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IN THE WAITANGI TRIBUNAL **WAI 898**

IN THE MATTER OF the Treaty of Waitangi Act 1975

AND

IN THE MATTER OF Te Rohe Pōtae District Inquiry

OPENING SUBMISSIONS OF THE CROWN RELATING TO NATIVE TOWNSHIPS, LOCAL GOVERNMENT AND RATING ISSUES: HEARING WEEK EIGHT

Dated 6 November 2013

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MAY IT PLEASE THE TRIBUNAL:

Introduction

1. These opening submissions address the themes of the professional evidence in hearing week 8: native townships, local government and rating.

Native townships

2. This part of the opening submissions addresses briefly the topic of native townships, particularly insofar as this topic is covered in H Bassett and R Kay's report, "The Impact of the Native Townships Acts in Te Rohe Pōtae: Te Kuiti, Otorohanga, Karewa, Te Puru and Parawai Native Townships" (Wai 898, A62).

Introduction

3. There were five native townships established in the inquiry district. Karewa, Parawai and Te Puru were established around the Kawhia harbour, and the Te Kuiti and Otorohanga townships built along the North Island main trunk line. The evidence notes that Rohe Pōtae native township areas were proclaimed between 1900 and 1904.[1]

4. The topic of native townships is being dealt with as a discrete issue for the purposes of this hearing week. There are obvious overlaps with broader land-related issues, including in particular, purchasing from the end of the 19th century, 20th century land title reform, and public works (see issues 12, and 14-17 of the Tribunal's Statement of Issues[2]).

5. As the Crown stated in its Statement of Position and Concessions, at a general level, the Crown's position is that the topic of native townships is best assessed as part of the wider consideration of the process of economic development and change in the early 20th century.[3] The wider political and

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1 H Bassett and R Kay "The Impact of the Native Townships Acts in Te Rohe Pōtae: Te Kuiti, Otorohanga, Karewa, Te Puru and Parawai Native Townships" (Wai 898, A62), pp 7 – 8.

2 Wai 898, #1.4.3.

3 Crown Statement of Position and Concessions, 21 March 2012, (Wai 898, #1.3.1), para 676.

economic context in which the townships were established will be drawn out in later hearing weeks by, for example:

5.1 Dr D Loveridge, "'The Bane of the Native Race': the Problem of Unused Māori Lands in King Country during the First Decade of the 20th Century", September 2012, (Wai 898, A93);

5.2 H Bassett and R Kay, "Crown Administration and the Alienation of Māori Land in Te Rohe Pōtae Inquiry District c. 1931 – 2010", August 2011, (Wai 898, A75); and

5.3 T Hearn, "Māori, land, and the Crown in Te Rohe Pōtae c1900 to c1935", June 2011, (Wai 898, A73).

6. The Crown has not made a concession of Treaty breach in this inquiry that addresses directly native township issues.

Purpose of native townships

7. The Crown submits that the circumstances and drivers behind the establishment of native townships within the Rohe Pōtae were complex. Native townships were intended to facilitate closer settlement of areas that were considered underdeveloped in an economic sense, in order to encourage economic prosperity. It was intended that Māori would benefit from townships by retaining land ownership and generating economic returns through leases and the general emergence of settlement.

Key issues for inquiry

8. The Crown considers that there are four key issues for inquiry in relation to native townships. They are:

8.1 The adequacy in Treaty terms of the Crown's consultation in respect of the establishment of each of the native townships;

8.2 The adequacy of the statutory framework that provided for the administration of native townships;

8.3 The extent to which the Crown can be held responsible for the ultimate success or failure of the native townships; and

8.4 The nature and extent of prejudice to Rohe Pōtae Māori.

Consultation in respect of the establishment of the native townships

9. The evidence on the record of inquiry indicates that some (though not all) Rohe Pōtae Māori welcomed the development of native townships, recognising the economic opportunities they were intended to provide. The Crown appears to have regarded itself as bound not to proclaim townships at Te Kuiti and Otorohanga without owner consent, and did not do so.[4]

10. The Crown put processes in place to ensure consultation in respect of the native township plans, and to address objections.[5] Where there were objections to the township, or the laying out of the township, it is a legitimate issue for inquiry to consider the adequacy of the mechanisms provided by the Crown for those objections to be addressed.

