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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 the Te Rohe Potae Inquiry District

GENERIC OPENING SUBMISSIONS: LOCAL GOVERNMENT

Dated this day of November 2013

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WELLINGTON

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INTRODUCTION:

1. These Opening Submissions address the theme of Local Government as it applies to the Te Rohe Potae Inquiry District.
2. This theme relates to:
    a. the establishment and imposition of Local Government structures within the Te Rohe Potae District;
    b. the exercise of authority by such structures within the district as a function delegated by the Crown;
    c. the charges that were placed upon tangata whenua to maintain the imposed infrastructures.
3. In considering matters relating to Crown Treaty obligations, it is noted that at all times the Crown has duties to:
    a. Actively protect Rohe Potae Maori rangatiranga and right to self-determination of their affairs to the fullest extent practicable
    b. Act reasonably and with the utmost good faith towards Rohe Potae Maori.
    c. Adopt a fair process in any dealings with Rohe Potae Maori and their lands
    d. Recognise and uphold Maori customs and practices.
    e. Foster and protect the autonomy of Rohe Potae Maori.
    f. Remedy wrongful acts and omissions of the Crown and its agents
    g. Consult with Rohe Potae Maori and obtain consent for measures which might affect or diminish their rangatiratanga and local autonomy;
    h. Ensure that its practices, policies and legislation permitted Rohe Potae Maori to develop their lands as they saw fit.
4. At its heart, this theme relates to the impact that imposition of Local Government structures has had on the rights and abilities of Rohe Potae Maori to exercise tino rangatiratanga as guaranteed to them by Te Tiriti o Waitangi.
5. The evidence will show Crown actions in the establishment and delegation of powers to Local Government within the Rohe Potae region gradually stripped Rohe Potae

Maori of their ability to exercise Tino Rangatiratanga including the ability to self-manage their affairs as they were required to abide by the edict of scattered local government policies. Moreover as the Tribunal will see Te Rohe Potae Maori have suffered immensely at the hands of imposed local government infrastructure and policies which were geared towards facilitating a settler community.

6. The evidence will also show that when the Crown empowered Local Government to levy rates on Te Rohe Potae Maori they thereby placed them under an unfair burden despite protest ï stifling them to the point that they were unable to develop and utilise their lands as they wish to. The resulting effect is that much of rohe potae land that remains in Maori ownership today is unproductive isolated and landlocked, notwithstanding its potential.

7. The evidence will further demonstrate that the Crown failed to ensure that Local authorities established a relationship with Maori that was consistent with Te Tiriti o Waitangi and instead permitted it to focus on Pakeha settlement and revenue gathering endeavours.

8. Furthermore it is the claimantsô position that the Crown failed to ensure that Local Authorities, worked with Maori to develop proper roading sewerage and other infrastructure for their betterment.

Key Reports

9. Issues surrounding the theme of Local Government are dealt with extensively within the #A24 Luiten report entitled ó*Local Government in Te Rohe* Potaeô. The pervasive nature of the issue within this district inquiry also sees aspects of the theme arising throughout a number of the other technical reports that have been included on the Record of Inquiry. The following reports are of particular relevance.

    a. #A71, Robinson and Christoffel, óAspects of Rohe Potae Political Engagement, 1886-1913,ô

    b. #A75, Bassett and Kay, óCrown Administration and the Alienation of Maori Lands in Te Rohe Potae Inquiry District c. 1931-2010,ô

    c. #A29, Sarich, óAn Overview of Political Engagement between Hapu and Iwi of the Te Rohe Potae inquiry District and the Crown, 1914-c. 1939.ô

d. #A72, Sarich and Francis, óAspects of Te Rohe Potae Political Engagement, 1939-c.1975, Government Provisions for Local Self Government for Te Rohe Potae hapu and Iwi.

10. In addition, much Tangata whenua evidence has and continues to be presented on this theme which show that issues relating to the exercise of local authority continues to be an issue within the region.

The Imposition of Local Government

11. The technical evidence of Ms Luiten relating to this theme asserts that local government was a Crown innovation devised and set up for Pakeha settlement ï with little regard for how it would impact upon customary tenure and the desire of Maori to retain self-management and government of their own affairs.

12. We remind the Tribunal of the efforts of Rohe Potae leadership to maintain the ability to exercise authority within the district. particularly within the Te Rohe Potae context, any analysis of the impacts of Local Government needs to be seen against the ongoing efforts of Rohe Potae leadership to secure the ability to exercise local authority to themselves, a theme that has permeated discussions relating to the Ohaaki Tapu.

13. Rather than allow tangata whenua to exercise authority within their region, the Crown established a number of counties, boroughs and districts within the region, some of which were not fully functional.

14. The claimants assert that local government poorly served the interests of Maori in Te Rohe Potae. This is demonstrated by the ratings framework brought in by local government which remained fundamentally ill-fitted to the Maori realities.

