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IN THE WAITANGI TRIBUNAL
KEI MUA I TE RŌPU WHAKAMANA I TE TIRITI O WAITANGI

WAI 898

WAI 575

IN THE MATTER OF **the Treaty of Waitangi Act 1975**

AND

IN THE MATTER OF **Te Rohe Pōtae Inquiry**

AND

IN THE MATTER OF **The Ngāti Tūwharetoa Comprehensive Claim**, a claim filed by Te Ariki Tumu te Heuheu on behalf of Ngā Hapū o Ngāti Tūwharetoa

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OPENING SUBMISSIONS
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MAY IT PLEASE THE TRIBUNAL

1. Ngāti Tūwharetoa come to this inquiry from the bordering regions of the district. Although they have customary interests in the border blocks, in the main their territory lies on the other side of the inquiry boundary that runs along the Hauhungaroa Ranges.[1] And yet, as one of the so-called 'Four Tribes', the story of Te Ōhākī Tapu cannot be fully unraveled without their participation.

2. Ngāti Tūwharetoa's claims concerning the Rohe Pōtae Compact have been heard by the National Park Tribunal. However, that Tribunal was in the disadvantageous position of not having heard from Ngāti Maniapoto (although the late Dr Tui Adams did deliver a précis of what was expected to be his fuller evidence before this Tribunal, which sadly has not come to pass).

3. Accordingly, in the recently released *Te Kāhui Maunga* report the National Park Tribunal emphasised that its analysis of the claims was only "preliminary", and it passed the baton to this Tribunal to canvass a thorough investigation of the issues.[2]

4. What were those findings? The National Park Tribunal accepted Cathy Marr's analysis that the 'compact' was the product of a series of meetings held from 1882 to 1885 between the Crown and the four or five tribes that comprised the Rohe Pōtae alliance.[3] All parties, including the Crown, concurred that the negotiations were an unfolding process, or as Crown counsel put it, 'a series of discussions, negotiations and incremental agreements'. The Tribunal concluded that:

> For our purposes, we agree with Ms Marr that **this 'series of agreements' amounted to agreed conditions for the opening of the King Country, and that these negotiations were part of an ongoing relationship between the parties, a relationship that reflected the Treaty relationship**.[4]

5. The Tribunal found that the Crown did not fulfill its side of the bargain. It described the expectations of the Rohe Pōtae leadership in this way:

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1 Refer Plate 1, Te Rohe Pōtae District Overview Map Book. Ngati Tūwharetoa's customary land interests in the Rohe Pōtae inquiry district are in the Maraeroa, Rangitoto-Tuhua and Ketermaringi blocks; refer Wai 575 statement of claim, #1.1(g).

2 Waitangi Tribunal, *Te Kāhui Maunga*, Vol 1, p256 and p303. The National Park Tribunal also did not have the benefit of having the more in-depth research that Cathy Marr and Dr Don Loveridge have now completed.

3 *Te Kāhui Maunga*, Vol 1, p256.

4 Emphasis added; *Te Kāhui Maunga*, Vol 1, p270.

> The Rohe Pōtae leadership had taken from its negotiations with the Crown that: a reformed court would confirm the external boundary to theRohe Pōtae; Māori committees would be legislatively empowered to determine the internal boundaries of the land; and that Māori would be able to manage their own lands. Ballance'spromises – to enhance the powers of district komiti and pass legislation for community management of lands – would have fuelled these expectations. **It was quite feasible for the Crown to fulfil its half of the bargain, and it could have done so while still accepting theTaupōnuiātia application in October 1885** ... Instead, it chose not to reform the court, and failed to provide adequate powers for Māori committees…[5]

Issues from Ngāti Tūwharetoa's perspective

6. In the first two weeks of the Rohe Pōtae inquiry, this Tribunal has already been appraised of the key issues concerning the nature of Te Ōhākī Tapu and the expectations underpinning it. I would add three more issues from the Ngāti Tūwharetoa perspective:

   6.1. The extent to which Ngāti Tūwharetoa participated in and supported the Compact negotiations;

   6.2. Whether the Crown's refusal and/ or failure to reach an accord with the Kīngitanga contributed to a 'divide and rule' situation that destabilised the alliance and facilitated the Crown's objective of introducing the Native Land Court to the district;

   6.3. The circumstances which led to the Taupōnuiātia application to the Native Land Court, which, as matters transpired, proved to be the thin end of the wedge in breaking open the Rohe Pōtae.

Participation of Ngāti Tūwharetoa in Compactnegotiations

7. Ngāti Tūwharetoa are consistently referred to as one of the 'Four Tribes' supporting the Compact negotiations at significant milestones along the road, such as the 1883 petition and the December 1883 agreement to obtain a survey of the external boundary. And yet even a rudimentary scratch at the surface reveals that Ngāti Tūwharetoa's response to the Rohe Pōtae negotiations was a complex one.

