as this district was not included in the operation of the Native Land Act 1862.

The report gives a brief account of recent tribal settlement in the area, because knowledge of inter-tribal relationships is crucial to researchers' understanding of the background to the purchases. The report is intended to be used by researchers as a starting point for further detailed research into claims in the area. It is exploratory only, and draws no definite conclusions.

There are eight claims in this region:

- ▲ Wai 52 – Tamihana Tukapua on behalf of Muaupoko (lodged 5 December 1988)
- ▲ Wai 88 – Pehi Parata on behalf of Te Ati Awa ki Waikanae (lodged 7 August 1989)
- ▲ Wai 108 – Tama-i-ua Ruru on behalf of Muaupoko (lodged 22 November 1989)
- ▲ Wai 113 – Whata Karaka Davis and others on behalf of Ngati Raukawa ki te Tonga (lodged 28 November 1989)
- ▲ Wai 182 – Ruth Jaqualine Hera Harris on behalf of Rangitane ki Manawatu (lodged 3 January 1991)
- ▲ Wai 207 – Akuhata Wineera and others on behalf of Ngati Toa Rangatira (lodged 1 June 1991)
- ▲ Wai 237 – Ron and William Taueki on behalf of Muaupoko ki Horowhenua (lodged 26 August 1991)
- ▲ Wai 265 – George Mathews on behalf of Ngati Apa (lodged 11 December 1991).

The purchases that the report investigates are as follows:

- ▲ the New Zealand Company purchases in Porirua and Wanganui
- ▲ the Rangitikei-Turakina purchase
 - Ngati Apa's right to sell
- ▲ ferry land leases (land at the junction of the Waikawa and Ohau Rivers)
- ▲ the Whareroa block (Waikanae)
- ▲ negotiations for the Manawatu
- ▲ the purchase of Te Awahou
- ▲ the Wainui purchase (Waikanae)
- ▲ Featherston's purchases
 - Porirua
 - the Okui eel fisheries
 - the Ahuaturanga purchase (upper Manawatu)
 - the Muhunoa block (between Otaki and the Manawatu)
 - Te Awahou Reserves
- ▲ Mana Island
- ▲ the Rangitikei-Manawatu purchase
 - Native Lands Act 1862
 - opposition to the sale
 - reserves.

The 61-page report is accompanied by a document bank of several hundred pages containing copies of original historical documents.

New claims registered

WAI 274

Claimants: Eric John Tupai Ruru for Te Aitanga a Mahaki

Concerning: Mangatu State Forest

Region: Gisborne

Received: 24 February 1991

WAI 275

Claimants: Kawana Te Kirikau for Ngati Makino

Concerning: Tahunaroa and Waitahanui blocks

Region: Rotorua

Received: 20 February 1992

WAI 276

Claimants: Ngati Whatua o Orakei Maori Trust Board

Concerning: Sylvia Park and other Auckland lands

Region: Auckland

Received: 17 March 1992

WAI 277

Claimants: Matiu Marino Mariekura for descendants of Rangituhua and others

Concerning: Raetihi and Mangaturuturu blocks

Region: Turangi

Received: 27 February 1992

WAI 278

Claimants: Pauline Tangiora for Te Whanau o Rongomaiwahine Trust

Concerning: Waikokupu Harbour

Region: Wairoa

Received: 27 November 1991

Corrections

The following claims were incorrectly recorded:

Wai 227

Claimant: Toa Haere Faulkner for the Pirirakau hapu of Ngatiranginui

Concerning: Blocks from Te Puna to Katikati, taonga and fisheries

Region: Tauranga, Bay of Plenty

Received: 19 August 1991

(*Te Manutukutuku*, October 1991)

Wai 262

Claimants: Haana Murray of Ngati Kuri and Del Wihongi of Te Rarawa and others

(*Te Manutukutuku*, March 1992)

We apologise to claimants for the errors – Ed.

Copies of the report and document bank are held by the Wananga o Raukawa, Otaki, and the Maori Studies Department of Massey University, Palmerston North, for the use by claimants and researchers of Ngati Apa, Ngati Kauwhata, Rangitane, Muaupoko, Raukawa, Ngati Awa and Ngati Toa. There is also a copy for claimant researchers' use in the Waitangi Tribunal library.

Mohaka River claim

Ngati Pahauwera has requested that the Waitangi Tribunal recommend to the Minister for the Environment not to act on the Planning Tribunal's recent recommendation for a national water conservation order on the Mohaka River.

