BEFORE THE WAITANGI TRIBUNAL

WAI 898

IN THE MATTER OF **THE TREATY OF WAITANGI ACT 1975**

CONCERNING **THE TE ROHE POTAE INQUIRY**

AND A claim by Maude Shaw, Tuahu Watene, Ken Te Houpikake Rautangata, Sunnah Thompson and Henare Gray for and on behalf of **NGATI MAHANGA** me **NGA URI O TE AWAITAIA (Wai 1327)**

JOINT BRIEF OF EVIDENCE OF TUAHU WATENE, TAOTAHI PIHAMA AND PAKIRA WATENE

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AURERE LAW
Barristers and Solicitors
P O Box 1693
DX JP30025
ROTORUA

Ph: 07 348 0034
Fax: 07 346 2933

Counsel Acting: Miharo Armstrong

JOINT BRIEF OF EVIDENCE OF TUAHU WATENE, TAOTAHI PIHAMA AND PAKIRA WATENE

1. We are Tuahu Watene, Taotahi Pihama and Pakira Watene.

2. We are giving this joint brief on behalf of Ngati Mahanga and the Wai 1327 claim.

3. In particular we are going to talk about the concept of mana and the signing of the Treaty by our tupuna Te Awaitaia.

THE TREATY

4. In April 1840, Te Awaitaia signed the English version of the Treaty of Waitangi at the Waikato Heads. The signing was witnessed by Robert Maunsell and Benjamin Ashwell.[1]

5. The First Article of the English version of the Treaty states that:

> *"the Chiefs… cede to Her Majesty the Queen of England absolutely and without reservation all the rights and powers of Sovereignty… over their respective Territories…"*

6. The Second Article to the English version of the Treaty states that

> *"Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals… the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession."*

[1] Te Rohe Potae Political Engagement 1840-1863, V O'Malley, A23, page 69.

7. Despite the wording of the English version of the Treaty, Te Awaitaia, and Ngati Mahanga, did not cede their mana or sovereignty to the Crown.

8. This is supported by what happened at the signing, by looking at the concept of mana, and by the actions and conduct of Te Awaitaia and Ngati Mahanga after the signing of the Treaty.

THE SIGNING

9. The version of the Treaty signed by Te Awaitaia is the only version to have been drafted solely in English.[2] All other versions included a Maori version of the Treaty. As such, unlike other signings, there was no Maori version of the Treaty that was available for Te Awaitaia to sign.

10. Article One of the Maori version of the Treaty granted 'Kawanatanga' to the Crown as a right to govern settlers under British Law.

11. Article Two of the Maori version guaranteed that Maori would retain their sovereignty or mana as 'Tino Rangatiratanga'.

12. Two hundred copies of the Maori text were printed by the Missionary Press at Paihia on 17 February 1840.[3]

13. No doubt Robert Maunsell would have had one of these copies at the Waikato Heads in order to assist him to explain the terms of the Treaty to those assembled including Te Awaitaia.

[2] Te Rohe Potae Political Engagement 1840-1863, V O'Malley, A23, page 65.
[3] Te Rohe Potae Political Engagement 1840-1863, V O'Malley, A23, page 65.

14. Tikanga Maori is largely an oral culture and great importance is placed on the spoken word. This is known as ‘kupu mana’ and is used to form binding agreements.

15. We do not doubt that the Maori text of the Treaty was read out as the explanation of the English version at the Waikato Heads. This would have been followed by great discussion amongst the Rangatira gathered there as was customary on any important issue.

16. Te Awaitaia would have signed the Treaty based on the discussions and explanations that occurred. He would not have signed the Treaty based on the English words on the document which Te Awaitaia is unlikely to have read or understood.

17. In order to understand Te Awaitaia’s position, you must first understand the concept of mana that would have been in Te Awaitaia’s mind at the time.

THE CONCEPT OF MANA

<u>Mana and Tapu</u>

18. Io is the source of tapu. Io was a spiritual symbol, and in its written form, it is represented by the letter ‘I’ – the male element - and ‘O’ - the female element. Io is the supreme energy of the universe and has many other names such as Io Matua or Io Kore.

