

THE
NGĀTI MANIAPOTO/NGĀTI TAMA
SETTLEMENT CROSS-CLAIMS
REPORT



WAITANGI TRIBUNAL REPORT 2001

The

Ngāti Maniapoto/Ngāti Tama

Settlement Cross-Claims

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REPORT

WAI 788, WAI 800

WAITANGI TRIBUNAL REPORT 2001

The cover design by Cliff Whiting invokes the signing of the Treaty of Waitangi and the consequent interwoven development of Maori and Pakeha history in New Zealand as it continuously unfolds in a pattern not yet completely known

A Waitangi Tribunal report

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ABBREVIATIONS

app	appendix
ch	chapter
comp	compiler
doc	document
ltd	limited
ots	Office of Treaty Settlements
p, pp	page, pages
para	paragraph
s	section
trans	translator

'Wai' is a prefix used for Waitangi Tribunal claim numbers



The Waitangi Tribunal
Wellington

The Honourable Parekura Horomia
Minister of Maori Affairs

and

The Honourable Margaret Wilson
Minister in Charge of Treaty of Waitangi Negotiations

Parliament Buildings
Wellington

29 March 2001

Tēnā kōrua

Enclosed is the Ngāti Maniapoto/Ngāti Tama Settlement Cross-Claims Report, the outcome of an urgent hearing in Wellington from 26 to 28 February 2001. This report deals with two claims by Ngāti Maniapoto in relation to the proposed settlement of Ngāti Tama's historical Treaty claims relating to Taranaki. The claimants stated that they have customary interests in part of the area covered by the Ngāti Tama settlement and that they will be prejudiced by the provision of redress to Ngāti Tama within that area before Ngāti Maniapoto's claims have been settled.

We note in our report that the Crown and Ngāti Tama have agreed to revise the original settlement offer to Ngāti Tama contained in the heads of agreement. We believe that, by revising the settlement package and endeavouring to meet Ngāti Maniapoto's concerns in certain other respects, the Crown has tried conscientiously to meet its obligations as a Treaty partner to both Ngāti Tama and Ngāti Maniapoto. For reasons outlined in our report, we consider that, if the revised settlement with Ngāti Tama goes ahead, the Crown will retain the capacity to provide adequate and appropriate redress to Ngāti Maniapoto when its settlement is negotiated.

Accordingly, we find that the Crown would not breach the principles of the Treaty of Waitangi by proceeding with the settlement of Ngāti Tama's Treaty claims in terms of the revised settlement package. We also make a recommendation in relation to the Kawau Pā historic reserve, site of Te Kawau Pā. This reserve was listed in the heads of

agreement as one of the areas to be vested in Ngāti Tama, but the Crown has now recognised that both Ngāti Tama and Ngāti Maniapoto have strong interests in this site and that as a result it would be inappropriate to vest title exclusively in either group. We endorse this position, but recommend that the Crown take an active role in trying to facilitate an agreement between Ngāti Maniapoto and Ngāti Tama which could recognise the interests of both groups and ensure that both can be involved in owning and managing the Te Kāwau Pā site.

Heoi anō

THE NGĀTI MANIAPOTO/NGĀTI TAMA SETTLEMENT CROSS-CLAIMS REPORT

1. THE BACKGROUND TO THE URGENT HEARING

1.1 *The Taranaki Report*

The Waitangi Tribunal's *Taranaki Report: Kaupapa Tuatahi*, released in June 1996, reported on the Tribunal's preliminary views on 21 claims concerning the Taranaki district. Among those claims was the Wai 135 (Ngāti Tama) claim. Ngāti Maniapoto was not heard as part of the Taranaki inquiry. While the focus of the *Taranaki Report* was on raupatu (confiscation) issues, it also covered other claims by Taranaki Māori.

Among the issues covered in the *Taranaki Report* was the 1882 Native Land Court determination of the ownership of the Mōhakatino–Parininihi and Mōkau–Mōhakatino blocks. These blocks were immediately to the north of the confiscation boundary, between the confiscation line and the Mōkau River, within the area claimed by Ngāti Tama as their rohe (see location map). The Native Land Court awarded the ownership of both blocks to Ngāti Maniapoto and rejected the claims of Ngāti Tama.¹ The Taranaki Tribunal criticised the court's decision for being politically motivated and 'having nothing at all to do with Maori custom', but it made the following important qualification to its statements about the Native Land Court determination:

We do not, however, infer that Ngati Tama were solely entitled to the whole of the lands to the Mokau River. Though Ngati Tama claims that right, we have not heard from the adjoining interest groups at this stage. . . . Until such time as other groups are given notice and are heard, or otherwise agree, we are assuming the Ngati Tama loss through the Native Land Court was probably equivalent to the greater part of the Mohakatino–Parininihi block, say 66,000 acres. It may not be necessary to determine the matter more precisely, unless the Government proposes compensating every lost acre or unless it is crucial to assessing the apportionment of compensation between hapu.²

1. Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi*, Wellington, GP Publications, 1996, pp 279–283

2. Ibid, p 283

1.2 The Ngāti Tama heads of agreement

In November 1996, the Crown recognised the mandate of the Ngāti Tama Iwi Development Trust to represent Ngāti Tama in negotiations with the Crown regarding their historical claims relating to Taranaki. The Crown and Ngāti Tama's mandated representatives agreed to terms of negotiation on 18 August 1997, and signed a heads of agreement for a proposed settlement of Ngāti Tama's historical claims on 24 September 1999.³

The historical account included in the heads of agreement as the basis of the proposed apology to Ngāti Tama refers to the Native Land Court investigation of the Mōhakatino–Parininihi and Mōkau–Mōhakatino blocks. The wording of this account indicates that the Crown has accepted that Ngāti Tama has interests north of the confiscation line and has also accepted the views of the Taranaki Tribunal regarding the prejudicial effect on Ngāti Tama of the Native Land Court's determination of ownership.⁴

The heads of agreement also proposed that, as part of the settlement with Ngāti Tama, various forms of redress would be provided to Ngāti Tama both north and south of the confiscation line. A distinction was drawn, however, between two parts of the Ngāti Tama claim area. The heads of agreement defined the 'cross claim area' as 'an area identified in the claim area map of the *Taranaki Report* as under claim from Ngāti Tama but north of the confiscation line on that map and, therefore, subject to a claim by Ngāti Maniapoto'. The 'exclusive claim area' was defined as 'an area identified in the claim area map of the *Taranaki Report* as under claim only from Ngāti Tama and south of the confiscation line on that map'.⁵ With regard to the 'cross claim area', the Crown planned to discuss the proposed redress with Ngāti Maniapoto, and the heads of agreement provided that cross-claim issues would have to be resolved to the satisfaction of the Crown before redress was provided to Ngāti Tama within that area. The heads of agreement did not make redress within the 'exclusive claim area' subject to cross-claim resolution.⁶

1.3 The Ngāti Maniapoto claims

On 11 June 1999, before the signing of the heads of agreement, the manager of the Maniapoto Māori Trust Board wrote to the Minister in Charge of Treaty of Waitangi Negotiations requesting that the Crown consult with Ngāti Maniapoto in respect of the negotiations between Ngāti Tama

3. Paper 2.4, app A

4. Ibid, p 18

5. Ibid, pp 111–112

6. Paper 2.4, pp 4–11

and the Crown. This letter informed the Minister that Ngāti Maniapoto claimed an interest in lands both north and several kilometres south of the confiscation boundary.⁷ The Minister replied on 22 July 1999, advising the board of the Crown's policy that, in cases of well-established cross-claims, 'the parties to the cross-claim must come to an agreement before any Treaty settlement redress is provided, or the redress provided must be of a non-exclusive nature'. He noted that all cross-claim issues would have to be resolved before the final deed of settlement for Ngāti Tama was agreed, and suggested that representatives of the Maniapoto Māori Trust Board meet with the Ngāti Tama Iwi Development Trust to discuss cross-claim issues.⁸