Administration of native townships

11. In terms of the administrative arrangements for native townships, the Crown notes in particular the following points:

11.1 The Native Township Act 1895 provided that the beneficial ownership of the township and native allotments remained with Māori owners, but legal ownership was vested in the Commissioner of Crown Lands.[6]

11.2 After the establishment of the Māori Land Councils in 1900, the Councils were empowered in 1901 to set apart and administer land in the same manner as under the Native Townships Act 1895.[7] Legislation in 1902 provided that the Councils would administer

4 Bassett and Kay (Wai 898, A62), pp 41 – 42.

5 See, for example, Bassett and Kay (Wai 898, A62), pp 48, 52 and 56 (in relation to Parawai Township), pp 74 and 77 – 79 (Karewa), pp 84 – 85 (Te Puru), p 105 (Te Kuiti) and pp 93 – 94 and 117 – 127 (Otorohanga), and see for example, the Native Townships Act 1895, ss 7 and 9.

6 See, for example, Native Townships Act 1895, ss 12(3), 12(4) and 17.

7 Māori Lands Administration Amendment Act 1901, s 11.

the native townships for the benefit of the owners.[8] The evidence on the record of inquiry states that Te Kuiti and Otorohanga were proclaimed in this context.[9]

11.3 The evidence notes that the three Kawhia townships were administered by the Lands and Survey Department until 1908, after which administration was transferred to the Maniapoto Tuwharetoa District Māori Land Board.[10] The Māori Land Laws Amendment Act 1908 provided for the powers exercised under the Native Townships Act 1895 by the Commissioner of Crown Lands to be vested in the Māori Land Boards.[11] Later, the Native Townships Act 1910 provided for the transfer of the fee simple from the Crown to the relevant Māori Land Board, and vested the land in the Land Board in trust for the owners.[12]

11.4 For three of the five native townships (Karewa, Te Kuiti and Otorohanga), a further change occurred in 1955 when the Māori Trustee assumed administrative responsibility for township lands that were subject to the provisions of the Native Townships Act 1910.[13]

12. A key issue for inquiry is the appropriateness of the Crown's engagement with Rohe Pōtae Māori on the administrative changes to native township lands that occurred over time. The Crown submits that the Treaty does not impose on it an absolute duty to consult with Māori, but it does require the Crown to make informed decisions on matters affecting the Māori interest.[14] The Crown notes that where owners understood and consented to native townships, they were accepting that the native townships would be managed and administered by a third party entity. These factors need to be

8 Native and Māori Land Laws Amendment Act 1902, s 10.

9 See, for example, Bassett and Kay (Wai 898, A62), p 8, 145 – 146.

10 See for example: Bassett and Kay (Wai 898, A62), p 8 and 149.

11 See s 2.

12 See ss 2, 4 and 5.

13 Māori Reserved Land Act 1955, s 3(4). See also Bassett and Kay, (Wai 898, A62), p 8.

14 *NZ Māori Council v A-G* [1987] 1 NZLR 641, per Richardson J at 683. See also Cooke P at 665.

taken into account when assessing the appropriateness of the Crown's engagement.

13. It is also important, the Crown submits, to consider the extent to which the Crown caused prejudice to Māori through the administrative arrangements. The Crown position is that it was responsible for the establishment of the legislative framework for the administration of native townships, but not for the particular administrative decisions or acts or omissions of the relevant Māori Land Board or Māori Land Council or of the Māori Trustee in the exercise of their powers under that legislative framework.

14. The Crown also cautions against assuming that the changes necessarily caused prejudice to the Rohe Pōtae Māori. For example, it is noted that the changes from Crown administration to Māori Land Councils and then Land Boards did not change the fundamental terms of trust on which those entities were required to act. Land Boards, like their predecessors, were required to administer the lands in the best interests of owners.

Crown responsibility for the success or otherwise of the townships

15. The evidence on the record of inquiry is that the five native townships developed differently over time. For example, the evidence indicates that Parawai never developed as a commercial township, and that Te Puru township was purchased by the Crown in 1912 at the request of the owners.[15] In contrast, townships lands have continued to be administered as such in Otorohanga, Te Kuiti and Karewa.

16. In assessing how the native townships developed over time, the Crown submits that the Tribunal's inquiry should take account of the following points:

    16.1 Economic decisions were made by both Māori and non-Māori as the townships developed (or in some cases, as appears to have been the case with Parawai, failed) and in response to changing circumstances.

15 See, for example, Bassett and Kay, (Wai 898, A62), pp 90 and 196.

16.2 The manner in which townships developed over the course of the 20th century was to a large extent outside the Crown's direct control. There were limitations on the Crown in controlling or directing economic outcomes, particularly in the early 20th century, and in light of this the Crown cannot be expected to have guaranteed the economic success of the townships.

