

BEFORE THE WAITANGI TRIBUNAL

WAI 27

IN THE MATTER OF the Treaty of Waitangi Act 1975

AND

IN THE MATTER OF claims to the Waitangi Tribunal by Henare Rakiihia Tau and Ngai Tahu Maori Trust Board

THE NGAI TAHU CLAIM:
SUPPLEMENTARY REPORT ON NGAI TAHU
LEGAL PERSONALITY

1 INTRODUCTION AND PURPOSE

This report is supplementary to the *Ngai Tahu Report 1991* which was presented to the Honourable Minister of Maori Affairs on 1 February 1991.

1.1 In chapter 24.3 of that report the tribunal referred to the need for tribal structures to be put in place so as to allow Ngai Tahu to conduct negotiations for remedies with the Crown. It said this:

Because reparation is likely to be to the tribe, it is clear that there must be appropriate tribal structures to control and administer tribal assets, whether money, lands or other property. The tribunal understands that in June 1990 in anticipation of the passage of the Runanga Iwi Act 1990 the tribe constituted the Runanganui o Tahu. We assume the new runanganui will be incorporated under the recently enacted Runanga Iwi Act 1990. If so, it will have the necessary legal status to act on behalf of the Ngai Tahu people. The runanganui's charter will no doubt provide for its accountability to the various Ngai Tahu hapu.

The chairperson of the claimant trust board, Mr O'Regan, has stated publicly that the Ngai Tahu Maori Trust Board in its present form is not an appropriate vehicle to deliver what is going to be required next century (see *Waitangi: Maori and Pakeha Perspectives of the Treaty of Waitangi*, edited by I H Kawharu, p 255). He currently envisages a central tribe governing structure which will service the regional tribal communities through a network of regional offices. Mr O'Regan says that the proposal is for a runanganui elected by the tribal runanga which will hold the tribal assets as trustee and will decide matters of tribal policy. Mr O'Regan sees the trust board as being the executive arm of the tribe and accountable to the runanganui. He emphasises however that other tribal administrative structures, involving possible division into autonomous regions, are also being considered.

No doubt there will be further tribal debate on this question which is not a matter for either this tribunal or the Crown to determine. It is however important that if negotiations for remedies are to be satisfactorily conducted, there should first be resolution by Ngai Tahu of their internal structures. The tribunal was informed by the claimants that that process is under way.

1.2 The purpose of this report is threefold.

First, to inform the Minister that Ngai Tahu have now completed their tribal deliberations and have presented to the tribunal their proposals for the constitution of a legal personality not only capable of binding Ngai Tahu in an enduring and final agreement with the Crown but also of providing an effective economic structure capable of developing and sustaining the tribe's rangatiratanga over its lands and other assets;

second, to convey to the minister the tribunal's findings as to the important question of representation of Ngai Tahu's interests; and

third, to recommend the action necessary to give effect to the tribunal's findings on Ngai Tahu's request for recognition of its tribal structure.

2 NGAI TAHU TRIBAL STRUCTURE

2.1 The tribunal must firmly emphasise that it is not the function of this tribunal nor indeed, and with respect, the right of the Crown to determine the structure that Ngai Tahu may require for their present and future needs. That must be a matter for Ngai Tahu.

2.2 The tribunal refers to its earlier report in chapter 3.1 where the Ngai Tahu identity is discussed. In the preface to its report (p xiii) the tribunal summarised the position as follows:

The claim is brought by Rakihiia Tau and the Ngai Tahu Maori Trust Board. They are the claimants. But the claim is really from and about Ngai Tahu, an amalgam formed from three main lines of descent which flowed together to make the modern tribe. The earliest of the three tribes was described as Waitaha, this being also a collective name given to a number of ancient tribal groups which occupied Te Waka o Aoraki (South Island). The claimant Rakihiia Tau referred to the founding ancestor as Rakaihautu o te Uruao canoe.

Archaeological evidence indicates that Maori people were in the South Island about 1000 years ago. The second tribe, known as Ngati Mamoe came from the Heretaunga (Napier) area, moved to the South Island area about the sixteenth century and gradually filtered down through the South Island to intermarry with Waitaha and to assume control. The third tribe, known as Ngai Tahu, also migrated from the eastern region of the North Island. From the seventeenth century Ngati Mamoe and Ngai Tahu tribes gradually united.

2.3 In submissions presented to the select committee on the Runanga Iwi Act Repeal Bill on 8 February 1991 Ngai Tahu set out their tribal rohe and explained how the tribal community was divided into traditional runanga or sub-tribal groups. Their

submissions also outlined the whakapapa connection to the older preceding tribes of Kati Waitaha, Te Rapuwai, Kati Hawea and others all of whom together with Ngati Mamoe and Ngai Tahu, formed Ngai Tahu Whanui.

2.4 Ngai Tahu held a series of hui between 1987 and 1989 to determine a future structure which would be consistent with tribal history and tino rangatiratanga and appropriate to Ngai Tahu needs. This structure was confirmed in a final hui-a-iwi in 1990.