The Waitangi Tribunal received a claim on 15 July 1999 from Atiria Takiari and others of Ngāti Maniapoto claiming a Ngāti Maniapoto interest in the area covered by the Crown–Ngāti Tama negotiations, including part of the area south of the confiscation line. This claim, registered as Wai 788 on 6 August 1999, requested that the Tribunal recommend the halting of the Ngāti Tama settlement process until Ngāti Maniapoto cross-claim issues had been resolved. The claimants asked the Tribunal to grant urgency to their claim.⁹ This claim was followed by another from Harold Maniapoto and Roy Haar on behalf of Ngāti Maniapoto. Received by the Tribunal on 17 November 1999 and registered as Wai 800 on 23 December, this claim was also concerned with the alleged prejudicial effects on Ngāti Maniapoto of the proposed Crown–Ngāti Tama settlement. The Wai 800 claimants requested an urgent hearing of their claim.¹⁰ The claimants have since emphasised that the Wai 788 claimants represent Ngāti Maniapoto hapū and marae of the Mōkau region, while the Wai 800 claimants represent the Ngāti Maniapoto Māori Trust Board and support the Wai 788 claimants on behalf of Ngāti Maniapoto whānui.¹¹

The Tribunal direction registering the Wai 800 claim also sought confirmation from the Crown that the claimants' interests would not be prejudiced by negotiations between Ngāti Tama and the Crown and details of how the Crown proposed to deal with Ngāti Maniapoto interests in settling the Ngāti Tama claims.¹² The Crown response to this direction advised the Tribunal that, in addition to the provisions contained in the heads of agreement for resolving cross-claim issues north of the confiscation line, the Crown now also planned to discuss Ngāti Maniapoto's concerns about proposed redress south of the confiscation line. Crown counsel concluded that Ngāti Maniapoto interests were adequately

7. Claim 1.1 (Wai 788), apps A, B

8. Paper 2.8, app 1

9. Claim 1.1 (Wai 788); paper 2.1 (Wai 788)

10. Claim 1.1 (Wai 800); paper 2.1 (Wai 800)

11. Paper 2.28, paras 2–3

12. Paper 2.1

protected and that the heads of agreement did not prejudice the interests of Ngāti Maniapoto.¹³

1.4 Mediation

On 29 May 2000, a judicial conference was held to discuss the Wai 788 and Wai 800 claimants' applications for urgency. The Crown and Ngāti Tama opposed these applications. At the judicial conference, it was proposed that the parties 'enter into a process of facilitated or mediated discussions aimed at agreeing an appropriate protection mechanism for non-settling claimants'. The parties agreed to this proposal. The agreement to enter into mediation pursuant to clause 9A of the second schedule to the Treaty of Waitangi Act 1975 was recorded in a direction from the deputy chairperson of the Waitangi Tribunal, Chief Judge J V Williams. In his direction, the chief judge noted that the mediation was solely for the purpose of trying to obtain agreement on a suitable protection mechanism: 'It is not for the purpose of settling the underlying boundary dispute between various of the claimant parties.'¹⁴ Mediation commenced on 2 June 2000 and was conducted on a 'without prejudice' basis. The parties were unable to reach an agreement, however, and on 4 August 2000 counsel for the Wai 788 and Wai 800 claimants advised that their clients were withdrawing from mediation and renewing their application for an urgent hearing.¹⁵

1.5 Urgency is granted

Once again, the Crown and Ngāti Tama opposed the application for an urgent hearing.¹⁶ However, the application was supported by two other claimant groups, Wai 555 (the Tamahaki Incorporated Society, representing certain Whanganui River Māori) and Wai 577 (descendants of Poutama, of Ngāti Maniapoto), who were concerned that the proposed Ngāti Tama settlement might also affect their interests.¹⁷ In a direction dated 14 December 2000, Chief Judge Williams granted urgency but stressed that:

this urgent hearing will not be an opportunity to hear the Ngāti Maniapoto claims to the Mokau–Mohakatino block itself. The issue is

13. Paper 2.4

14. Paper 2.9

15. Paper 2.10

16. Papers 2.19–2.20

17. Papers 2.13–2.15, 2.18

rather, whether the Ngati Tama settlement in this area will prejudice the Ngati Maniapoto and/or Tamahaki interests.¹⁸

This same direction constituted the Tribunal to hear the claims.

This direction was followed on 21 December by a judicial conference with representatives of the Crown, the Wai 788 and Wai 800 claimants, and Ngāti Tama. In the Tribunal's direction following the conference, Judge Carrie Wainwright recorded that she had emphasised the limited scope of the hearing, stating that:

the hearing is not an opportunity for parties opposing the Ngati Tama settlement on account of its alleged impact on them, to rehearse their claims against the Crown in the areas in dispute *in extenso*. I have enjoined counsel for these claimants to ensure that their evidence and submissions focus narrowly on the direct prejudice to their clients' interests in the area(s) in question occasioned by the terms of the proposed settlement between Ngati Tama and the Crown.¹⁹

Counsel agreed to a timetable and certain interlocutory rules aimed at ensuring the smooth running of the urgent hearing within the limited time available. Claimant counsel were to file a statement of issues, to be followed by brief responses from Crown counsel and counsel for Ngāti Tama. All evidence was to be taken as read, except by leave on application to the Tribunal, and cross-examination was not to be permitted except by leave. The hearing of the claims was scheduled for 26 to 28 February 2001.²⁰

1.6 Revision of the Ngāti Tama settlement package

Following the failure of the parties to reach agreement in the mediation process, the Crown reconsidered its proposed settlement with Ngāti Tama in light of the concerns raised by Ngāti Maniapoto and sought additional information to assist in this reconsideration. In a letter dated 9 August 2000, the Office of Treaty Settlements (OTS) advised the Wai 788 and Wai 800 claimants that it was willing to provide a letter to Ngāti Maniapoto stating that the Crown recognised that Ngāti Maniapoto have historical claims within the Ngāti Tama area of interest, and to arrange a meeting between Ngāti Maniapoto and Ministry of Fisheries officials 'to discuss fisheries matters in the area of overlapping interest'. OTS also

18. Paper 2.21, p 3

19. Paper 2.22, p 2

20. Ibid, pp 2–3

informed the claimants that it intended to commission independent historical research into the customary associations of Ngāti Tama and Ngāti Maniapoto with the sites that were proposed for transfer to Ngāti Tama in the area of overlapping interest. The outcomes of this research would be considered in deciding whether or not to include these sites in Ngāti Tama's deed of settlement.²¹

OTS official Andrew Hampton then met with Ngāti Maniapoto representatives, who agreed to participate in the proposed independent historical research. Comments were sought and received from all interested parties on the instructions to be given to the independent researchers and the instructions were altered to reflect some of these comments. In September 2000, OTS commissioned David Young to carry out the research. His brief was to investigate the customary associations of Ngāti Tama and Ngāti Maniapoto with the particular sites proposed to be transferred to Ngāti Tama, and to determine the significance of each site to Ngāti Tama and Ngāti Maniapoto. Mr Young (with the assistance of Tui Gilling) examined relevant written sources, and also spent a week in the area collecting oral evidence from Ngāti Maniapoto and Ngāti Tama. The report was completed in November 2000 and provided to the parties for comment.²²

OTS also wrote on 7 February 2001 to the chief executives of the Department of Conservation, the Ministry of Fisheries, the Taranaki Regional Council, and the New Plymouth District Council stating that Ngāti Maniapoto and Ngāti Tama had overlapping claims in the area between Parininihi and the Mōkau River; that Ngāti Maniapoto had not yet entered into settlement negotiations with the Crown; that the non-exclusive redress (statutory acknowledgements and deeds of recognition) offered to Ngāti Tama did not preclude the Crown from offering Ngāti Maniapoto similar redress as part of their eventual settlement; and that the redress offered to Ngāti Tama did not preclude Government departments and local bodies from consulting with Ngāti Maniapoto as appropriate. The Ministry of Fisheries was also requested to set up a meeting between its officials and Ngāti Maniapoto.²³

In addition to meeting the commitments contained in the OTS letter of 9 August, the Crown also revised the settlement offer to Ngāti Tama set out in the heads of agreement. This revision was agreed to by the representatives of Ngāti Tama. In evidence to the Tribunal, Mr Hampton stated that:

21. Document A7(b)

22. Document A7, pp 6–8

23. Documents A7(e)–(h)

Withdrawing all redress in the disputed area would prejudice Ngāti Tama as the Crown considers that Ngāti Tama does have interests in the disputed area. In making revisions to the settlement package the Crown was guided by the need to give appropriate recognition to Ngāti Tama's interests, while not prejudicing Ngāti Maniapoto's ability to negotiate a fair and durable settlement of their historical claims in the future.²⁴