19. The Atua are the source of mana and since they are inherently tapu, the mana they handed down to all of their descendants was tapu as well.

20. Mana and tapu were the source of order. Tapu acted in the same way as a legal system operated, as a system of prohibitory controls, as a protective device.[4]

21. Profound lessons were given through Wananga. Rangatira moved into various Whare Wananga of the Iwi to develop their skills. They moved through eight levels and at the ninth level, one became a tohunga. Eight of the nine Tainui Wananga are mentioned in our O&T History report.

22. Tohunga acknowledged the tapu of all things and maintained law and order. The names of Ngati Maahanga tohunga who maintained this system of law and order extends from the tupuna Maahanga back to the waka and into the 20th century.[5] Many of them are mentioned in our O&T History report.

23. Everything our ancestors did involved karakia. Every karakia related to every living thing in the universe. That's how much mana our tupuna had in those days. The concept of tapu and noa came from that and ruled everything in our lives in those days. Our tupuna were always guided by the wairua, including guidance from the planets.[6]

24. Tomo Whare is an analogy of the process and illustrates the connection between mana and tapu.

25. All materials in a new whare had former energies of their own and karakia makes a relevant acknowledgement and connection to the former energies of 'the materials'. As such, the tapu inherent

[4] John Patterson, *Exploring Mäori Values*, Dunmore Press, Palmerston North, 1992.
[5] In the 20th century, Ngati Maahanga people went to tohunga healers when they got sick, not to doctors e.g. Koro Whati. 'Kia matatau ki te rereketanga o te hinengaro whakaaro me te ngakau rongo.To be fluent with the difference between the thought of mind and the feelings of the heart'.
[6] Notes of Ngati Maahanga waananga, 3 January 2013.

in those energies has to be lifted for them to accept a role they were not originally created for and allow everyone to use them.

26. Tohunga recited karakia to acknowledge the Atua as the source of the raw materials such as timber, and all of the living things like manu and insects that used the timber in its original form as a tree. The karakia also acknowledges Man's whakapapa connection to the raw materials. Karakia to lift the tapu and to make the whare safe and pleasant for people to use are also recited. The takitaki korero is a time when people can help with the physical connection to the spiritual acknowledgement and re-energise the materials to match the purpose of the whare. The Female Element is the first voice and acknowledges the role of wahine to open the way.

Mana and Whakapapa

27. Whakapapa connects Io - the concept of the male and the female elements – to the Atua: Ranginui, Papatuanuku and their children to all things in the universe.

28. The elements on the left side of the matrix are people of high rank who had special responsibilities for the tapu of mana.

29. Ariki were first-borns, usually sons, whose whakapapa could be traced back directly to the Atua. It was their responsibility to lead the people.

30. The first-born (Ariki) of an Ariki was prepared for the time when he would receive his father's rank and leadership. Ariki were given automatic rights to lead the tribe.[7]

[7] 'Mana and Tapu', in Ministry of Justice, *He Hinatore ki te Ao Maori A Glimpse into the Maori World,* Wellington, March 2001.

31. Ariki were responsible for maintaining the tribe's mana and tapu.

32. Ariki were responsible for keeping the strength of the mana and tapu associated with the Atua as pure as possible.

33. Rangatira were the siblings of Ariki with responsibility for upholding the mana of their tribe.[8] There were different levels of rangatira.

34. The mana of the rangatira class was inherited. They had clear ranks and roles of leadership. Mana was acquired and diminished during their lives.

35. Rangatira could gain support and leadership through displays of extraordinary skill such as that displayed by the warriors Tonganui, Te Ahooterangi and Te Punatoto.

36. Leadership is a dominant aspect of Ngati Maahanga whakapapa with tupuna hapu, rangatira and tohunga in every generation.

