IN THE WAITANGI TRIBUNAL
OF NEW ZEALAND

WAI 1040
WAI 1248
WAI 591
WAI 504
WAI 291
WAI 2337
WAI 1725

IN THE MATTER OF	the Treaty of Waitangi Act 1975
AND	
IN THE MATTER OF	Te Paparahi o Te Raki Inquiry
AND	
IN THE MATTER OF	Te Parawhau Claims In Whangarei

OPENING SUBMISSIONS FOR TE PARAWHAU

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1. A significant part of the Te Parawhau story shall be told before this Tribunal. This is the story of Te Parawhau post the signing by their rangatira of He Whakaputanga me Te Tiriti. This story in Counsels submission is one of an abject failure of the Crown to protect Te Parawhau or recognizse and uphold their tino rangatiratanga.

2. Te Parawhau have a long history of political dominance in the Whangarei area. The rangatira of Te Parawhau such as Tirarau and Taurau actively engaged with the early settlers encouraging settlement and development amongst them. They thus embraced the new world ultimately facilitating under Crown pressure the alienation from their people of tens of thousands of acres of Te Parawhau lands in Whangarei and its surrounds.

3. The onus was on the Crown to protect Te Parawhau and others from the inevitable result of alienating all their land from them. More land was alienated at Whangarei by means of Crown purchasing than in any other district in this Inquiry. Over the space of just 11 years between 1854 and 1865 nearly all of the premium land around Whangarei Harbour, and a large chunk of the adjacent lands suitable for pastoral or agricultural purposes, had been acquired by the Crown, often at minimal prices and by means that were often questionable.

4. Throughout this period Crown agents demonstrated little concern to ensure Te Parawhau retained a sufficient quantity of good lands for their own present and future needs. Reserves were rare and Te Parawhau efforts to retain lands deemed suitable for settler occupation were consistently resisted. The technical evidence concludes that throughout this process the protection of Whangarei Maori interests was not so much deficient, as entirely absent from proceedings.1

5. Te Parawhau are now landless with less than 500 acres of Maori land remaining in their (mostly individual) ownership. Clearly the Crowns concessions relating to

[1] Vincent O'Malley, 'Northland Crown Purchases, 1840-1865', July 2006, pp 333-334

landlessness in the Whangarei region must be specifically applied to Te Parawhau.

6. Te Parawhau's key issues are landlessness and the undermining of their Rangatiratanga. The evidence to be heard today addresses the issues of Old Land Claims and Crown Purchasing regimes and some aspects of the operation of the Native Land Court as they involved Te Parawhau.

7. The relatively small blocks that were put through the Native Land Court process, have largely been individualized and alienated from Te Parawhau ownership. These much smaller alienations are more keenly felt given the huge losses suffered through Crown purchasing.

8. Particular attention is drawn to some of the Te Parawhau blocks that have been retained. In many instances they are wholly or partially landlocked. This is evident in those portions of land still in Maori ownership at Toetoe, Ruarangi, Maungakaramea (in the Mangapai Paina reserve) and Rewarewa.[2]

9. The Maungakaramea Block is one example that will be highlighted to the Tribunal as regards the difficulties faced by whanau who despite having retained ownership in ancestral lands have never the less still been alienated from them for want of access.[3]

10. It is of note in Counsel's submission that many of the remaining Te Parawhau blocks seem to have been targeted for public works even though the Crown owned the surrounding lands, they still took or controlled, large amounts of Te Parawhau lands for railways, roads, limestone mining and the like.

11. It is also of note that much of the remaining Te Parawhau lands are tucked out of sight of the general public, and/or have become surrounded by Industrial development. This policy of 'segregation' is evident in the early Crown purchasing regime which highlights in Counsels submission that settler

[2] See Brief of Evidence of Marina Fletcher and Taparoto George

[3] See Briefs of Evidence of Steve, Reuben and Joy Panoho

development was only ever intended to be for 'them' not 'us'. Interestingly, this attitude was still evident in the practices at Whangarei hospital, whereby a separate Maori maternity ward where Maori mothers and their babies were kept separate from Pakeha ones was still taking place in Taparoto Georges' time.