The revised Ngāti Tama settlement package withdrew four properties north of the confiscation line which the Crown had previously proposed to vest in Ngāti Tama. The Crown also withdrew offers of nohoanga (camping entitlements), statutory acknowledgements, and deeds of recognition in respect of certain areas around the Mōkau River where Ngāti Tama's interests were considered to be insufficiently strong. The revised settlement package limited Ngāti Tama's right of first refusal to purchase shellfish quota and their preferential right in respect of coastal tendering to the area south of the confiscation line. It contained no commercial redress north of the confiscation line. Mr Hampton informed the Tribunal that:

All other redress offered in the Heads of Agreement continues to be offered on the basis that it is either non-exclusive (Statutory Acknowledgements, Deeds of Recognition, and Protocols), or Ngāti Tama have sufficiently strong interests to justify exclusive redress.²⁵

However, the status of one proposed item of redress, the Kawau Pā historic reserve, was unresolved, as the Crown recognised strong claims by both Ngāti Tama and Ngāti Maniapoto to this site.²⁶

Mr Hampton also noted that the Ngāti Tama deed of settlement would not refer to the area south of the confiscation line as Ngāti Tama's 'exclusive area' but, rather, as the 'right of first refusal area', because this is where:

Ngāti Tama's right of first refusal to purchase surplus Crown properties (if any) will operate and where memorials (if any) will be removed by the settlement legislation. The Office of Treaty Settlements land bank will also cease to operate in this area.²⁷

He pointed out that OTS's comprehensive property schedules recorded no memorialised properties within the area claimed by Ngāti Tama south of the confiscation line. Likewise, he said that the only Crown properties

24. Document A7, p 9

25. Ibid, p 10

26. Ibid, pp 9–10. The revisions to the redress offered in the heads of agreement are set out in document A7(i).

27. Document A7, pp 10–11

south of the confiscation line which would be subject to Ngāti Tama's right of first refusal were Department of Conservation land, 'which is not generally declared surplus by the Crown'. There are currently no properties held in the OTS land bank in the Ngāti Tama area of interest, either north or south of the confiscation line. Nevertheless, the Crown considered that, in the interests of certainty, it was appropriate to retain the provision for the removal of memorials and for the Ngāti Tama right of first refusal south of the confiscation line.²⁸

The Tribunal understands that the practical effect of the Crown's grant of a right of first refusal over surplus Crown properties south of the confiscation line is minimal, since the only Crown land in the area (Department of Conservation land) is, as a matter of policy, not declared surplus. Likewise, the lifting of section 27B memorials on State-owned enterprise land in the area south of the confiscation line is notional only, since no schedules reveal the existence of section 27B land in the area in question.

Mr Hampton acknowledged that the confiscation line was an artificial boundary marker and did not align with iwi boundaries. Nevertheless, he stated that the Crown considered Ngāti Maniapoto's interests south of the confiscation line to be 'very limited'. For Ngāti Tama, on the other hand, the area south of the confiscation line was said by Mr Hampton to represent 'the core of their interests' and to be 'the turangawaewae of the contemporary Ngāti Tama population in Taranaki'. The Crown therefore considered it appropriate, having regard to the Waitangi Tribunal's *Taranaki Report*, the research of Mr Young, and OTS's own analysis of contemporary associations, to use the confiscation line as a boundary in relation to the lifting of memorials and the Ngāti Tama right of first refusal, as described above.²⁹

2. THE HEARING

The Tribunal hearing, held in Wellington, was attended by some 80 Ngāti Maniapoto claimants and a small number of Tamahaki claimants (who were there to support Ngāti Maniapoto). Sam Laubscher and Layne Harvey were counsel for the Wai 788 and Wai 800 claimants respectively. Counsel for Wai 577 were also present, but with a watching brief only. Ngāti Tama were not represented by legal counsel at the hearing, and

28. Document A7, pp 10–11

29. Ibid, pp 11–12

their sole representative there was Greg White of the Ngāti Tama Iwi Development Trust.

At the commencement of the hearing, the Tribunal emphasised that this was an inquiry into whether or not the Ngāti Maniapoto claimants would be prejudiced by the proposed settlement between the Crown and Ngāti Tama, and that this narrow focus should be kept in mind during the course of the hearing. We observed that everyone appeared to agree that the Ngāti Tama settlement should proceed in some form, and we therefore wished to hear from the claimants what they would like to see done to protect their interests, so that we could decide whether the additional protections requested by the claimants should be pursued by the Crown and Ngāti Tama. We also made the point that the Tribunal did not consider it constructive to inquire into the details of the Crown's consultation with Ngāti Maniapoto up to the time of the hearing. Rather, we wished to focus on the alleged future prejudice to Ngāti Maniapoto's interests arising from the proposed settlement with Ngāti Tama.

In this urgent hearing, the Tribunal was anxious to get to the nub of Ngāti Maniapoto's concerns about the Crown's proposed settlement with Ngāti Tama. Like Ngāti Maniapoto, we did not want the delivery of redress to Ngāti Tama to be delayed more than absolutely necessary. We therefore encouraged counsel to focus on the aspects of the Wai 788 and Wai 800 claims that the Tribunal process might be able positively to influence. We also took a flexible approach to procedure. All counsel, as well as Mr Hampton from the Office of Treaty Settlements and Wai 800 claimant Harold Maniapoto, cooperated in a fluid process: information was provided when needed and several adjournments were taken for kōrero (discussion) between claimants, their counsel, and the Crown.

The Tribunal sought clarification on a number of points from both the claimants and the Crown. In particular, Mr Hampton was asked to clarify various aspects of the proposed settlement with Ngāti Tama, while claimant counsel were asked to clarify the claimants' positions in relation to this settlement and to specify more precisely which aspects of the settlement they objected to. The Tribunal also encouraged the parties to reach an agreement between themselves, independently of the Tribunal.

On the afternoon of 27 February, there was an extended adjournment of the hearing aimed at seeing whether the Crown was able to allay Ngāti Maniapoto's concerns sufficiently to allow the Wai 788 and Wai 800 claims to be withdrawn. Crown counsel made it clear that these

discussions could not result in the further revision of the Ngāti Tama settlement but that the Crown could clarify with Ngāti Maniapoto those forms of redress which would still be available to them for their settlement and could endeavour to reassure Ngāti Maniapoto that their interests would be protected. Following the adjournment, claimant counsel reported that progress had been made on some issues and that a number of issues had been clarified, but that the claimants considered that it was not possible to withdraw their claims.

Although the parties were unable to reach an agreement in the course of the hearing which would have obviated the need for a Tribunal report, it was evident by the end of the hearing that progress had been made towards meeting some of Ngāti Maniapoto's concerns. Near the conclusion of the hearing, Mr Hampton outlined a number of actions which the Crown would take to meet those concerns, although he also emphasised that the Crown would continue making progress towards a deed of settlement with Ngāti Tama at the same time. Mr Hampton mentioned the following actions, which, he said, the Crown could undertake immediately:

- ▶ The Minister in Charge of Treaty of Waitangi Negotiations could provide a letter to the Ngāti Maniapoto claimants, to be developed in consultation with Ngāti Maniapoto, which could be shown to local authorities. The letter would state that Ngāti Maniapoto have unsettled claims in the area covered by the Ngāti Tama settlement, that the provision of redress to Ngāti Tama does not preclude the provision of similar redress to Ngāti Maniapoto in the future, and that local bodies should still consult with Ngāti Maniapoto as appropriate.
- ▶ The wording of the deed of settlement in relation to Te Ohu Kai Moana (the Treaty of Waitangi Fisheries Commission) would be looked at to see whether the current wording of the heads of agreement could be strengthened. The heads of agreement states that nothing in the Ngāti Tama settlement is 'intended' to affect the decisions of Te Ohu Kai Moana, and Mr Hampton advised the Tribunal that the Crown was seeking legal advice about changing that wording.
- ▶ A meeting between Ngāti Maniapoto representatives and officials of the Ministry of Fisheries could be arranged to explain how those aspects of the Ngāti Tama settlement involving fisheries would work in practice.

- ▶ Mr Hampton could meet with local government bodies in Taranaki to explain to them the progress of the Ngāti Tama settlement and the fact that Ngāti Maniapoto have unsettled claims in the area.
- ▶ Te Kawau Pā would not be transferred to Ngāti Tama, although the Crown reserved the right to recognise Ngāti Tama's interest in the site in a non-exclusive way as part of the Ngāti Tama settlement.