37. Inter-marriages between rangatira of different iwi was a feature of Ngati Maahanga whakapapa. This was done to maintain the strength of mana from the Atua. There are many examples to illustrate this point.[9]

38. Inter-marriages were also a form of political alliance and peace-making. The principle of marriages as political alliances was

[8] 'Mana and Tapu', in Ministry of Justice, He Hinatore ki te Ao Maori A Glimpse into the Maori World, Wellington, March 2001.

[9] For example, the wives of tupuna Mahuta to Kiingi Mahuta were descendants of Maahanga. Maahanga's great granddaughter, Hourua, was at the centre of several rangatira lines: she married Pukauae, son of Haua, son of Koroki. Her father was Uerata, son of Mahuta. Her mother was Puakirangi, granddaughter of both Maahanga and Mahuta. Hourua's grandfather Mahuta, father Uerata, and brother Tapaue were the first three generations of the Kahui Ariki.

used in reference to Ngati Maahanga's relationship with the Crown after 1840.[10]

Mana Whenua

39. The elements on the right side of the matrix are related hence the saying, 'Mana Atua, Mana Whenua, Mana Tangata'. Tane fashioned the first human (Hineahuone) from Papatuanuku so people are linked by whakapapa to the whenua.

40. In customary land tenure, mana whenua was determined by who had political control and authority over the land and who could defend the land from intruders. This included:

a. Take Tupuna;
b. Take Raupatu;
c. Ringa Kaha
d. Ahi-ka-roa;
e. Te Noho Kore Mana; and
f. Te Whakahoki Whenua.

41. Ngati Maahanga **take tupuna** was often referred to by witnesses in Native Land Court hearings as ancestral right by whakapapa over Ngati Maahanga's 'papatupu land', the ancestral lands claimed by Maahanga the tupuna, and defended by his descendants from then on.

42. **Take raupatu** and **ringa kaha** were the basis for Ngati Maahanga's right by conquest and ability to defend its 'utu' land, that is, the area that Ngati Maahanga claimed in conquest after war and defended from then on.

43. The porotaka of Ngati Maahanga was set by the tupuna Maahanga and was extensive before adding the utu land from

[10] See below.

Whaingaroa Harbour to Waikawau in the Rohe Potae and Maungatautari in the east.

44. The people vanquished were dealt with in five ways: some moved or were driven away and never returned. The morehu intermarried with Ngati Maahanga. Some were asked to come back and had land returned to them as **whakahoki whenua**.

45. Some were brought back by a relative of the victors. They were eventually allowed to settle but their occupation was considered to be **noho kore mana.**

46. After the conquest of Aotea and Kawhia in the early 1800s, there was no formal division of land that would remove Ngati Maahanga's mana whenua but the hapu leaders collectively agreed to each hapu's chosen area of occupation.

47. Hapu occupation of their areas maintained the mana whenua of the iwi as a whole

48. Ngati Maahanga had mahi kai sites in every kilometre of its country west of the Waipa. The country eastward was easier terrain and our tupuna modified the soil for gardening.

RELATIONSHIP WITH THE CROWN

49. As above, the mana held by Ngati Mahanga, and exercised by Te Awaitaia on behalf of the Iwi, was an intrinsic part of our identity and of who we are. It connected us to our past, our present, our future, to our people, to our land, and to the Atua.

50. This mana was not something that was capable of being given away. It is certainly not something that Te Awaitaia would ever have given up.

51. Rather, Te Awaitaia would have understood that under the Treaty:

a) Ngati Mahanga would retain their mana or sovereignty over their Rohe, Whenua, Moana, Ngahere, Awa, Wahi Tapu, Taonga, Whanau and Hapu;

b) The Crown would govern settlers under British law; and

c) Maori and the Crown would work together as partners for the prosperity of all.

52. This is in line with the concepts of Kawanatanga and Rangatiratanga which were in the Maori versions of the Treaty. As above, although Te Awaitaia didn't sign the Maori version, we do not doubt that this would have been read out and would have been relied on in Te Awaitaia's understanding of what he was agreeing to.