Confiscation of Te Ahi Pupurangi puta noa ki Te Wahapu o Terenga Paraoa

12. Once the extensive land interests had been promptly purchased by the Crown, the next step in the alienation of Te Parawhau from their whenua arrives in the form of Crown Acts which vest extensive amounts of the harbor of Whangarei below the High Water Mark in the Whangarei Harbor Board. This amounted to no less than a confiscation of approximately 3-4000 acres of hapu lands.

13. Today Whangarei harbor is 24 kilometres long, has a shoreline of 140 kilometres and has an area of 10,000 hectares, of which more than half is uncovered at low tide. Prior to the extensive reclamation works, the harbor was of course larger.[4]

14. The first major physical impacts to the harbor were three wharves and the railway line leading to them at the Whangarei Town Wharf, the Wharf at Kioreroa and in 1912 the Grahamstown (Onerahi) deepwater wharf.[5] The Onerahi wharf however had been in use by Tirarau and others long before the extensive settler development of the harbor as he was trading as the owner of the Petrel.[6] This authority of rangatira, over the harbour however and the fact of its continual and extensive use as a fishing and food gathering area, and the fact of its contiguous location to Maori land, the Crown simply ignored.

15. As far as the Crown was concerned the pre-existing customary status of the lands below the high water mark, and the authority of the hapu over the beds of the harbor, rivers and waters was claimed as part of the Kings domain in complete disregard for Te Parawhaus rights in Te Ahi Pupurangi puta atu ki Terenga Paraoa.

[4] David Alexander, Land Based Resources, Waterways and Environmental Impacts Report, Wai 1040 #A7 page 539

[5] David Alexander, Land Based Resources, Waterways and Environmental Impacts Report, Wai 1040 #A7 page 540

[6] Brief of Evidence of Mira Norris, Wai 1040 # I21 pg. 5

16. One such vesting of the Hihiaua foreshore area became the subject a Native Land Court investigation, two petitions, a Commission of Inquiry and eventual resurvey and return to the Maori owners only to be taken again for Harbor Board purposes but this time under the Public Works Act.[7]

17. The Whangarei Harbor Endowment Area as set out in the schedules to the 1907 Act included a 53 acre area known as Hihiaua which the Surveyor General considered the Maori had no claim to at all 'as it was all part of the foreshore, and is mudflat which was being gradually reclaimed by natural action', thus leading the Native Land Court to decline consideration of the application for it.[8] The Court did note in its records however the lawyer for the claimants statement that:

> *When the natives heard that these lands were to be included in the Endowments, they obtained an adjournment of the Court expressly to enable them to interview the Minister, who was then at Whangarei. It is clear from the plan that part of the land is not covered by water at spring tides. It is in the same position as much other land adjoining that has been sold. But this piece was reserved as a landing place. What the natives really want is the land itself, not compensation, nor other land in exchange. Crown had full notice that this was native land before they vested it in the Harbour Board. They have therefore done the natives a great wrong. If this can be done in this instance, there is no protection for other Native Lands, and the Treaty of Waitangi etc is void. The question is whether the Crown can, by Act of Parliament, seize lands belonging to Natives. They may agree to accept compensation, but at present I assume they will not do so. I understand the Harbour Board Act will require to be amended for other reasons. If so, it can also be amended as regards this particular block. The question of what right the Crown has to take land is a large one, and would be expensive to contest. This is why I ask that the list of owners as agreed to only be entered up*

[7] See the detail relating to this area in David Alexander, *Land Based Resources, Waterways and Environmental Impacts* Report, Wai 1040 #A7 page 543-564

[8] David Alexander, Land Based Resources, Waterways and Environmental Impacts Report, Wai 1040 #A7 page 546

in the minutes, and I can then consider which further steps to take.[9]