3. THE ISSUES

3.1 Wai 788 and Wai 800 claimants' submissions

In the statement of issues prepared for the urgent hearing, claimant counsel submitted that Ngāti Maniapoto have customary interests in the area covered by the proposed settlement with Ngāti Tama and that the claimants are likely to have well-founded Treaty claims requiring the provision by the Crown of redress within that area. Counsel identified two potential breaches of the principles of the Treaty of Waitangi if the Crown–Ngāti Tama settlement were to go ahead:

- ▶ the transfer to Ngāti Tama of land and other resources claimed by Ngāti Maniapoto would 'remove the ability of the Crown to restore the rangatiratanga of the Claimants over those lands and other resources in the settlement area'; and
- ▶ the Crown's use of the confiscation line to 'delineate between the interests of the Claimants and those of Ngāti Tama' would be 'unjust and improper'.

In addition, counsel claimed that the Crown had already breached the Treaty by failing to consult adequately with the Ngāti Maniapoto claimants in seeking to settle the Ngāti Tama claims and by failing properly to investigate or to take into account the claimants' interests.

As a result of these alleged Treaty breaches, the claimants stated that they would be prejudiced if the Crown provided the redress proposed to Ngāti Tama.³⁰

In their opening submission to the Tribunal, claimant counsel were able to respond to the Crown's revised settlement offer to Ngāti Tama, as set out in Mr Hampton's evidence. However, they stated that the offer still failed to protect Ngāti Maniapoto interests fully.³¹ Counsel explained that the principal remedy sought by the claimants was a recommendation from the Tribunal that any redress offered to Ngāti Tama above the

30. Paper 2.24

31. Paper 2.28, paras 23–26

‘Wahanui line’ be set aside pending the resolution of the Ngāti Maniapoto claims to the region.³²

The claimants stated that the southern boundary of the Ngāti Maniapoto rohe was defined in a petition to Parliament by the Ngāti Maniapoto rangatira Wahanui Huatare and others in 1883. According to Mr Maniapoto, the petition:

established the southern extent of Ngati Maniapoto mana rangatira and mana whenua. The petition confirms the southern extent of Ngati Maniapoto interests . . . The outline set down by Wahanui is retained to this day by Ngati Maniapoto.³³

The southern boundary set out in this petition extended inland from the coast at Waipīngau Stream (named ‘Waipingao’ in the petition).³⁴ The ‘Wahanui line’ is several kilometres south of the ‘confiscation line’ (the boundary of the area of Taranaki proclaimed liable for confiscation in 1865), which proceeds inland from the coast at Parininihi (White Cliffs) (see the location map).

3.2 The Crown’s response

Crown counsel responded to the claimants’ statement of issues by arguing that, while the Crown recognised that Ngāti Maniapoto have customary interests within the proposed Ngāti Tama area of interest, the Ngāti Tama settlement would not prejudice the Crown’s ability to provide redress to Ngāti Maniapoto. Crown counsel further maintained that:

- ▶ it was not the Crown’s role to resolve issues of mana whenua or mana moana;
- ▶ it was unfair to claimants who were ready to negotiate a settlement with the Crown to make them wait until all overlapping claimants were also in a position to negotiate;
- ▶ the confiscation line was being used only to define the area within which Ngāti Tama would have a right of first refusal, and within which memorials would be removed, and it was not intended to represent areas of mana whenua or mana moana;
- ▶ the claimants’ allegations of inadequate consultation were unfounded; and
- ▶ much of the redress offered to Ngāti Tama was non-exclusive, and, with regard to those items of exclusive redress offered to Ngāti Tama

32. Paper 2.28, para 118

33. Document A8, p 16

34. Document A8(a). For more background on the Wahanui petition, see Waitangi Tribunal, *The Pouakani Report 1993*, Wellington, Brooker’s Ltd, 1993, ch 7. Wahanui also affirmed this boundary in evidence before the Native Land Court in 1886: doc A1, p 2; claim 1.1 (Wai 788), app 3.

in the revised settlement proposal, the Crown was satisfied that Ngāti Tama's associations with the sites in question justified exclusive redress being offered.³⁵

3.3 Ngāti Tama's position

Ngāti Tama's counsel, in her written responses filed with the Tribunal, rejected the Ngāti Maniapoto claims. Counsel noted that Ngāti Tama had already agreed to revisions to their proposed settlement but stated that they would not accept further delays to their right to settle with the Crown according to the terms of the revised settlement offer.³⁶ Ngāti Tama adopted 'the submissions made by the Crown that there is no prejudice whatsoever to these claimants' as a result of the proposed settlement, and elected not to respond to the claimants' evidence in a comprehensive manner.³⁷

Ngāti Tama were not represented by counsel at the hearing, electing instead to play a low-key role, with Greg White their only representative present. Mr White told the Tribunal that, for the purposes of the urgent hearing only, the positions of Ngāti Tama and the Crown were effectively the same.

4. ANALYSIS, RECOMMENDATIONS, AND FINDINGS

4.1 The revised Ngāti Tama settlement

Mr Hampton advised the Tribunal comprehensively on the revisions that the Crown had made to the proposed settlement contained in the heads of agreement with Ngāti Tama. These revisions have been outlined above, and some details of the revised settlement are set out in appendix 1.

The Tribunal considers that it is greatly to Ngāti Tama's credit that they have been able to accede to the withdrawal of a number of items of redress which were originally included in the heads of agreement. We are conscious that agreement to revise the terms of that settlement cannot have been easily given in circumstances such as these, where matters of mana are at issue. However, in this difficult area of overlapping claims and layers of tribal interest, compromise is usually the only way forward. We are very grateful that Ngāti Tama's cooperation has enabled the Crown to revise the settlement package in ways that we consider extremely constructive in properly recognising the legitimate interests of Ngāti

35. Paper 2.26

36. Paper 2.27

37. Paper 2.30

Maniapoto. Likewise, and notwithstanding Ngāti Maniapoto's criticisms of the Crown's efforts to consult with them, it seems to us that the Crown has gone a considerable distance towards understanding, and endeavouring to meet, Ngāti Maniapoto's concerns.

The Tribunal asked claimant counsel to outline the aspects of the Crown's revised 'offer' to Ngāti Tama that continued to cause difficulty for Ngāti Maniapoto. Mr Harvey detailed Ngāti Maniapoto's concerns about the impact on them of two categories of redress being offered to Ngāti Tama north of the 'Wahanui line'.

The first category of redress, and the one of most concern to Ngāti Maniapoto, was labelled 'exclusive redress'. This entails the transfer to Ngāti Tama of certain areas of Crown land. A total of 1967.8 hectares is proposed to be transferred to Ngāti Tama. Of this area, only 24.9 hectares are north of the confiscation line and consist of three areas subject to grazing licences; the Umukaha Point reserve, which is to be vested in Ngāti Tama as an administering body; and the Tongaporutu recreation reserve, which is to be vested in Ngāti Tama if the New Plymouth District Council agrees to that transfer. Below the confiscation line, 1942.8 hectares are proposed to be transferred to Ngāti Tama. It is difficult to say how much of this area is north of the 'Wahanui line', but it appears that the Pukearuhe historic reserve of 4.3 hectares, the Uruti conservation area of 252.9 hectares, and an area subject to grazing licence of 13.8 hectares are below the line, while the line appears to pass through the Whitecliffs conservation area, the Mount Messenger scenic reserve, and the Mount Messenger conservation area.

The second category of redress is labelled 'non-exclusive redress'. It is called 'non-exclusive' because, according to the Crown, it is by its nature capable of being offered to more than one group in any area. So, for instance, statutory acknowledgements and deeds of recognition now being offered to Ngāti Tama would subsequently be available to Ngāti Maniapoto as part of its settlement package in the event that its Treaty claim is shown to be well founded. The Tribunal understands a statutory acknowledgement to be a recognition by the Crown of a claimant group's association with an area. It has the effect of strengthening the requirement on consent authorities to notify that claimant group of resource consent applications under the Resource Management Act 1991 in relation to the site in question. Consent authorities, the Environment Court, and the Historic Places Trust are also required to have regard to the statutory

acknowledgement when deciding whether to hear from the group at proceedings affecting a site. A statutory acknowledgement is also a precondition for a deed of recognition, which provides that the claimant group must be consulted, and that regard must be had to the group's views, concerning the management of the area covered by the statutory acknowledgement.

When the Tribunal questioned claimant counsel about the claimants' objections to the revised Ngāti Tama settlement package, it became clear that the primary concern was one of mana. We therefore find it necessary to discuss Ngāti Maniapoto's view of their mana in the area covered by the Ngāti Tama settlement.