8. In *Te Kāhui Maunga*, the National Park Tribunal described Ngāti Tūwharetoa's support for the negotiations as ambivalent.[6] Ambivalence may not be precisely the right term, as it is known that there was support

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5 Emphasis added. *Te Kāhui Maunga*, Vol 1, p280.

6 *Te Kāhui Maunga*, Vol 1, p264.

from some Ngāti Tūwharetoa leaders, but that others, most notably Te Heuheu, made their opposition plain by filing counter-petitions.

9. Perhaps Cathy Marr was closer to the mark in her suggestion that it was those chiefs from communities living within the Rohe Pōtae who were more likely to be involved in the negotiations, particularly when they had close whakapapa links to other key players.[7]

10. This would appear to be borne out by the identity of those in support, at least as far as can be gleaned from the record. Without key sources of evidence such as the signatories to the 1883 petition, we are dependent on the traditional history of Ngāti Tūwharetoa to identify those involved. According to the evidence those in support included:

    10.1. Kingi Te Herekiekie of Tokaanu (the nephew of Te Pikikotuku of Whanganui);

    10.2. Matuaahu Te Wharerangi of Rotoaira, the Ngāti Hikairo chief;

    10.3. Hitiri Te Paerata of northern Taupō, who also had strong Raukawa connections;

    10.4. Ngahuru Te Rangikaiwhiria, who was Ngāti Manunui.

11. However, Ngāti Tūwharetoa traditional history records that those chiefs did not have the other chiefs of Ngāti Tūwharetoa standing alongside them. The most outspoken was Ariki Horonuku Te Heuheu, who objected by petition and letter. I would suggest however that it is problematic to characterise Te Heuheu's response as opposition. What was he opposing exactly? It appears that he was motivated largely by his fear that the external boundary cut Ngāti Tūwharetoa in half (his concern to keep Ngāti Tūwharetoa land intact was most vividly expressed through his use of the kiwiweka metaphor in his Poutu speech).

12. The crucial point to grasp is that there was unanimity amongst the Ngāti Tūwharetoa leadership in supporting the priorities of the Rohe Pōtae alliance.[8] Those objectives, including most notably the protection of the whenua and the need for reform of the Native Land Court, were objectives shared by the Kīngitanga and objectives shared by Ngāti Tūwharetoa. Any differences between the leaders were over strategy, not objectives.

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[7] From memory, Ms Marr stated this during cross-examination. See also *Te Kāhui Maunga*, Vol 1, p264.

[8] *Te Kāhui Maunga*, Vol 1, p264.

The Kīngitanga

13. This raises squarely the question of whether things might have turned out differently if the Crown had been more reasonable and agreed to reach an accommodation with the Kīngitanga. Like the other iwi of the district, Ngāti Tūwharetoa had committed to the Kīngitanga's political objectives of retaining Māori authority and autonomy over their communities and land.

14. Cathy Marr's more detailed evidence in this inquiry casts fresh light on how close the Crown and the King had been to reaching agreement on more than one occasion, such as the agreement in principle that the King believed he had reached with Native Minister McLean in 1875. Although that agreement fell through, the Kīngitanga maintained a willingness to engage and by the 1880s accepted that there was a need to reach an accommodation that would allow the integration of the Kīngitanga 'state' with the rest of the country. And hence King Tawhiao's 1882 proposals called for the work of surveys, land sales and the Native Land Court to cease until agreement had been reached on "some mutual basis of settlement".

15. The Crown's preference was not to engage with the Kīngitanga, because to do so had constitutional and political implications. Instead of considering the Kīngitanga's reasonable (and Treaty compliant) proposals for reform, Native Minister Bryce decided to bypass King Tawhiao and negotiate directly with the customary chiefs of the district with respect to their customary lands. The focus was thus shifted from the overarching Kīngitanga kaupapa of recognising co-existing Māori authority to the more pragmatic discussion of whether to allow the railway in exchange for winning concessions on reforms.

16. It is clear that in achieving this shift Bryce put Wahanui and the other leaders under considerable pressure to proceed without the King. This Crown pressure had destablising consequences for the Kīngitanga alliance, compounding the pressure created by the Crown's rejection of the King.

Taupōnuiātia application

17. Ngāti Tūwharetoa were in an increasingly vulnerable position by the 1880s, with the Native Land Court encroaching significantly into their territory. As the pace of colonisation accelerated, there was increasing tension between supporting the Kīngitanga kaupapa, on the one hand, and losing control of Ngāti Tūwharetoa land on the other.

18. By this time, the land under Kīngitanga control had contracted significantly, and the 1883 Rohe Pōtae boundary cut through the middle of Lake Taupō. This unnatural division ultimately proved unsustainable, for as Te Heuheu objected with feeling, "your boundary cuts me in half". The Rohe Pōtae decision in December 1883 to apply to the Native Land Court to confirm this external boundary appears to have generated considerable anxiety for the Ngāti Tūwharetoa leadership.