16.3 Where native township lands were sold (for example, in Te Puru), there are likely to have been various reasons why Rohe Pōtae Māori chose to sell township lands. Whether any particular sales of native township lands breached the standards expected of the Crown under the Treaty are matters appropriate for further inquiry.

Prejudice to Rohe Pōtae Māori

17. A further important issue for inquiry is the extent to which Rohe Pōtae Māori have in fact suffered prejudice through the operation of the native townships. The Tribunal's inquiry here is necessarily wide, and will extend to, for example:

17.1 The extent to which perpetual leases were appropriate in Treaty terms.

17.2 The adequacy of reserves made for Māori.

17.3 Whether the Crown was justified in not paying compensation for township reserves (a particular issue for the Te Puru township).

17.4 The purpose to which reserved lands were put and the disposal of reserves (a particular issue for Karewa and Te Puru).

Local government and rating

18. This part of the opening submissions addresses briefly the topics of local government and rating, particularly insofar as those topics are covered in Jane Luiten's report, "Local Government in Te Rohe Pōtae" (Wai 898, A24).

19. The Crown has not made a concession of Treaty breach in this inquiry relating to local government or rating.

Local government

20. In its statement of position and concessions, the Crown acknowledged that there have been consistent, but not always unanimous, calls amongst Rohe Pōtae Māori for at least a degree of self-government (or local self-government or self management); in other words, a wish by Rohe Pōtae Māori to exercise control over key aspects of their affairs. Such calls were, for example, a focus of the discussions and interactions between the Crown and Rohe Pōtae Māori in the 1870s and the 1880s.[16]

21. The Crown further acknowledged that, for its part, it has often considered that the better approach, for both Rohe Pōtae Māori and the national interest, has been to draw all its citizens under the same institutions and rules.[17]

22. Consistent with the position it has adopted in other inquiries, the Crown's position in this inquiry is that its Treaty responsibility lies with the statutory framework within which local government operates and in ensuring that that framework is consistent with the Treaty and its principles.[18]

23. The Crown submits that the establishment and subsequent evolution of New Zealand's local government arrangements represents a genuine, good-faith endeavour on its part to implement a national, uniform, independent and largely self-funding system for the efficient and effective development of the country's various regions. The challenge for the Crown has been how to establish local government consistently with the Treaty and its principles so as to provide for and protect the interests of Māori, including Rohe Pōtae Māori, and facilitate their participation in local government systems and structures and the regional and national economies.

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16 Crown Statement of Position and Concessions, 21 March 2012, (Wai 898, #1.3.1), para 1005.

17 Crown Statement of Position and Concessions, 21 March 2012, (Wai 898, #1.3.1), para 1006.

18 Crown Statement of Position and Concessions, 21 March 2012, (Wai 898, #1.3.1), para 1030.

24. In assessing the Crown's response to that challenge, the Crown submits that it is important to acknowledge the fact that the circumstances it faced were without precedent; no blueprint or instructions existed as to how to establish local government in New Zealand consistently with the Treaty and its principles.

Rating

25. The power to set and levy rates is a particular (and pivotal) statutory function of local government. Consistent with the position it has adopted in other inquiries, the Crown's position in this inquiry is that:

    25.1 the provision for the levying of rates is a reasonable exercise of the Crown's right to govern under article 1 of the Treaty, and an aspect of the sovereign right to impose reasonable taxation;[19] and

    25.2 the principle of rating Māori land is not inconsistent with the Treaty.[20]

Key issues for the Crown

26. The Crown is aware that issues relating to local government and rating have been the subject of considerable focus in previous Tribunal inquiries and reports. The Crown does not intend to traverse that same ground unnecessarily in this inquiry.

27. From the Crown's perspective, insofar as local government and rating are concerned, the key issues in this inquiry that have not been the subject of inquiry elsewhere are:

    27.1 whether the Crown/Rohe Pōtae agreements of 1882-1885 should have influenced:

        27.1.1 the Crown's introduction of local government in the inquiry district; and

        27.1.2 the manner in which Rohe Pōtae Māori were rated; and

19 Crown Statement of Position and Concessions, 21 March 2012, (Wai 898, #1.3.1), para 1036.

20 Crown Statement of Position and Concessions, 21 March 2012, (Wai 898, #1.3.1), para 1035.

27.2 the extent to which the agreements in fact influenced these matters.

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TO: The Registrar, Waitangi Tribunal
AND TO: Claimant Counsel