



Clients' Bulletin

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The Ngati Makino Claim to the Rotoehu Forest Waitangi Tribunal Hearing

Ngati Makino presented their claim to the Waitangi Tribunal at Otamarakau marae, 19-23 June. Other Trust clients should be heartened by the high quality of presentation and content of Ngati Makino's evidence to the Tribunal and by the Tribunal's appreciation of that evidence.

Ngati Makino is the first group that has worked closely with the Crown Forestry Rental Trust's historical research unit to bring its claim to hearing. The Chief Judge of the Waitangi Tribunal (who is presiding over the claim) noted that:

- Ngati Makino had made a strong case in respect of their traditional history;
- on the basis of the traditional and historical evidence the Tribunal was disposed towards considering making a recommendation for the return of the forest land to Ngati Makino;
- further assessment of the evidence, which could take up to 12 months, would be required before making a recommendation. In the meantime the Crown, Ngati Makino and the other claimants to the land should attempt to negotiate a settlement, and in so doing, avoid the need for a binding recommendation from the Tribunal.

The Hearing

The hearing was attended by Ngati Makino and other claimants to the Rotoehu Forest; Ngati Awa and Tuwharetoa ki Kawerau.

Traditional Evidence

Following a vigorous powhiri, Kawana Te Kirirau, Peretini Te Whata and Don Stafford presented Ngati Makino's traditional evidence to establish their manawhenua. This took the best part of two days. On Wednesday 22nd Ngati Makino conducted a site visit to several pa sites and other areas described in the traditional evidence.

Historical Evidence

Crown Acquisitions

On 23 June, David Alexander presented evidence on the Crown's acquisition of Ngati Makino Land between 1870 and 1900. He stressed that although Ngati Makino wished only to lease some of their land, the Crown manipulated survey charges and advances made to some owners by land

purchase agents to progressively acquire more and more land; all the while ensuring the primacy of its own interests. By 1900, just one generation after the first Crown purchase, Ngati Makino had lost 96% of their lands between lakes Rotoehu, Rotoma and the Bay of Plenty coast. Further, the Crown did nothing to ensure that Ngati Makino retained sufficient land to allow them to participate meaningfully in the colonial economy.

Social Consequences of Land Loss

David Armstrong's evidence described the social consequences of land loss for Ngati Makino. He concluded that after the 1880s, when Crown land purchasing activity was at its height, Ngati Makino had become economically marginalised. They were forced to either move to the Thames gum fields or take up uncertain seasonal work for Pakeha in extracting industries such as sulphur mining, flax gathering or timber milling. This, coupled with the continuous ill-effects of the Native Land Court in the region, caused major social dislocation for Ngati Makino. The result was a high level of tuberculosis, typhoid and

infant mortality, all of which can be directly linked to the loss of land. At this time Ngati Makino were also deprived of their traditional kaimoana resources through the introduction of exotic fish species (which wiped out the inanga and koura), by government regulations and by Pakeha commercial exploitation of these resources.

Mr Armstrong noted that poor housing conditions from the turn of the century until at least the 1960s were a result of economic marginalisation which also contributed to poor health. Housing problems were exacerbated by the confused state of Maori land titles and multiple ownership which made it virtually impossible to raise housing loans.

In education Ngati Makino were disadvantaged by the nomadic lifestyle they were forced to adopt after 1880. The Land Court required whole families to migrate to wherever the Court happened to be sitting—often for long periods—and where ghastly living conditions prevailed. The children's education was further hindered by outbreaks of disease causing schools to close.

Cross-examination

Although several of the witnesses were vigorously cross-examined by counsel for Ngati Awa, the Crown did not

question any witnesses. Crown counsel explained that they had not had the opportunity to assess all the documentation and sought leave to recall witnesses at a subsequent hearing.

The fixture

The Tribunal and those most closely involved in the hearing were seated in the wharepuni. A marquee with a large television screen, and loud speakers placed around the marae allowed others of Ngati Makino and guests (including Trust staff and other Trust clients), to observe the proceedings.

Visuals

The traditional evidence was accompanied by effective visual displays: overheads of various sites and a video of some to the less accessible places.

A direction or memorandum following the Ngati Makino hearing is expected from the Waitangi Tribunal in the near future. Copies may be requested from Bruce Stirling of the Trust's research unit.

Research Project on the East Coast Native Trust

The Trust is going to fund a research project on the East Coast Native Trust to assist its current and future East Coast clients with research into their claims. One authoritative report will be more useful and cost effective than several different reports from various research groups.

The East Coast Native Trust is closely linked to the history of Maori land loss from Wairoa to East Cape, and also to Maori attempts to control and benefit from land development. The New Zealand Native Land Settlement Company, created in the 1870s, was a private company with Maori and Pakeha shareholders. Through a number of complex legal and financial transactions the East Coast Native Trust, a statutory body, created and controlled by the Crown, emerged in 1902. At one stage it controlled 300,000 acres of Maori land.