18. The first petition (of 1910) was shelved and the second petition (in 1915) relating to just Hihiaua resulted in a Commission of Inquiry. The petitioners set out that Hihiaua was a landing place for canoes, a shellfish gathering ground, and a camping area used by Maori coming to town for Land Court sittings. It pointed out that no compensation had been paid and that two wooden houses on the block owned by Hoori Rewi, were being used for storage purposes by the Board.[10]

19. The following is the petition in its entirety:

> *E inoi kaha ana matou o koutou kai pitihana kia patua te Rarangi o te Ture i tangohia ai to matou tauranga. Kia whakaurua enei kupu ki roto ko te 53 eka me te 13 eka me te 2 ruri kia whakataua kite hunga I roto I tenei pitihana me o ratou hoa e kitea e ratou i waenganui i te iwi i te hunga mo ratou tenei tauranga kia waiho teneitauranga hei whenua rahui mo enei iwi ina huihui ratou ki Whangarei he mate nui tenei e pa ana kia matou ina tae ki Whangarei ki te Kooti ite kore kainga e rito ana matou ina tae ki reira he iwi whenua kore ka moho ki te kainga Pakeha hei a utu te kai ka kitea I konei he mate tenei.*
>
> *Ko te mate nui rawa atu ko te tangohanga o matou whare e tenei ture ko te pakuru tanga o nga ruma e te kaunihera a waiho rawa hei takotoranga mea ma ratou mehemea na matou tenei mahi kua whina matou eta ture.*
>
> *We your petitioners earnestly entreat of you to annul that section of the act by which our landing place has been taken from us, and in lieu thereof to substitute words providing for the return of the 53 acres and of the 13 acres 2 roods to your petitioners, and to such*

[9] Maori Land Court minute book 8 WH 320-322. Supporting Papers to Alexander report # 4367-4369. David Alexander, Land Based Resources, Waterways and Environmental Impacts Report, Wai 1040 #A7 page 547

[10] David Alexander, Land Based Resources, Waterways and Environmental Impacts Report, Wai 1040 #A7 page 553

> *others as they and the iwi find to be representative of the original owners, also to have this landing place reserved for the use of our people when assembling at Whangarei. At present we suffer the terrible drawback of having no native home when attending the Court at Whangarei. At such times we are no better than landless natives, we have to pay for our board at Pakeha houses, and this is a great hardship to us.*
>
> *Perhaps the greatest injury suffered by us in this matter is that our houses were taken under the Act referred to. The (Borough Council) burst open the rooms which they now actually use for storage purposes. If we had done such a thing, we would have been fined at law.*

20. This resulted in the appointment of Judge Wilson as a commissioner to inquire into the claim, and a terms of reference was sought from the Soicitor General who instead of drawing up a terms of reference conducted his own preliminary inquiries and advised the Minister:

> *"the limit of Native title is high water mark, the foreshores of this country being vested in the Crown or its grantees and not in the Natives". He was not sure whether or not the petitioners were claiming title to foreshore land, but if the Natives are really claiming an area admitted to be tidal land below high water mark, their claim raises a most important point of law which affects very large interests of the Crown throughout the Dominion, and is one for the Supreme Court, and not appropriate for determination by a Commission.*

21. He then suggested that if the only claims could be about the two-acre dry land area, the cost of a Royal Commission would probably far exceed the likely small value of the land. He asked the Minister if he wanted to revise his instructions for the preparation of terms of reference.[11] The Inquiry went ahead on the basis that the terms of reference for the Royal Commission would not 'raise any question as to the right of the Crown to land below high water mark' as any such claim

[11] David Alexander, Land Based Resources, Waterways and Environmental Impacts Report, Wai 1040 #A7 page 555

could not be entertained. So despite the earlier petitions referring to a far larger area and in fact thousands of acres having been vested, the Inquiry was limited to whether a 2 acre portion of the 'dry' land vested in the Harbour Board was in fact Native land or Crown land before its vesting and thus whether it should have been vested without payment of compensation.