53. This approach is also consistent with Te Awaitaia's actions after the signing of the Treaty.

54. At Kohimarama Te Awaitaia spoke in support of a strong relationship between Maori and the Crown. He told a parable about a man with seven sticks tied together in a bundle that could not be broken, but once separated could easily be snapped in two. He suggested that it was the same for Maori and Pakeha, if they were separated they would easily be broken up and would not endure but be torn to pieces.[11]

55. At Kohimarama Ngati Mahanga emphasized their long record of engagement with the Crown (like a 'friendship'), from the time of Hobson, the first Governor (also the time of the Treaty), to the present, and they particularly emphasized the sustained, direct

[11] Te Rohe Potae Political Engagement 1840-1863, V O'Malley, A23, page 294.

relationship (like a 'marriage') of Te Awaitaia himself with each and every individual Governor.

> *'No Wiremu Nero tena whakaaro ki te Kawana tuatahi, marena rawa, ki te Kawana tuarua, marena rawa, ki te Kawana tuatoru, marena rawa, ki te Kawana tuawha, marena rawa.*
>
> *The thought with reference to the first Governor was Wiremu Nero's. They two were married; to the second Governor they were married; to the third Governor they were married; to the fourth Governor they were married'*[12]

56. This is also consistent with other political alliances before the arrival of Pakeha where marriages occurred between Iwi to bring the two together. Despite this each Iwi still had their own mana but were joined together by the marriage.

57. This also helps to explain why Te Awaitaia continued to support the Crown even through the wars of the 1860s. He was honouring and upholding this relationship and the commitment he made to the Crown, as a partner, in signing the Treaty. Upholding this commitment was part of upholding his mana and the mana of Ngati Mahanga, in the partnership.

58. One of the key interests of Ngati Mahanga at Kohimarama was the current and future governance of New Zealand. The comments made there indicated that they wanted to secure the future for Maori and Pakeha through forms of government based on principles of love and peace, bringing the peoples of New Zealand together within a framework of laws. They saw themselves as equal partners both in devising the laws (in assemblies of all the Chiefs such as Kohimarama) and

[12] *Te Karere Maori: The Maori Messenger*, 31 July 1860.

administering those laws (through the runanga). They were very flexible, willing to adapt and adopt a mix of Maori and Pakeha practices such as Christianity, magistrates, juries, runanga and national assemblies to achieve their overall goals.

59. Te Awaitaia then practised this through the Runanga established at Whaingaroa.

60. The Runanga operated out of Te Awaitaia's house at Whaingaroa and was used for meetings and court cases and other assertions of their mana. They made regulations, heard cases between Maori, and between Maori and Pakeha and even sometimes between Pakeha. They appointed police (at Whaingaroa, Ohiapopoko, Aotea, Waitetuna) and played a significant role in attempting to introduce runanga in both Aotea and Kawhia.

61. There is more detail on this in our O & T Report.

62. As set out in our other briefs and the O & T Report Te Awaitaia also played huge role in attempting to prevent war and bloodshed. This was all part of Te Awaitaia upholding this principle of partnership and promoting peace and prosperity for all.

SUMMARY

63. For these reasons it is far too simplistic to say that because Te Awaitaia signed the English version of the Treaty Ngati Mahanga ceded sovereignty to the Crown.

64. Te Awaitaia would have signed based on the discussions that occurred rather than what was printed on the parchment. He would have also been heavily influenced by the concept of mana

to Ngati Mahanga and retaining, upholding and protecting that mana. As above that is not something that you can give away.

65. We firmly assert that Te Awaitaia and Ngati Maahanga took the position that:

a) Ngati Mahanga would retain their mana or sovereignty over their Rohe, Whenua, Moana, Ngahere, Awa, Wahi Tapu, Taonga, Whanau and Hapu;

b) The Crown would govern settlers under British law; and

c) Maori and the Crown would work together as partners for the prosperity of all.

66. This is not only consistent with our concept of mana but it is also consistent with Te Awaitaia's and Ngati Mahanga's actions following the signing of the Treaty.

DATED this 26th day of August 2013

Tuahu Watene Taotahi Pihama Pakira Watene