4.2 Ngāti Maniapoto and mana

It was apparent to the Tribunal that the situation in which Ngāti Tama and Ngāti Maniapoto now find themselves is one that is by no means uncommon, nor is it a situation easily capable of a resolution that will satisfy everybody. Ngāti Tama's connections with parts of the Mōkau–Mōhakatino and Mōhakatino–Parininihi blocks, as well as with the area south of these blocks, have been affirmed by the Waitangi Tribunal in its *Taranaki Report*. The Crown has accepted the evidence of Ngāti Tama's connections with these areas and has therefore considered it appropriate to provide redress to Ngāti Tama there. But Ngāti Maniapoto say that any form of redress for Ngāti Tama – whether 'exclusive' or 'non-exclusive' – within the area which Ngāti Maniapoto claim as their rohe would infringe their own mana.

Ngāti Maniapoto, through their counsel and through their spokesperson, Mr Maniapoto, left the Tribunal in no doubt as to their position. The issue is one of mana. Their tūpuna laid down for them the area over which Ngāti Maniapoto have mana, and honouring the memory of those tūpuna necessarily involves defending from modern incursion the boundaries that in times past were defended by force of arms. One form of modern incursion, in the claimants' view, is the acknowledgement, through the process of Treaty settlement, of the interests within their stated rohe of another iwi, Ngāti Tama.

Ngāti Maniapoto did not deny that Ngāti Tama returned to parts of northern Taranaki from the 1840s onward. However, they attributed Ngāti Tama's presence there to the aroha of Ngāti Maniapoto and

Waikato.³⁸ The Tribunal was told that any Ngāti Tama presence within the area claimed by Ngāti Maniapoto as their rohe (that is, north of the ‘Wahanui line’) was under the mana of Ngāti Maniapoto.³⁹

We acknowledge that Ngāti Maniapoto feel duty-bound to honour the traditions passed down from their tūpuna regarding the boundaries of their rohe, and to maintain their mana within those boundaries. However, it became apparent to us that Ngāti Maniapoto’s view of things provided little scope to manoeuvre in their discussions either with Ngāti Tama or with the Crown. We do not wish to express a decided view on the question of mana, whether in terms of its definition or its extent, because the evidence presented by Ngāti Maniapoto for the purposes of this urgent hearing was properly and necessarily only a part of the whole story that will be told in order to substantiate Ngāti Maniapoto’s claims against the Crown. Nevertheless, it is fair to signal that the members of this Tribunal certainly have some difficulty with the translation into practical application in the present day of the concept of mana proffered by Ngāti Maniapoto.

4.3 Use of the ‘confiscation line’

Ngāti Maniapoto have expressed to this Tribunal their sense of affront at the use of the confiscation line as a boundary in the heads of agreement and the revised settlement offer to Ngāti Tama.⁴⁰ The Crown has explained that its use of the line is for convenience only, and that there is no intention on its part to define rohe. The Crown has stated that the confiscation line will be used only in the revised settlement offer to Ngāti Tama to define the area within which:

- ▶ section 27B memorials on land titles will be lifted;
- ▶ Ngāti Tama will be offered a right of first refusal to purchase surplus Crown properties and to purchase shellfish quota;
- ▶ Ngāti Tama will be offered a preferential right to purchase up to 10 per cent of any coastal space authorisations offered by the Minister of Conservation; and
- ▶ the OTS land bank will cease to operate.⁴¹

While we would not go so far as to say the use of the confiscation line for these purposes breaches the principles of the Treaty of Waitangi, we do consider that its use should be very limited given the history of raupatu in the area. Moreover, we consider that, wherever possible, the

38. Document A8, pp 13–14

39. Paper 2.36, paras 7, 38

40. Paper 2.35, paras 8–10

41. Document A7, pp 10–11

Crown should eschew the use of lines on a map which define, or may be presumed to define, traditional or modern tribal boundaries. We would similarly avoid the use of the ‘Wahanui line’ for such purposes.

Mana was, and is, we think, much more to do with areas of influence, which were often identified by reference to landscape features rather than by lines on maps.⁴² Such lines are simplistic and bald, and bear no relation to tikanga. While convenient, they will usually be wrong.

The Crown must recognise that, if it adopts a boundary for the purpose of granting a tribal interest there, that boundary may well be interpreted as an affirmation of rohe. We encourage the Crown to do all it can to emphasise the narrow purposes for which the confiscation line has been used and to distance the settlement from the establishment or endorsement of any particular line as a tribal boundary. We are satisfied that the Crown has already made, and is continuing to make, efforts to this end, particularly through the clarification with local authorities which Mr Hampton has promised to carry out.

4.4 Balancing Ngāti Tama’s and Ngāti Maniapoto’s interests

This Tribunal has not inquired comprehensively into the claims of Ngāti Maniapoto and is not in a position to express a view on the nature or extent of their rohe. On the other hand, the Taranaki Tribunal did inquire comprehensively into the claims of Ngāti Tama, although it did not hear from Ngāti Maniapoto, and it considered that Ngāti Tama did have interests north of the ‘Wahanui line’.

The Crown, when brought by the Ngāti Maniapoto claimants’ protests to consider the respective interests of Ngāti Tama and Ngāti Maniapoto within the area claimed by Ngāti Tama, commissioned research into these issues. The historical report by David Young confirmed that Ngāti Maniapoto’s interests in the area were strongest in the north and weakest in the south.⁴³ While some uncertainty remained, the Crown was able to be reassured that the proposed transfers of land to Ngāti Tama in the revised package were areas where it was appropriate to recognise the mana of Ngāti Tama. Likewise, the Crown considered that its proposal to afford Ngāti Tama ‘non-exclusive’ redress, in the form of statutory acknowledgements and deeds of recognition, was an integral and necessary part of the settlement package.

42. See the comments of the Ngāti Awa Tribunal in Waitangi Tribunal, *The Ngāti Awa Raupatu Report*, Wellington, Legislation Direct, 1999, pp 131–134

43. See doc A7(d), esp p 53

It was apparent to the Tribunal that the Crown has been involved here in a delicate balancing exercise. In deliberating on what redress should properly be offered to Ngāti Tama to resolve its grievances, the Crown is concerned at the same time to ensure that it does not jeopardise its relationship with Ngāti Maniapoto. It seemed to us that in this regard the Crown had endeavoured to be conscientious in its obligations as a Treaty partner to both Ngāti Tama and Ngāti Maniapoto.

The Ngāti Maniapoto claimants have argued before us that, if the Ngāti Tama settlement is to go ahead, the Crown ought to provide redress to Ngāti Maniapoto now, so that Ngāti Tama does not derive benefit from being ‘first cab off the rank’.⁴⁴

We do not consider this to be a viable suggestion. Whereas Ngāti Tama’s claims against the Crown have been heard and determined, Ngāti Maniapoto’s have not. To require the Crown to provide redress to Ngāti Maniapoto in an evidential vacuum would not be reasonable, nor would it be fair to Ngāti Tama. It would devalue Ngāti Tama’s settlement if equivalent redress were handed out to another party simply to avoid the possibility of disadvantage to Ngāti Maniapoto arising from Ngāti Tama’s settlement having been concluded first.

The more sensible approach is to minimise any negative effects arising from the ‘first cab off the rank’ factor by ensuring that no unintended inferences about Ngāti Maniapoto’s mana are drawn from recognition in the settlement of Ngāti Tama’s mana. Ngāti Maniapoto’s legitimate interests are also protected by ensuring that the Crown retains the capacity to provide redress to Ngāti Maniapoto when their turn comes. These have been the points on which the Tribunal has focused in considering these claims, and we have been satisfied by the Crown that they too have borne these considerations in mind, and have recast the terms of settlement accordingly. In one or two areas, discussion with Ngāti Maniapoto is ongoing (see s4.6). We enjoin the Crown to continue in its endeavours to minimise the possibility of negative inferences about Ngāti Maniapoto’s interests being drawn from the Crown’s various forms of recognition of Ngāti Tama.

