OFFICIAL

IN THE WAITANGI TRIBUNAL
OF NEW ZEALAND

IN THE MATTER	of the Treaty of Waitangi Act 1975
A N D	
IN THE MATTER	of the Te Rohe Pootae District Inquiry (Wai 898)
A N D	
IN THE MATTER	of Wai 1588, 1589, 1590, 1591 being claims by Phillip Tauri King and Verna Tuteao for and on behalf of Ngaati Mahuta

OPENING SUBMISSIONS ON BEHALF OF NGAATI MAHUTA

4 March 2013

RECEIVED
Waitangi Tribunal
4 Mar 2013
Ministry of Justice
WELLINGTON

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MAY IT PLEASE THE TRIBUNAL

Introduction

1. It is a privilege for our firm to open the case for Ngaati Mahuta here at Maketuu.

2. This week, the Tribunal will be introduced to Ngaati Mahuta, their ancestors, their rohe, their mamae and uri of those tuupuna who signed Te Tiriti in a hope that it would create a better future in "partnership" with the Crown.

3. It seems ironic that the Tribunal should hear from Ngaati Mahuta first given that they are arguably one of the last hapuu to acquire mana in Te Rohe Pootae (before the Crown arrived). Although it is appropriate, given that their marae, Maketuu, hosts the Tainui Waka which could be considered the glue that binds many hapuu and iwi of this Inquiry together. It is submitted that the Ngaati Mahuta claims, and claims of many hapuu and iwi that the Tribunal will hear about over the coming months, have their origins here at Maketuu.

4. The Tribunal's robust interlocutory process alleviates the need for lengthy opening submissions, setting out the case in detail. What is however required, is to provide the Tribunal with a framework in which to consider the claims of Ngaati Mahuta and to identify particular themes which may be unique to this claim.

5. Therefore these opening submissions seek to briefly:

   (a) Introduce Ngaati Mahuta to the Tribunal;

   (b) Provide a framework of how the Ngaati Mahuta claims ought to be considered by the Tribunal; and

   (c) To introduce the key themes of the Ngaati Mahuta evidence to be presented this week.

Ko wai a Ngaati Mahuta

Ngati Mahuta Takaroa *Ngati Mahuta slow to arouse*

He haringa ano te nga hoe *First they take their paddles*

He haringa ano to nga whariki *They then return to their sleeping mats*

6. It is perhaps ironic in addressing the question, "*Ko wai a Ngaati Mahuta?",* that this is Census week, where we are all asked who were are, where we are and what we are doing. These questions, although straightforward to most have been challenging for Ngaati Mahuta, as they have tried to retain their unique identity amongst mistruths, Crown policies and general ignorance. It is therefore a fundamental outcome of this process that the Ngaati Mahuta identity be explained and recorded accurately from their perspective.

7. It is submitted that the Tribunal cannot start to assess the nature and extent of the grievances and prejudice suffered until they understand who they are dealing with and the subtle differences of one's tikanga and in this case, the Ngaati Mahuta origins.

8. In that vein the starting point is that Ngaati Mahuta is a hapuu of Waikato and form part of the wider Tainui confederation of hapuu and iwi.

9. Their origins on the west coast of Te Rohe Pootae are unique and evolve from the conquest of Ngaati Toa during the 1820s by Waikato.

10. Ngaati Mahuta assert that, following the conquest, they retained mana in the area by continued occupation. Something the Native Land Court in its wisdom sought to question around 60 years later with respect to Kaawhia lands.

11. Ngaati Mahuta acknowledge and value their relationships with other hapuu and iwi around them but wish to make it very clear that they are not a hapuu of Ngaati Maniapoto as is sometimes believed. They have their own distinct identity as a hapuu of Waikato.

12. Ngaati Mahuta consider themselves a Kiingitanga hapuu and have a strong allegiance to the Kiingitanga movement.

13. Through conquest and a continued presence in the region, Ngaati Mahuta claim customary interests in a vast area along the west coast of the Inquiry. Like many hapuu, Ngaati Mahuta have areas where they have predominant interests as well as areas where they have shared interests. This is particularly the case in the areas to the north and east of Kaawhia towards Aotea and Raglan where the interests were shared. John Forbes will orientate the Tribunal with a mapping presentation later this morning.

14. Although Ngaati Mahuta are a hapuu of Waikato, there are other hapuu who consider themselves part of the Ngaati Mahuta identity on the west coast of Te Rohe Pootae. The hapuu include:

    (a) Ngaati Te Kiriwai;

    (b) Ngaati Hui a rangi;

    (c) Ngaati Rangitaka;

    (d) Ngaati Ngaahia;

    (e) Te Patupoo;

    (f) Ngaati Pou;

    (g) Ngaati Aamaru;

    (h) Ngaati Karere; and

    (i) Ngaati Kawerau.

15. The Tribunal will hear from some of these hapuu during the course of the week.

16. Throughout the Ngaati Mahuta evidence filed, the Tribunal will find a number of variations to how the witnesses seek to define the hapuu such as, Ngaati Mahuta *ki Tai*, Ngaati Mahuta *ki Te Hauauru*, Ngaati Mahuta *ki te Tonga* and Ngaati Mahuta. These terms are simply used to ensure that it is clear which Ngaati Mahuta is being referred to, given that the hapuu also has a strong presence inland along the Waikato River. As the evidence bears out, they are the same hapuu but with different areas of influence and responsibility.

17. For the purposes of the Tribunal process, the claimants we represent wish to have their hapuu recorded as Ngaati Mahuta.