2.5 As an outcome of tribal discussion an incorporated society, 'Te Runanganui o Tahu', has been formed which is recognised as the real 'owners' of Ngai Tahu and the repository of the tribe's collective tino rangatiratanga. Ngai Tahu affirm that tino rangatiratanga resides ultimately in the papatipu runanga which comprise the runanganui. It has been explained to the tribunal that the runanganui is the beneficial owner of the tribally-owned assets and properties and that the Ngai Tahu Maori Trust Board is the *trustee manager* of that collective estate and is accountable to the runanganui for its management. The overall policies governing management of Ngai Tahu interests will be set by the runanganui which in real terms will be the 'Parliament of Ngai Tahu'.

2.6 Ngai Tahu propose that any formal contract or agreement with the Crown as Ngai Tahu's Treaty partner or any contract binding Ngai Tahu as a whole is to be made with a proposed Ngai Tahu Iwi Authority which will be created by statute, comprising both the runanganui and the trust board. Both bodies sitting together or separately must agree to the terms of any agreement or contract and the manner in which it will be concluded.

2.7 The claimant trust board now asks that legislation be passed to constitute the Ngai Tahu Iwi Authority as the corporate entity which has the capacity to bind Ngai Tahu in any settlement with the Crown.

3 THE FINDINGS OF THE TRIBUNAL

3.1 The tribunal is satisfied that it has taken all the proper steps necessary to ensure representation of Ngai Tahu views as a tribal group before the tribunal. Comprehensive public notification of hearings and forward programme of sitting dates and venues as well as extensive media coverage gave full opportunity to bring the claim to notice by all persons with an interest in the claim. As a result of this notification an overlapping claim from certain northern tribes was received and as fully detailed in its report (1.6.12^{*}) the tribunal stated a case under the provision of the Treaty of Waitangi Amendment Act 1988 to the Maori Appellate Court to determine Ngai Tahu tribal boundaries. Indeed it was an earlier interlocutory recommendation of this tribunal that led to legislation being enacted to allow any question of fact relating to rights of ownership of land and determination of tribal boundaries to be determined by the Maori Appellate Court.

^{*} Waitangi Tribunal, *The Ngai Tahu Report 1991*, 3 vols (Wellington: Brooker and Friend Ltd, 1991), vol 1, s 1.6.12

3.2 The Maori Appellate Court heard the iwi and persons claiming interest and gave its decision on 15 November 1990. The appellate court held that Ngai Tahu, according to customary law principles of 'take' and occupation or use, had sole rights to ownership in respect of the lands in dispute. The decision of the Maori Appellate Court is binding on the Waitangi Tribunal (Treaty of Waitangi Act 1975 s 6A(6)).

3.3 The decision of the Maori Appellate Court was appealed to the Privy Council. Proceedings were also filed in the High Court for review of the Maori Appellate Court's decision and also to review the Waitangi Tribunal's case-stated to the Maori Appellate Court. The Privy Council refused leave of appeal. The High Court has yet to hear the applications for review. The tribes bringing these proceedings acknowledged to the tribunal that their interest in the Ngai Tahu claim related only to certain portions of the Ngai Tahu lands and grievances and they did not wish to intrude on other areas of the Ngai Tahu claim.

3.4 The tribunal is satisfied that the claimants, in fulfilment of the assurances given to the tribunal during the inquiry have consulted with iwi and that the proposed Ngai Tahu Iwi Authority properly represent the runanganui of Ngai Tahu and is a proper and appropriate structure to be put in place to conduct and conclude agreements with the Crown and provide a structure for future administration of Ngai Tahu tribal affairs.

3.5 As a result of the repeal of the Iwi Runanga Act 1990 the opportunity for incorporation of the proposed iwi authority under the Act has been removed.

3.6 The tribunal supports the proposal by the claimant that legislation be introduced urgently to constitute the Ngai Tahu Iwi Authority as a corporation sole having perpetual succession and a common seal which shall be judicially noticed in all courts and for all purposes.

4 RECOMMENDATION

The tribunal recommends that, as a matter of urgency and importance, the Minister of Maori Affairs introduce legislation constituting the Ngai Tahu Iwi Authority to conduct and conclude negotiations with the Crown on the Ngai Tahu claim resolution.

The tribunal supports the claimant proposal as put to it and endorses the view that any incorporated structure should logically be also empowered to provide for the future implementation of Ngai Tahu goals and aspiration. The tribunal commends the initiatives and proposals as outlined by Ngai Tahu.

Accordingly, and pursuant to section 6(3) of the Treaty of Waitangi Act 1975, the tribunal having found and reported that Ngai Tahu grievances and claims are well-founded, recommends to the Crown that legislation be effected so as to appoint and constitute the Ngai Tahu Iwi Authority as the appropriate legal personality to act on behalf of the iwi.

In accordance with section 6(5) of the Treaty of Waitangi Act 1975, the registrar is directed to serve a sealed copy of this report on:

- (i) the Minister of Maori Affairs
- (ii) the Minister of Justice
- (iii) those other Ministers of the Crown listed in the *Ngai Tahu Report 1991*;
- (iv) the claimants, Henare Rakiihia Tau and the Ngai Tahu Maori Trust Board;
- (v) Ms Jennifer Lake, senior counsel, Crown Law Office; and
- (vi) Mr John Upton QC, counsel for claimants.

Dated at Wellington this 6th day of September 1991

A G McHugh, presiding officer

M T A Bennett, member

M E Delamere, member

G M Te Heuheu, member

I H Kawharu, member

G S Orr, member

D J Sullivan, member