22. The Judge recommended the land be revested in its Maori owners finding that the Crown had no right or claim to the land, because even if it had developed from a recent build up of silt, that build up had been sufficiently gradual and imperceptible to amount to accretion to the Hihiaua Block, which would mean the Crown did not have any right to include it in land vested in the Harbour Board. He accepted that the Hihiaua Block, as ordered by the Native Land Court in 1867, was only part of a larger area known as Hihiaua, and that larger area had been reserved by Maori for fishing and other purposes, specifically as "a landing reserve, a fishing-station, and a shark-drying ground". The 1907 Act had taken "certain unascertained areas of Native land, and handed them over to the Harbour Board without the Natives being granted compensation, and without giving them a full opportunity of lodging complaints or objections".

23. A survey was completed in September 1917, and showed an area of 1 acre 2 roods 35 perches as dry land alongside the Waiarohia Stream. By Section 15 of the Native Lands Administration and Land Claims Adjustment Act 1917, the area of 1 acre 2 roods 35 perches was declared to cease to be vested in the Whangarei Harbour Board, and instead to be regarded as uninvestigated customary land.[12]

24. So out of the thousands of acres of the harbour bed effectively confiscated, and the two acres recommended for return, but 1 acre was re-vested in its proper owners only to be taken again in December of 1938 for harbour works under the Public Works Act. The Whangarei Harbour Board thereby reacquiring the land.

25. A similar story without the temporary and limited acknowledgement by the Crown arises for many parcels of the Whangarei harbour lands. One such story the

[12] The Native Land Court eventually issued a title order in October 1925

Tribunal will hear about in evidence relates to the Opau/Kaituna block, again vested as Harbour Endowment and reclaimed by the Harbour Board despite it being an area of Maori land surrounding the peninsula of the Kioreroa Block on the Whangarei River. The total area of the block was 652 acres. This land originally contained two camping sites an oyster ground and fishing grounds and was the site of a tauranga waka. Remnants of the camp contained shell dunes. The oyster ground was known as Ko Tio. Ko Tio is the area now covered by the old WECO shed and the old Northport buildings. The area that is now the Fertilizer Works wharf extending along to the Old Port Whangarei Wharf is another camping ground site and a traditional fishing ground. These sites are now owned by Port Nikau Joint Venture.[13]

26. This area was also the subject of two Native Land Court applications which the Court declined to hear for want of jurisdiction, the land being below the high water mark. As we are all aware today, the legal position is, or was that the Maori Land Court and thus its predecessor had jurisdiction to entertain applications to the foreshore and seabed.[14] The legal ownership of the Whangarei Harbor lands may well have been a very different story had this legal right been recognised when Te Parawhau were attempting to have their legitimate claims recognised.

27. As a post script to the confiscation of this area of the foreshore at Opau, the Tribunal shall hear of the Whangarei District Councils attitude to 'significant issues' as they concern Whangarei Maori.[15]

28. The witnesses the Tribunal shall hear from are:

i. Taipari Munro #I26;

ii. Taparoto George #I34;

iii. Marina Fletcher #I35;

[13] Brief of Evidence of Mira Norris, pg 2

[14] Attorney-general v 'Ngati Apa'. NZLR 3, 2003, p643

[15] Brief of Evidence of Mira Norris

iv. Mira Norris #I21;

v. Tom Paki;

vi. Steve Panoho #I23;

vii. Joy Panoho #I27.[16]

29. The Tribunal shall hear how Te Parawhau are a hapu who have endured a city being built on their lands, which has brought a somewhat challenging set of circumstances. The people have struggled to maintain the mana of Te Parawhau as this city of Whangarei has developed with their support and assistance. The Crowns deliberate and pervasive undermining of their authority through the generations is a constant theme running throughout their experience.[17] Some aspects of this struggle run throughout the evidence that will be heard today.

Moana Tuwhare
14 October 2013

[16] Further Briefs filed for this hearing that are to be taken as read are those of Reuben Panoho (I22) and Marina Fletcher

[17] Further evidence relating to this experience will be more fully put before the tribunal in later hearing weeks including Te Parawhau's extensive and ongoing struggle with local and regional government bodies,