15. Although the Treaty was set out in terms of a partnership between Maori and Pakeha, Local Government was structured in a way that ensured the exercise of local authority occurred in a way that suited colonial circumstances of no relevance to Maori Customary knowledge and experience. Ongoing Crown failures to adapt the system to meet Maori realities and needs ultimately contributed to their exclusion from the local body politic. This is epitomised by the systematic failure to include provision within local government legislation throughout most of the 20th century to address how the Crowns treaty obligations might be fulfilled.

16. The evidence highlights fundamental failings within the system of Local Government which essentially excluded Rohe Potae Maori increasing their social and economic marginalisation within the region.

Delegation and Exercise of Local Authority

17. The Tribunal has found on numerous occasions that the local authorities are not the Crown, nor are they agents of the Crown.[1] The Tribunal has found further that the Crown has the right to delegate powers and responsibilities of local government, however, any such delegation must occur consistently with its Treaty obligations; and the delegation cannot be used as a mechanism for the Crown to avoid those obligations.[2]

18. In its Statement of Position and Concessions,[3] the Crown seeks to assert that its responsibility under the Treaty is limited and lies with the statutory framework within which local authorities operate and in ensuring that that framework is consistent with the Treaty and its principles.

19. It is submitted that the Crown cannot disassociate itself from the actions of Local Government in this way. The fact remains that it is an institution that is subordinate to the state and exists for its purposes. It continues to exist only due to the will of Parliament who created it. Any conclusion then that the Crown bears no responsibility is therefore a bizarre paradox and not in accordance with reality. We ask that the Tribunal consider carefully the Crowns actions in introducing this system, the processes and legislation employed and the ultimate impact that Local Government actions have had on Maori within the Rohe Potae region.

20. It is within this context that the actions of local authorities need to be considered as functions that would have otherwise been carried out by the Crown. The doctrine on non-delegation of responsibility should then mean that the Crown subrogates for the Local Government Structure where it exercises of local authority in a way that infringes on the rights guaranteed to Rohe Potae Maori as a result of the ratification of the Treaty.

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[1] See for instance Waitangi Tribunal, *Tauranga Moana 1886-2006: Report on the Post-Raupatu Claims* (Wellington: Legislation Direct, 2010), p1062

[2] Waitangi Tribunal, *The Wairarapa ki Tararua Report* (Wellington: Legislation Direct, 2010), p1062

[3] Doc#1.3.1, p313, para 1030.

21. What needs to be kept in mind is that Local government has been, and continues to be, very much a tool of the state.

Rating

22. Closely related to the imposition and exercise of local authority is the issue of rating. It was a key issue in the Rohe Potae Compact negotiations and Rangatira were clear in their efforts to ensure that the opening up of their lands to roads and railway would not render them liable to an objectionable system that could become a means of depriving them of their lands.

23. It is submitted that the imposition of rating in the region is therefore a breach of the Compact as well as the Treaty.

24. The implementation of local government within Te Rohe Potae coincided with the extension of rating legislation that extended liability over all Maori freehold land which meant that almost overnight, Rohe Potae Maori were faced with an annual recurring tax on their traditional homelands, with few means to pay.

25. The Hauraki Tribunal reported that rates created further pressures on Maori,[4] and that problems associated with the rating of Maori land are a symptom of the issues caused by Native and Maori land legislation. Issues which the Crown should have taken into account and provided assistance to Maori to develop their land and avoid the problems of fragmented title that led to the loss of land through a number of mechanisms including the burden of rates.[5]

26. It is submitted that the rapidity in which Rohe Potae lands were made subject to liability exacerbates the impact of the inequitable pressures that were brought to bear upon them:
    a. as the Crown imposed a charge over their lands while at the same time imposing restrictions which inhibited their ability to obtain income from them; and
    b. local Authorities charged rates against unoccupied and unproductive lands on the basis of ópreposterousô land values.

27. The evidence will show how rating was attributed as an ongoing cause of estrangement between Maori and Pakeha in the region and the Crownôs refusal to

[4] *The Hauraki Report,* p1017
[5] Ibid p1018.

mediate between Maori and local bodies allowed conflict between and tensions between the two to foment:

a. engendering a lack of confidence in Maori in local government; while
b. developing a perception of Maori as burdensome rates defaulters who were afforded special treatment.

28. Local Authority officials depicted Maori as an oppressive burden and advocated that the needs of the growing settlement outweighed the promises that had been made to the peoples of Te Rohe Potae to allow settlement in the first place.

29. Maori became the scapegoat for the countryôs financial woes. Their lands were described as wastelands in Parliament where they were pinpointed as the root of the countryôs troubles

30. It is within this context that evidence about Crown experimentation with mechanisms such as consolidation ought to be assessed by the Tribunal. Such mechanisms were imposed with the ostensible intent of making Maori land productive, however, such mechanisms were more about justifying making Maori lands liable for rating.

31. In the end, the Crown would impose and entrench the very system of rating that it had promised Rohe Potae leadership that it would protect it from with an intent to ensure that their lands were brought further under the authority of the state and its subordinate institutions.