BEFORE THE WAITANGI TRIBUNAL

Wai 1750
Wai 87

IN THE MATTER OF the Treaty of Waitangi Act 1975

AND

IN THE MATTER OF the North-Eastern Bay of Plenty Inquiry District (**Wai 1750)**

AND

IN THE MATTER OF a claim by the late Claude Edwards and Adriana Sylvia Edwards for and on behalf of Whakatōhea hapū/iwi
(Wai 87)

Memorandum of Counsel –Waipaoa Mangatu CFL.

Dated 17 March 2023

NGĀTAHI LAW

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WELLINGTON

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MAY IT PLEASE THE TRIBUNAL

1. This Memorandum of Counsel is filed on behalf of the late Claude Edwards and Adriana Sylvia Edwards for and on behalf of Whakatōhea Hapū of all relevant times, (**Wai 87)** addressing Memorandum-Directions Wai 1750, #2.5.76

2. The directions called for submissions concerning Ngati Ira o Waioweka (Wai 558) claimed interests in the Mangatu Crown Forest Lands (Wai 1750, #3.1.433). Parties who wish to support Wai 558 submissions to do so by 5pm, Friday 17 March 2023.

3. Wai 87 is supportive[1] of Wai 558 submissions in particular the Power of the Tribunal[2]and The Supreme Court Decision in Wairarapa Moana.[3] The relevance of the case law to the current situation Whakatohea find themselves in cannot be understated, as quoted;[4']

'The Supreme Court allowed the appeal, indicating that the tikanga of mana whenua needed to be evaluated in the wider context of tikanga at play in particular circumstances;' and

'It is said it was dangerous to apply tikanga principles, even important ones, as if they were rules that excluded regard to context[5]'.

4. Whakatohea context, suffering a historical invasion and colonial retribution from 1865 to the present day, a displaced dispossessed tribe, a pariah in their own lands overlapping into the hinterland with others, prejudiced by the last to be heard when all others were years in advance; reference to Turanga inquiry 2004.

5. Wai 87 dogged persistence to interests in Mangatu and Waipaoa resulted in the Ngati Muriwai Authority Trust achieving approved client status to Crown Forest Lands. Such support allowed Wai 87 to generate research to those forest blocks. Prior to such support Wai 87 went alone and filed amended claims to the Mangatu forest blocks on 26 July 2018 Wai 87 1.1(h) which intel alia stated[6];

h) That the customary rights and interests Whakatōhea Wai 87 claim referred to were to be further particularised at such a time that either a historical inquiry was held, or

[1] Wai 1750, #3.1.433
[2] At [9-18] Power and Jurisdiction of the Tribunal
[3] *Wairarapa Moana Ki Pouakani Incorporation v Mercury NZ Limited* [2022] NZSC 142
[4] At [74]
[5] At [74].
[6] Wai 87, 1.1(h) 26 July 2018 para 4(h)

research granted to cover those areas and issues in preceding Wai 87 statements of claim; and

i) That Wai 87 overlapping boundaries and customary rights and interests in Manga Blocks 1 have not been heard before a Tribunal as at 2018.

6. On 19 June 2020 indicative of Whakatohea interests principle claimant Adriana Edwards[7] filed for the Waipaoa blocks.

7.. The Wai 87, 1.1(i) amended claim stated;

b) Whakatōhea hapū had customary rights use and interests in Waipaoa Blocks 5, 1A1, 1A2, 1, and 2, overlapping and abutting Mangatu and had customary rights and interests in Mangatu blocks (1,2,3,4,5,6).

8. In support of the amended application the affidavit of Adriana Edwards was filed[8].

9. The affidavit stated ;

'I was raised in Toa Toa the back of the Motu. I mixed with and regularly attended hui with elders of our tribe inland around the Motu regions. I travelled with my father Claude Edwards who was Whakatohea and Tuhoe[9].