4.5 The exclusive redress offered to Ngāti Tama

With respect to the exclusive redress that has been offered by the Crown to Ngāti Tama (namely, the transfer of land), the Tribunal accepts the

44. Paper 2.35, paras 2, 16–18, 28–29; paper 2.36, paras 57–58

Crown's evidence. It seems to us that the proposed transfers to Ngāti Tama would not involve the Crown in breaching its Treaty obligations to Ngāti Maniapoto for the following reasons:

- (a) The Tribunal accepts the Crown's evidence that its revised settlement offer was the best it could do by way of balancing its obligations to both Ngāti Tama and Ngāti Maniapoto.
- (b) The proposed settlement offer entails the vesting of 1967.8 hectares of land in Ngāti Tama. The sites to be transferred to Ngāti Tama currently have conservation area or reserve status, and all are to be vested in fee simple title, with the exception of the Umukaha Point recreation reserve, which is to be vested in Ngāti Tama as an administering body. Not all of this land is within the area claimed by Ngāti Maniapoto; that is, some of it is south of the 'Wahanui line'.
- (c) These proposed transfers are the only transfers of title to land in Ngāti Tama's settlement package, apart from certain yet-to-be-determined Education Board properties south of the confiscation line, title to which is to be transferred to Ngāti Tama and which are then to be leased back from Ngāti Tama by the Crown.
- (d) These areas are a very small proportion of the total of Department of Conservation land remaining in Crown hands in the area claimed by Ngāti Maniapoto. The Crown has informed the Tribunal that there are a further 13,149.5 hectares in the Mōhakatino conservation area and 16,131.6 hectares in the Waitaanga conservation area.⁴⁵ We accept the Crown's assurances that, while it is not Crown policy to effect the wholesale transfer of conservation estate as part of Treaty settlements, there is plenty of scope for the Crown to make transfers of Department of Conservation land to Ngāti Maniapoto. Since the Crown proposes to transfer conservation land to Ngāti Tama, there is no apparent reason why it could not transfer other conservation land in the area to Ngāti Maniapoto, in the event that Ngāti Maniapoto's Treaty claims are shown (like Ngāti Tama's) to be well founded.
- (e) If the Tribunal were to find that these transfers to Ngāti Tama ought not to proceed because of the risk that Ngāti Maniapoto may in the future locate evidence of specific associations with the areas in question, or due to Ngāti Maniapoto's plea that their mana over the whole area north of the 'Wahanui line' should be

45. Paper 2.37, p 14

respected, then Ngāti Tama would be seriously disadvantaged. The prejudice to Ngāti Tama would, we think, be more than hypothetical. It would mean that the Crown could deliver only the monetary part of its settlement with Ngāti Tama, together with the transfer of a limited area of land south of the 'Wahanui line'. Those aspects of the settlement that we think are more directly related to mana (elements that the Crown calls 'cultural redress') would be withheld indefinitely. Such redress would be delivered only after the negotiation between Ngāti Maniapoto and the Crown of Ngāti Maniapoto's claim. Depending on how long it takes Ngāti Maniapoto to prepare their claim, and on the process by which they choose to have that claim addressed, the delay in the resolution of matters between Ngāti Tama and the Crown could be anywhere between one and 10 years.

- (f) There are serious precedent implications arising from the Wai 788 and Wai 800 claims. If the Tribunal were to take the view that the Crown ought not to deliver redress to any claimant where there are overlapping or cross-claims, the repercussions for the Crown's settlement policy would be very serious. It would thwart the desire on the part of both the Crown and Māori claimants to achieve closure in respect of their historical Treaty grievances. Indefinite delay to the conclusion of Treaty settlements all around the country is an outcome that this Tribunal seeks to avoid.

While we believe that it would not be appropriate to delay the provision of redress to Ngāti Tama, the Crown has a responsibility to exercise caution in cases of overlapping claims. In our view, the Crown has done so in this case. We also commend the Crown's stated policy of making settlements dependent on the satisfactory resolution of overlapping claims, preferably by agreement between the claimant groups themselves.

4.6 The non-exclusive redress offered to Ngāti Tama

With respect to the non-exclusive redress now proposed for Ngāti Tama, there is again a problem from Ngāti Maniapoto's point of view in that recognition is thereby given to Ngāti Tama's mana in areas where Ngāti Maniapoto regard their mana as exclusive. Put simply, Ngāti Maniapoto do not want Ngāti Tama to be recognised in the area north of the 'Wahanui line'. Their objection is such that the non-exclusive nature of

the recognition provides no solace. Here again, the Crown is on the horns of a dilemma: it cannot, in the claimants' view, recognise the mana of Ngāti Tama north of the 'Wahanui line' – however minimally – without infringing the mana of Ngāti Maniapoto.

We consider that, following the report of the Tribunal on the Taranaki claims, the Crown has a responsibility to act on the basis of that report and to recognise Ngāti Tama's interests, including those interests that lie within the area claimed by Ngāti Maniapoto. The Crown must do so in a way that does justice to Ngāti Tama but without harming Ngāti Maniapoto. Ngāti Maniapoto's view of their own mana in the area north of the 'Wahanui line' is so comprehensive that the Crown can in our opinion do no better than ensure that the recognition given to Ngāti Tama is not such as to preclude the possibility of giving similar, or greater, recognition to Ngāti Maniapoto in the settlement of its claim, should the circumstances later warrant it. We are satisfied that the Crown has achieved this balance in its revised settlement package.

In addition to their concerns about mana, the claimants expressed to the Tribunal their concerns about the possible effect on Ngāti Maniapoto's interests of various forms of non-exclusive redress being offered to Ngāti Tama. In particular, it was felt that the recognition being given to Ngāti Tama may:

- ▶ influence Te Ohu Kai Moana's determination in respect of coastal boundaries for the allocation of fisheries settlement assets and other fisheries matters; and
- ▶ give Ngāti Tama greater standing than Ngāti Maniapoto with local authorities and Government departments, and encourage such authorities to consult exclusively with Ngāti Tama.⁴⁶

The Crown has agreed to work with Ngāti Maniapoto to try to allay their concerns on these matters. Mr Hampton said, in respect of local government, that he would write another letter to the relevant councils correcting any misapprehension created by the wording of his earlier letter. He also undertook to meet with local government bodies to inform them about the Ngāti Tama settlement and Ngāti Maniapoto's unsettled claims. We understand also that the Crown is seeking legal advice on the wording of the Ngāti Tama deed of settlement in relation to Te Ohu Kai Moana. The heads of agreement states that nothing in the Ngāti Tama settlement 'will be intended to affect' the decisions of Te Ohu Kai Moana, but Ngāti Maniapoto say that this wording does not go far enough, and

46. Paper 2.28, paras 100–104; paper 2.35, paras 14–18

words like ‘shall not affect’ are sought. Dialogue between Ngāti Maniapoto and the Crown will follow the receipt by the Crown of legal advice on this point. Mr Hampton has also promised to set up a meeting between Ngāti Maniapoto and Ministry of Fisheries officials.

We hope that the ongoing discussions in these areas of concern will enable Ngāti Maniapoto to feel less anxious about the possible effects on them of the non-exclusive redress being provided to Ngāti Tama. We encourage the Crown to do all that it can in these areas to ensure that the practical effect on Ngāti Maniapoto of the settlement with Ngāti Tama is neutral.

Crown counsel has also pointed out that Ngāti Maniapoto’s standing under the Resource Management Act 1991, and ‘the obligations of the local council or territorial authorities’ to Ngāti Maniapoto, will be unchanged by the Ngāti Tama settlement. Crown counsel submitted that:

the local authority will still need to consider whether it should serve a notice of an application for a resource consent on Ngāti Maniapoto in any particular case. Similarly, the local authority will still need to consider whether Ngāti Maniapoto have such interests in an area or site that their written approval should be obtained under s94 of the Resource Management Act before a decision is made not to notify a resource consent application.⁴⁷

The Tribunal accepts this submission.

While local authorities may sometimes fail to meet the requirements for the provision of notice and consultation with appropriate iwi authorities under the Resource Management Act, this is not the responsibility of the Crown. The statutory acknowledgements and deeds of recognition to be provided in the Ngāti Tama settlement are certainly no basis for a local authority to neglect its obligations in respect of notice to, or consultation with, Ngāti Maniapoto.

The Tribunal is satisfied with the course proposed, and being pursued, by the Crown. Again, we are conscious of the precedent implications for the settlement of claims where there are cross-claims. If the Tribunal were to recommend that the Crown not recognise Ngāti Tama at all in the area north of the ‘Wahanui line’, that would send a signal that could seriously delay the resolution of many other claims. However, we emphasise the necessity for the Crown to be constantly vigilant to ensure that, in awarding interests to Ngāti Tama under the heading of non-exclusive redress, it

47. Paper 2.37, p9

preserves its capacity to provide similar redress to others who demonstrate an equivalent interest in the future. If the Crown fails to do this, the redress labelled non-exclusive will, in effect, be exclusive.