19. History records that in the end Ngāti Tūwharetoa's priority was to focus on keeping their lands whole by bringing the Taupōnuiātia application. The motivation behind the application is graphically illustrated by the '1886 boundary' drawn on the map accompanying the application, which depicted Ngāti Tūwharetoa's entire rohe, even though some of that land had already been through the Native Land Court.[9]

20. The list of signatories to the application reads as a roll call of the Ngāti Tūwharetoa leadership of the time. Notably it included those chiefs who had been actively involved in the Rohe Pōtae negotiations. There can be no doubt that the application was intended to promote the mana and kotahitanga of Ngāti Tūwharetoa.

21. Ironically, the application was filed only a month after the Poutu hui, at which Ngāti Tūwharetoa reaffirmed their commitment to the Kīngitanga and reiterated their rejection of the Native Land Court. This may appear incongruous, but Ngāti Tūwharetoa genuinely thought that they could use the Native Land Court to confirm their authority over the land. The Tūwharetoa traditional history relates that the chiefs were seeking a 'Determination' from the Court that would confirm the external boundary of the block.[10] Taupōnuiātia was, as Bruce Stirling described it, intended as Ngāti Tūwharetoa's own Rohe Pōtae. The National Park Tribunal accepted that characterisation, and noted the parallels between Ngāti Tūwharetoa's intentions and the expectations of the Rohe Pōtae leadership that a reformed court would confirm their external boundary, with iwi being legislatively empowered to determine their own internal boundaries and manage the land themselves.[11] It appears that the

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9 Refer to Appendix 1 to #J22. The red line represents the original extent of the claim, which includes land that has already been through the Native Land Court. The yellow line represents what was actually adjudicated upon (ie the remaining customary lands). The gap between the red and yellow line on the western boundary represents the adjustments made following negotiations with Ngati Maniapoto at the opening of the hearing. Appendix 2 shows the blocks created within Taupōnuiātia.

10 Evidence of Paranapa Otimi and Louis Chase, #J22, para [106].

11 *Te Kāhui Maunga*, Vol 1, pp303-304.

thinking behind the Rohe Pōtae negotiations was influential even to those who remained on the fringes.

22. The unintended consequence of the application was, of course, the same fate that befell all who went through the Native Land Court - the individualised dealings and land loss that Ngāti Tūwharetoa were trying to protect themselves against.

23. It is especially striking that the Taupōnuiātia application was followed in very short succession by two more massive blocks to be brought before the Native Land Court, namely the Waimarino and Aotea blocks. It is only in this inquiry that the Tribunal has before it the final pieces of the jigsaw that reveals the extent of the Crown's grand design in engineering the submission of such an enormous land area to the Native Land Court. The Crown's success was all the more remarkable because it had achieved far more than simply obtaining land through the auspices of the Native Land Court –it had effectively neutralised the political authority of the Kīngitanga and secured control of what had hitherto operated as a separate state beyond the reach of the Crown.

Ngāti Tūwharetoa's claims

24. In summary, Ngāti Tūwharetoa's statement of claim in this inquiry captures five main assertions:

    24.1. The Crown's failure to respect and provide for the mana, tino rangatiratanga, kaitiakitanga and autonomy of ngā hapū of Ngāti Tūwharetoa;

    24.2. The Crown's failure to respect and provide for the mana and tino rangatiratanga of the Kīngitanga, its leadership, and the iwi and hapū that supported it, including Ngāti Tūwharetoa;

    24.3. The Crown's active undermining of the Kīngitanga leadership and its attempts to maintain a united front with respect to its kaupapa, instead creating division by isolating the King and his supporters and turning to negotiate with the 'Four Tribes';

    24.4. The Crown's failure to honour the spirit or the letter of its undertakings with respect to the Ōhākī Tapu, which prejudiced Ngāti Tūwharetoa as well as the other iwi;

    24.5. The Crown's actions in manoeuvring Ngāti Tūwharetoa into submitting the Taupōnuiātia application to the Native Land Court in order to achieve its objective of breaking open the Rohe Pōtae,

even though it was aware that Ngāti Tūwharetoa opposed the Native Land Court and sought legal reforms to enable the protection of their land under their authority.

Evidence

25. Two briefs of evidence are being called:

25.1. Ngāti Tūwharetoa's traditional kōrero, presented by Paranapa Otimi and Louis Chase. This brief gives an overview of Ngāti Tūwharetoa's history, culture and traditions, followed by a closer examination of the kōrero in relation to the Ōhākī Tapu;

25.2. The evidence of Te Ngahe Wanikau, on behalf of Ngāti Hikairo ki Tongariro, a community located on the southern border of the aukati.

26. The tangata whenua evidence will be followed by that of professional historian Bruce Stirling, who is presenting relevant aspects of his report *Taupō-Kaingaroa 19th Century Overview Project* (#A53(k)). Mr Stirling is appearing as an independent expert witness, but his evidence is relied upon because it is highly relevant to the Ngāti Tūwharetoa claims.

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