At an urgent hearing in Wellington on 15 April 1992, counsel for Ngati Pahauwera detailed the claimants' objections to the Planning Tribunal recommendation.

An application was brought before the Planning Tribunal by the Acclimatisation Society to protect the Mohaka River from planned development by Electricorp. Claimant counsel said a refusal for legal aid denied Ngati Pahauwera participation in that Planning Tribunal hearing.

The tribe filed submissions which were not considered in the Planning Tribunal's findings because they were unsworn statements, they were written in Maori, and because cross-examination was not possible through lack of representation. Ngati Pahauwera say they were not told about these procedural matters when they filed their submissions.

The Planning Tribunal heard the Acclimatisation Society's application under the Water and Soil Conservation Act 1967, an Act that does not direct the Treaty of Waitangi to be taken into account. As a result, its decision states, 'that the Planning Tribunal has no authority to give effect to the Treaty of Waitangi'. However, claimants hold that nothing in the Act restricts a wide community interpretation and that a wider interpretation is consistent with the New Zealand Bill of Rights Act 1990.

According to the claimants' counsel, a preferable route would have been to use the Resource Management Act 1991 which provides for the Treaty of Waitangi.

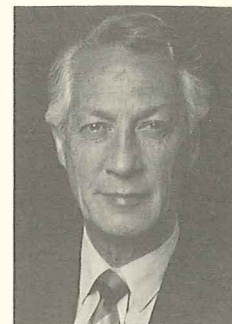
Spiritual and cultural values were also not taken into account because they were not viewed by the Planning Tribunal as part of the river's physical attributes or 'other natural characteristics' as the Act provides. Claimant counsel said previous Waitangi Tribunal reports deal with cultural and spiritual values, values that should not be dismissed or denied by any other court; the Planning Tribunal should take note of Waitangi Tribunal decisions when making its recommendations.

The Waitangi Tribunal heard support for the Ngati Pahauwera claim to ownership of the Mohaka River from the Whanganui River Trust Board which stated that rangatiratanga and kaitiaki functions are not inconsistent with the duties of the Crown. Tainui also supported the claim as it relates to all rivers.

Crown counsel responded by advising the Waitangi Tribunal to think carefully before challenging the Planning Tribunal decision, adding that a water conservation

Tribunal member receives award

The Elsdon Best Memorial Medal has been awarded to **Professor Sir Hugh Kawharu** of Ngati Whatua.



Sir Hugh, who has been a member of the Waitangi Tribunal since 1986, received the award in recognition of his writings on Maori land tenure and the Treaty of Waitangi, his work on the Tribunal and his role as head of the Maori Studies Department at the University of Auckland. He holds a BSc (NZ), MA (Cambridge) and DPhil (Oxford) and has worked for numerous national and international organisations.

The Polynesian Society awards the medal for outstanding ethnographic work on Maori issues. It commemorates Elsdon Best, a prolific writer on Maori culture who died in 1931.

Congratulations to Sir Hugh from the chairperson, members and staff of the Waitangi Tribunal.

order does not concern ownership of the Mohaka River. Further, Crown counsel said that it is the claimants' responsibility to prove their ownership to the Crown; Ngati Pahauwera must prove that the river is distinct from the surrounding land, from which the tribe is presently alienated.

It was suggested by Crown counsel that the Waitangi Tribunal should not submit a recommendation on the water conservation order until it has decided that the claim of ownership by Ngati Pahauwera is well founded. Claimant counsel replied that the Crown must give its assurance that it will not take steps towards implementing the water conservation order before receiving the Waitangi Tribunal's findings.

Finally, while making no formal recommendations, the Waitangi Tribunal requested Crown counsel to convey to the Crown that no further action should be taken until the Tribunal has heard the Ngati Pahauwera claim at the beginning of May. On the issue of legal aid, the Waitangi Tribunal will advise the appropriate legal aid sub-committee that the Waitangi Tribunal is giving priority to this claim and that legal aid is necessary.

At the time of writing, the Tribunal was hearing the claim by Ngati Pahauwera to regain tino rangatiratanga over the Mohaka River. Ngati Pahauwera is joined for research and inquiry purposes with a Ngati Kahungunu claim, and the Mohaka River is being dealt with separately from the land claim because of the Planning Tribunal recommendation.

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