4.7 Te Kawau Pā

One item of redress which the heads of agreement with Ngāti Tama proposed to vest in Ngāti Tama is now in limbo following the revision of the settlement offer: the Kawau Pā historic reserve, the site of Te Kawau Pā. The Crown has acknowledged that it is inappropriate for a site of such great significance to Māori to remain in Crown ownership, and it has also recognised that both Ngāti Tama and Ngāti Maniapoto have strong interests in the site. Accordingly, the Crown considers that it would be inappropriate to vest title exclusively in either Ngāti Tama or Ngāti Maniapoto. We agree.

So far, Ngāti Tama and Ngāti Maniapoto have been unable to reach an agreement on what to do with the Kawau Pā historic reserve. The Tribunal acknowledges that this leaves the Crown in a difficult position and that, for the time being, the reserve should remain in Crown ownership. However, we also believe that the Crown has a responsibility to take an active role in trying to resolve this matter. We therefore recommend that the Crown (through ORS, Te Puni Kōkiri, or another appropriate Government body) facilitate hui involving Ngāti Tama and Ngāti Maniapoto at which the future management and ownership of the Te Kawau Pā area would be discussed. If the parties are unable to reach an agreement at such hui, the Tribunal recommends that the current status of the site remain unchanged for the time being. We consider that it would then be appropriate for the question to be reconsidered when Ngāti Maniapoto are negotiating their settlement with the Crown. In the context of such negotiations, it would be appropriate to look again at mechanisms for recognising the interests of both Ngāti Maniapoto and Ngāti Tama in the site, and for ensuring that both groups can be involved in owning and managing it.

We note that, while the Crown no longer proposes to vest Te Kawau Pā in Ngāti Tama, the Crown's closing submissions state that Ngāti Tama may be given a statutory acknowledgement and deed of recognition of their historical associations with the site.⁴⁸ This is inconsistent with the Tribunal's view, stated above, that there should be no change to the status of this site until there is some agreement between the parties. We

48. Ibid, p 5

therefore recommend that a statutory acknowledgement and deed of recognition of Ngāti Tama's interests in Te Kawau Pā should not be included as part of the Ngāti Tama settlement.

4.8 Tribunal finding and recommendation

The Tribunal finds that the Crown would not breach the principles of the Treaty of Waitangi by concluding a settlement of Ngāti Tama's Treaty claims on the basis of the revised settlement package, the relevant terms of which are set out in appendix 1.

We recommend that the status of the Kawau Pā historic reserve remain unchanged for the time being, and that no statutory acknowledgement or deed of recognition in relation to this site be included in the Ngāti Tama settlement. We further recommend that the Crown facilitate hui involving Ngāti Maniapoto and Ngāti Tama to discuss the future management and ownership of Te Kawau Pā. If no agreement about the future ownership and management of this site results from such hui, we recommend that the matter be reconsidered when Ngāti Maniapoto negotiate their settlement with the Crown, at which time another attempt should be made to find a way of recognising the interests of both Ngāti Tama and Ngāti Maniapoto in the site, and of including both groups in its ownership and management.

Dated at **Wellington** this **29th** day of **March** 2001


CM Wainwright, presiding officer



MER Bassett, member



JW Milroy, member



APPENDIX I. SUMMARY OF KEY ASPECTS OF THE REVISED NGĀTI TAMA SETTLEMENT PACKAGE

The tables below summarise the key aspects of the revised Ngāti Tama settlement package but they do not give a complete list of the redress to be provided to Ngāti Tama in the package. The tables are based on the heads of agreement and the evidence of Andrew Hampton of the Office of Treaty Settlements.¹

Land to be vested in Ngāti Tama in fee simple title
The Pukearuhe historic reserve
Part of the Whitecliffs conservation area
Four areas subject to grazing licences in the Whitecliffs conservation area
The Uruti conservation area
Part of the Mount Messenger conservation area
The Mount Messenger scenic reserve

Land which may be vested in Ngāti Tama in fee simple title, provided the New Plymouth District Council agrees
The Tongaporutu recreation reserve

Land to be vested in Ngāti Tama as an administering body
The Umukaha Point recreation reserve

Areas in respect of which statutory acknowledgements only are to be given
The Mohakatino River (no 1) marginal strip
The Mohakatino River (no 2) marginal strip
The Mohakatino coastal marginal strip
The coastal marine area between the mouths of the Wai-iti Stream and the Mokau River

1. Paper 2.4, app A; docs A7, A7(i)

Areas in respect of which both statutory acknowledgements and deeds of recognition are to be given

The Pou Tehia historic reserve

Part of the Mimi–Pukearuhe coast marginal strip

The balance of the Mount Messenger conservation area within the area claimed by Ngāti Tama, excluding that part to be vested in Ngāti Tama

The Tongaporutu conservation area

The Mohakatino Swamp conservation area

The Mohakatino River

The Tongaporutu River

The Moki conservation area

Other (the following redress applies south of the confiscation line, within the 'Ngāti Tama area of interest')

The right of first refusal to purchase surplus Crown properties

The right of first refusal to purchase shellfish quota

A preferential right to purchase up to 10 per cent of coastal space authorisations offered by public tender by the Minister of Conservation

APPENDIX II. RECORD OF INQUIRY

Except where indicated, the records of inquiry for Wai 788 and Wai 800 are identical.

RECORD OF HEARINGS

THE TRIBUNAL

The Tribunal constituted to hear claims Wai 788 and Wai 800, concerning the Crown's proposed settlement with Ngati Tama, comprised Judge Carrie Wainwright (presiding), the Honourable Dr Michael Bassett, and Professor Wharehuia Milroy.

COUNSEL

The Wai 788 claimants were represented by Sam Laubscher; the Wai 800 claimants by Layne Harvey with Dominic Wilson; and the Crown by Helen Carrad with David Soper. The hearing was also attended by Mark Hickford with Melanie Smith for the Wai 577 claimants, but they maintained a watching brief only.

THE HEARING

The claims were heard at the West Plaza Hotel in Wellington from 26 to 28 February 2001.

RECORD OF PROCEEDINGS

1. CLAIMS

1.1 A claim by Atiria Takiari and others concerning Ngati Maniapoto tribal lands and boundaries and the proposed settlement between the Crown and Ngati Tama coupled with an application for urgency, 14 July 1999 (Wai 788)

1.1 A claim by Harold Maniapoto and Roy Haar concerning Ngati Maniapoto tribal lands and boundaries and the proposed settlement between the Crown and Ngati Tama coupled with an application for urgency, November 1999 (Wai 800)

2. PAPERS IN PROCEEDINGS

2.1 Direction of deputy chairperson registering claim 1.1 as Wai 788, 6 August 1999 (Wai 788)

2.1 Direction of member (acting with authority of chairperson) registering claim 1.1 as Wai 800, 23 December 1999 (Wai 800)

2.2 List of parties sent notice of Wai 788, 9 August 1999 (Wai 788)

Declaration that notice of Wai 788 given, 9 August 1999 (Wai 788)

2.2 List of parties sent notice of Wai 800, 19 January 2000 (Wai 800)

Declaration that notice of Wai 800 given, 19 January 2000 (Wai 800)