I attach as Appendix **"A" (map 1)** of Crown Forest Lands. The green outline is the Waipaoa forest blocks in the Whatatutu location. The Waipaoa blocks were owned by Whakatohea hapu who resided there and owned the lands. The Waipaoa River identified **(map 2)[10].**

I retrieved from Turanga several document bundles. Waipaoa Block 5A. I attach it as Appendix **"B".** The records show the schedule of owners as Whakatohea chief Matiu Ranapia of Ngai Tamahaua. The schedule contains the names of Ani Ranapia;]haka Ranapia· Mere Ranapia; Maia Ranapia; Mihi Ranapia; Matiu Ranapia; Taku Ranapia alias Ranapia Taku; they are all Whakatohea[11].

10. Edwards affidavit goes on the state some of the Waipaoa blocks became vested in the Crown[12].
11. This effort was carried out without any support except for claimant's determination with little to no financial assistance. Wai 87 claimants are now able to adequately fund Wai 87 research which is ongoing providing further clarification to that research filed.

12. However the Crown response when asked the status of the Waipaoa blocks that it is the subject of an AIP with an undisclosed source was enlightening.

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[7] Wai 87, 1.1(i) Date;19 June 2020
[8] Wai 87, #A6
[9] Wai 87, #A006 (para2)
[10] Wai 87, #A006 (para5)
[11] Wai 87, #A006 (para7)
[12] Wai 87, #A006 (para7)

13. Counsel has not been the subject of any discussions regarding Waipaoa and despite having met Crown Officials to discuss the forest block most recently nothing of the sort was disclosed. Clarification and disclosure from the Crown on this matter would be helpful.

Crown Treaty Settlement Policy

14. The attached letter from the Crown sets out the settlement of Whakatohea Wai 87 received by Wai 87 principal claimant , dated 21 February 2023[13]

> 'Te Whakatohea members supported the settlement package and post-settlement governance entity through ratification in October and November 2022'
>
> 'Once the Deed is signed [….] When enacted, that legislation will settle Wai 87'
>
> "The Waitangi Tribunal will retain jurisdiction to make findings but not recommendations regarding historical claims".

15. The Crown has effectively removed the jurisdiction of the Tribunal to recommend on Waipaoa Forests.

16. Section 8HB was available for those claimants of Turanga but not available for those claimants of Whakatohea.

17. Turanga claimants received reports and binding recommendations and are also now available to be involved in the Whakatohea inquiry.

The Whakatohea Pre-Settlement Claims

18. The Whakatohea Pre-Settlement Claims Trust Deed[14]includes in its preamble Wai 87.

19. The preamble states the claim was registered by the Waitangi Tribunal and amended in 1999 to include claims for lands of rivers, harbours and foreshore and seabed.

20. Wai 87 has been amended several times since 1999 including the Mangatu and Waipaoa CFL blocks.

21. The Deed does not mention the extent of Wai 87 amendments and what exactly the areas covered relate to.

Conclusion

22. From the outset Wai 87 position is to not disrupt or stand in the way of a desperately needed Whakatohea Treaty Settlement. However, Wai 87 cannot countenance the refusal of the

[13] Te Arawhiti Letter to Wai 87 Principal Claimant Adriana Edwards 21 February 2023
[14] Wai 1750, #3.3.14(c)

Crown to remove those parts of Wai 87 being Waipaoa and Mangatu from the current settlement which lay outside the current Waitangi Tribunal District Wai 1750.

23. Whakatohea Wai 87 anecdotal evidence from local historians of Whakatohea interests all along the Motu river from the backblocks of Toa Toa, Waipaoa, Takaputahi, and Whitikau blocks and Whakapaupakihi.

24. Wai 87 affirm a discrete inquiry of Whakatohea customary interests and uses in Waipaoa Mangatu before the Wai 1750 Tribunal.

Dated this **17** day of **March 2023**

Tony Sinclair
Legal Counsel