The Framework to consider the Ngaati Mahuta claims

Te Tiriti and Partnership

18. An important, yet easily forgotten starting point to any claim before the Tribunal is Te Tiriti and its principles. The evidence will confirm that Kiwi Te Roto and other Ngaati Mahuta rangatira signed Te Tiriti in 1840, which in turn created certain obligations on the Crown.

19. We submit that the fundamental obligation on the Crown is the overarching Treaty principle that the relationship between the Crown and Maaori is in the nature of a

partnership and rests on the premise that each partner will act reasonably and in the utmost good faith towards one another.[1] A trite point, but Ngaati Mahuta urge the Tribunal to consider their evidence this week by asking whether the Crown's actions were consistent with treating them in the spirit of a partnership as envisaged by Te Tiriti as opposed to focusing exclusively on landloss. This is important because the Ngaati Mahuta claim is not, as many claims are, focused on severe landlessness via Crown processes.

Usurpation of Rangatiratanga/Mana Whakahaere

20. The overarching claim of Ngaati Mahuta is about the usurpation of their rangatiratanga or mana whakahaere over their taonga. That is not to say that they have retained 100% of their rohe as at 1840, quite the contrary, but it is fair to say that Ngaati Mahuta have done well to retain what they were able to secure through an imposed Native Land Court process.

21. We submit that land retention post 1840 was more about Ngaati Mahuta resilience, luck and relative isolation as opposed to any active protection afforded to them by the Crown.

22. Previous Tribunals have found that the guarantee of rangatiratanga in Te Tiriti amounted to more than mere property rights. The Taranaki, Turanga and Central North Island Tribunals have interpreted rangatiratanga to amount to a guarantee of Maaori authority, autonomy or self-government.[2] Ngaati Mahuta ask the Tribunal to consider their evidence in light of these interpretations and to ask whether Ngaati Mahuta are any better off in regards to their rangatiratanga or mana whakahaere than hapuu and/or iwi who are virtually landless today. We submit that the evidence will show that they are in no better position.

The Fear Factor

23. Further, the Ngaati Mahuta claims should be considered in the context of their unique presence in Te Rohe Pootae, their strong relationship with Waikato and the Kiingitanga, and the impact of the Waikato Wars and raupatu. We submit that these factors are important to understand how Ngaati Mahuta engaged with the

[1] Refer Tribunal Statement of Issues, Wai 898 #1.4.1, pg 19
[2] Refer Tribunal Statement of Issues, Wai 898 #1.4.1, pg 19

Crown and, importantly, the way in which the Crown then chose to engage with Ngaati Mahuta.

24. Ngaati Mahuta's strong Waikato and Kiingitanga links were detrimental to Ngaati Mahuta in the 19th Century as the Crown played upon Maaori fears of another war, loss of life and the potential for raupatu to follow if they did not play by the Crown's rules. The best example of this is the arrival of Bryce and 114 Crown troops in Kaawhia in May 1884, which served as a reminder of what the Treaty "partner" could do.[3]

Success in Context

25. It is generally acknowledged that the retention of land *per se* does not automatically equate to success. There are many factors that come into the mix and of course "success" can be defined in many ways. It is not disputed that the black sands of Tahaaroa have created opportunities for Ngaati Mahuta and, more specifically, the shareholders of the Tahaaroa C Incorporation.

26. The evidence to be presented this week does not seek to deny the fact that some "success" has been gained from iron sand mining, but the evidence seeks to balance the "successes" against the challenges that it has brought to the people of Tahaaroa and Ngaati Mahuta. Ngaati Mahuta ask the Tribunal to keep in mind those challenges when weighing up the nature and extent of the prejudice they have suffered through Crown breaches of Te Tiriti. It is too simple to conclude that Ngaati Mahuta have not been prejudiced just because some hapuu members receive benefits from mining licences with New Zealand Steel.

Key themes of the Ngaati Mahuta claim

27. An amended statement of claim was filed last week which adopts many of the generic pleadings already filed, but also adds specific examples relevant to the Ngaati Mahuta claim. The Ngaati Mahuta claim is therefore a comprehensive one covering many of the issues captured in the Tribunal's Statement of Issues (Wai 898, #1.4.3).

28. With the above framework in mind, the evidence to be presented this week seeks to highlight the following key grievances for Ngaati Mahuta:

[3] Refer paragraph 71, evidence of Tom Moke #J7.

(a) Pre-1865 land loss, particularly around the Kaawhia Harbour and the Harihari purchase;

(b) The imposed Native Land Court experience that boxed Ngaati Mahuta into a certain part of their rohe, forever extinguishing their mana in other parts, creating rigid lines of interests, and redefining histories that created tensions still present today;

(c) Unjustified attempts by the Crown to acquire Ngaati Mahuta lands for Native townships and for public purposes;

(d) The assumed control and ownership of the Kaawhia Harbour and the takutai moana by the Crown without the consent of Ngaati Mahuta remains a significant grievance for them today and has had a serious effect on the mana and rangatiratanga as kaitiaki of the Harbour and the takutai moana;

(e) Environmental degradation, the inability of Ngaati Mahuta to have a real and meaningful voice at the local government level and the challenges in trying to protect waahi tapu;

(f) The loss of Te Reo and the way in which the education system assimilated and marginalised the Ngaati Mahuta mind; and

(g) Finally and fundamentally, that their rangatiratanga or mana whakahaere over their taonga is no more than a "tick in a consultation box", a far cry from the partnership envisaged by those Ngaati Mahuta rangatira who signed Te Tiriti in 1840.

Dated this 4th day of March 2013

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A H C Warren
Counsel for Ngaati Mahuta