2.3 Direction of deputy chairperson arranging urgency conference and releasing document A1, 24 March 2000

2.4 Memorandum from Crown counsel to Tribunal responding to paper 2.1 (Wai 800), 26 May 2000

2.5 Submission of Wai 800 claimant counsel supporting application for urgency, 29 May 2000

2.6 Submission of Wai 577 claimant counsel concerning applications for urgency, 29 May 2000

2.7 Submission of Wai 788 claimants concerning proposed Ngati Tama settlement, 29 May 2000

2.8 Submission of Crown counsel concerning applications for urgency, 29 May 2000

2.9 Direction of deputy chairperson outlining mediation process to be undertaken by parties, 31 May 2000

- 2.10** Memorandum from Wai 788 and Wai 800 claimant counsel to Tribunal advising of claimants' withdrawal from mediation and renewing applications for urgent hearing, 4 August 2000
- 2.11** Memorandum of deputy chairperson directing parties to file submissions on applications for urgency, 22 August 2000
- 2.12** Facsimile from Wai 788 claimant counsel requesting extension for filing of submissions, 5 September 2000
- 2.13** Submission of Tamahaki Incorporated Society (Wai 555 claimants) supporting Wai 800 claimants' application for urgency and seeking to be registered as party to action, 5 September 2000
- 2.14** Submission of Wai 800 claimant counsel supporting their application for urgency, 5 September 2000
- 2.15** Submission of Wai 577 claimant counsel supporting Wai 800 claimants' application for urgency, 5 September 2000
Covering letter from Wai 577 claimant counsel to registrar, 5 September 2000
- 2.16** Letter from Whanganui River Maori Trust Board to Tribunal supporting applications for urgency, 1 September 2000
- 2.17** Facsimile from Tribunal to claimant and Crown counsel and others granting extension sought by Wai 788 claimant counsel for filing of submissions, 6 September 2000
- 2.18** Submission of Wai 788 claimant counsel supporting Wai 800 claimants' application for urgency, 11 September 2000
- 2.19** Submission of Crown counsel opposing Wai 800 claimants' application for urgency, 28 September 2000
- 2.20** Submission from Ngati Tama supporting Crown submissions of 29 May and 28 September 2000 (papers 2.8, 2.19), 29 September 2000

2.21 Directions of deputy chairperson granting urgency and constituting Tribunal to hear Wai 788 and Wai 800, 14 December 2000

2.22 Directions of Tribunal concerning urgent hearing, 21 December 2000

2.23 Memorandum from Crown counsel to Tribunal responding to paper 2.21, 21 December 2000

2.23A Notice of hearing, 30 January 2001

2.24 Joint statement of issues by Wai 788 and Wai 800 claimants, 2 February 2001

Covering letter from Wai 788 and Wai 800 claimant counsel to registrar, 2 February 2001

2.25 Declaration that notice of hearing given, 5 February 2001

Notice of hearing, 30 January 2001

List of parties sent notice of hearing, 5 February 2001

2.26 Submission of Crown counsel responding to paper 2.24, 9 February 2001

2.27 Submission of counsel for Ngati Tama responding to paper 2.24, 9 February 2001

Covering letter from counsel for Ngati Tama to registrar, 9 February 2001

2.27A Facsimile from Wai 845 claimant counsel to registrar advising of their intended non-appearance at hearing, 23 February 2001

2.28 Outline of opening submissions of Wai 788 and Wai 800 claimant counsel, February 2001

(a) Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi*, Wellington, GP Publications, 1996, fig 17 (Ngati Tama lands)

(b) Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi*, Wellington, GP Publications, 1996, fig 4 (claimants' boundaries)

2.29 Memorandum from Wai 788 and Wai 800 claimant counsel to Tribunal seeking leave to cross-examine Crown witness, 6 February 2001

2.30 Submission of counsel for Ngati Tama concerning proposed Ngati Tama settlement, 16 February 2001

2.31 Submission of Wai 577 claimant counsel concerning application for urgency and responding to paper 2.24, 16 February 2001

2.32 Memorandum from Wai 845 claimant counsel to Tribunal seeking leave to attend hearing by way of watching brief, undated

2.33 Memorandum from Crown counsel to Tribunal seeking leave to cross-examine two claimant witnesses, 16 February 2001

2.34 Submission of Crown counsel concerning proposed Ngati Tama settlement, 16 February 2001

2.35 Closing submissions of Wai 800 claimant counsel, February 2001

2.36 Closing submissions of Wai 788 claimant counsel, 7 March 2001

2.37 Closing submissions of Crown counsel, 9 March 2001

2.38 Submission of Wai 800 claimant counsel responding to paper 2.37, 14 March 2001

Covering letter from Wai 800 claimant counsel to Tribunal, 14 March 2001

2.39 Submission of Wai 788 claimant counsel responding to paper 2.37, 13 March 2001

3. RESEARCH COMMISSIONS

3.1 Direction of deputy chairperson commissioning Cathy Marr to prepare a scoping report on land that Ngati Maniapoto might have an interest in, 14 January 2000

RECORD OF DOCUMENTS**A DOCUMENTS RECEIVED TO END OF HEARING**

A1 Cathy Marr, 'The "Mokau Blocks" and the Ngati Maniapoto Urgency Claim', report commissioned by Waitangi Tribunal, February 2000

A2 Brief of evidence of Barbara Marsh, undated

A3 Brief of evidence of Waleriana Ngauru, undated

(a) Evelyn Stokes, *Mokau: Maori Cultural and Historical Perspectives*, Hamilton, University of Waikato, 1988, pp 1–2, 5, 7–9, 10–11, 64–75, 135–140, 227–263

(b) FL Phillips, *Nga Tohu a Tainui: Landmarks of Tainui – A Geographical Record of Tainui Traditional History*, 2 vols, Otorohanga, Tohu Publishers, 1989–95, vol 1, pp v, ix–x, 13–14, 16–20, 68–73, 88–90, 115–124, 144–145, 148–163, 186–189

(c) FL Phillips, *Nga Tohu a Tainui: Landmarks of Tainui – A Geographical Record of Tainui Traditional History*, 2 vols, Otorohanga, Tohu Publishers, 1989–95, vol 2, pp v, ix, 8–11, 15–24, 41–44, 53–60, 71–72, 97–98, 141–143, 259–284, 289

(d) Pei Te Hurinui, *King Potatau: An Account of the Life of Potatau Te Wherowhero, the First Maori King*, Wellington, Polynesian Society, 1959, pp i–iii, 4–22, 53–55, 94–112, 150–152, 172

(e) AT Ngata (comp), *Nga Moteatea: He Maramara Rere no nga Waka Maha – Part II*, Pei te Hurinui (transl), Auckland, AH and AW Reed, 1985, pp 126–127, 164–165, 170–171, 188–189

(f) 'Petition of the Maniapoto, Raukawa, Tuwharetoa, and Whanganui Tribes', AJHR, 1883, J-1, pp 1–4

A4 Brief of evidence of James Taitoko, undated

A5 Brief of evidence of Atiria Takiari, undated

A6 Brief of evidence of Patrick Taylor, undated

A7 Brief of evidence of Andrew Hampton, 9 February 2001

(a) Submission of Crown counsel concerning applications for urgency, 29 May 2000

- (b) Letter from Andrew Hampton, Office of Treaty Settlements, to Wai 788 and Wai 800 claimants concerning failure of mediation to reach agreement, 9 August 2000
- (c) Letter from Andrew Hampton, Office of Treaty Settlements, to Wai 788 and Wai 800 claimants concerning commissioning of report into cultural associations of Ngati Tama and Ngati Maniapoto, 22 August 2000
- (d) David Young, 'Customary Associations of Ngati Tama and Ngati Maniapoto with Specific Taranaki Sites', report commissioned by Office of Treaty Settlements, November 2000
- (e) Letter from Andrew Hampton, Office of Treaty Settlements, to director-general, Department of Conservation, concerning overlapping claims of Ngati Maniapoto and Ngati Tama in north Taranaki, 7 February 2001
- (f) Letter from Andrew Hampton, Office of Treaty Settlements, to chief executive, Ministry of Fisheries, concerning overlapping claims of Ngati Maniapoto and Ngati Tama in north Taranaki, 7 February 2001
- (g) Letter from Andrew Hampton, Office of Treaty Settlements, to chief executive, New Plymouth Council, concerning overlapping claims of Ngati Maniapoto and Ngati Tama in north Taranaki, 7 February 2001
- (h) Letter from Andrew Hampton, Office of Treaty Settlements, to chief executive, Taranaki Regional Council, concerning overlapping claims of Ngati Maniapoto and Ngati Tama in north Taranaki, 7 February 2001
- (i) Table entitled 'Revised Ngati Tama Cultural Redress Settlement Package', undated
- (j) Table entitled 'Non-Department of Conservation Crown Properties in the Ngati Tama Area of Interest', undated
- (k) Table entitled 'Memorialised Properties in the Ngati Tama Area of Interest', undated

A8 Brief of evidence of Harold Maniapoto, undated

(a) 'Petition of the Maniapoto, Raukawa, Tuwharetoa, and Whanganui Tribes', AJHR, 1883, J-1, pp 1-4

A9 Collection of maps entitled 'Cultural Redress Relating to Specific Sites Identified in the Ngati Tama Heads of Agreement, 23 September 1999, Discussion Maps', undated

A10 Brief of evidence of Hinekahukura Aranui, undated

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