The project will research:

- the restrictive effects on Maori aspirations of Land Court legislation for Maori controlled land development, which the company may have represented;

- the way in which the Crown legislated to prevent the mortgagee sale of much of the company's land and the process whereby it secured to the BNZ questionable title to the company land;
- the general legislative environment of the late 19th century and its effect on Maori attempts to control and engender development of Maori land on the East Coast;
- the East Coast Native Trust Lands Act 1902 (and amendments) and the Maori Purposes Act 1951; and
- the role of key political figures—Sir James Carroll, Wi Pere, William Rees, Sir Apirana Ngata, and others.

The report will include maps and tables indicating the location of lands affected, but it will not be a detailed study of transactions affecting each and every block. Instead, individual Trust clients will be able to use the report as a basis for their submissions on the blocks within their rohe that were affected by the operation of the East Coast Trust.

Ngati Koheriki—Claim to the Maramarua Forest

In a March 1995 postal referendum, all registered beneficiaries of the Tainui Maori Trust Board received a copy of the final settlement proposal between the Crown and Waikato-Tainui. They were asked to vote for or against the proposal. The settlement is for all descendants of Tainui Waka who were affected by the government's confiscation of their lands by the government under the New Zealand Settlements Act.

A majority of votes were in favour, giving the Tainui Maori Trust Board the mandate to finalise a deed of agreement

with the Crown. This happened on 22 May 1995. The settlement will be effected through legislation and will be an iwi settlement between the Tainui Maori Trust Board and the Crown.

Ngati Koheriki is a hapu of Waikato-Tainui. It claims ownership rights to the Maramarua forest which falls within the raupatu boundary.

On 17 May 1995, the hapu of Ngati Koheriki applied to the Waitangi Tribunal for an urgent hearing.

Ngati Koheriki states in its application that it :

- will not be bound by the terms of the Crown/Tainui Maori Trust Board settlement;
- has not given its property rights to iwi; and
- has not asked iwi to negotiate its property rights on its behalf.

Ngati Koheriki contends that the Crown has breached the principles of the Treaty of Waitangi in allowing iwi to sign away hapu rights and negotiate Treaty settlements of grievances that occurred at hapu level. Ngati Koheriki contends that the Crown is the Treaty partner of hapu and it breaches the Treaty when it ignores their independent existence in favour of dealing with a statutory body such as the Tainui Maori Trust Board.

The claimants asked the Tribunal that if an urgent hearing was not possible, it make the following interim recommendations to the Crown:

- that the assets to be transferred from the Crown to Waikato-Tainui be held in trust by the Tainui Maori Trust Board or the pending runanga; and
- that distribution to beneficiaries should not take place until:
 - the terms are determined for the new body that will replace the Tainui Maori Trust Board; and
 - it is ensured that the new runanga would recognise

the rights of Ngati Koheriki as determined by the Tribunal.

Ngati Koheriki's principal claims are to the Waikarakia Block and to the Maramarua Forest. The Tainui/Crown settlement will extinguish their claim to the Waikarakia block.

The Maramarua Forest is also claimed by the Hauraki Maori Trust Board. Claimants understand that if the Maori Appellate Court determines the Tainui Maori Trust Board's claim to be superior to Hauraki's, Tainui and the Crown will jointly approach the Waitangi Tribunal for an order for resumption of the forest to Waikato-Tainui. Ngati Koheriki are not involved anywhere in the process and they believe this is unjust.

On 19 May the Waitangi Tribunal advised that it could not make recommendations until it had inquired into the matter and was satisfied the Ngati Koheriki claim is well founded. The Tribunal heard counsel for Ngati Koheriki in Hamilton on 16 June 1994 and is now deciding whether to grant the hapu's application for an urgent hearing.

The Crown Forestry Rental Trust is providing funding assistance to Ngati Koheriki to present their claim to the Maramarua forest to the Waitangi Tribunal. The Trust is also providing assistance to the two other groups claiming the forest—the Tainui Maori Trust Board and the Hauraki Maori Trust Board.

Information Manual Update

You will have already received, or are about to receive a series of updated pages for the Information Manual.

Of particular importance is the administrative steps necessary when hiring an independent contractor. Page 3.4.2 explains the need for a written contract for services.

Pages 3.3.1 to 3.3.3 is a *sample contract for services* which you and the independent contractor can modify to suit your particular situation.

For example, on page 3.3.2, section 5. Tax, states:

Fifteen per cent (15%) of the payments made to the Contractor will be withheld by the Claim Committee for payment to the Inland Revenue Department on account of the Contractor's tax liability.

The claim committee does not have to withhold any part of the payment for tax. The claim committee can, with the agreement of the contractor, withhold a larger or smaller percentage of the payment.

The phrase *for payment to the Inland Revenue Department* may be misleading. The claim committee does not pay tax to IRD on behalf of the contractor. The claim committee would give any money withheld for tax to the contractor who would then forward it to IRD. See Page 3.4.3 of the manual for further clarification of this point.

People Working for the Claims Committee

It is important that there is no confusion about the relationship between the claim committee and the people

it remunerates. Page 3.13 explains your options—taking on an employee or buying the services of a contractor. The Trust advises that there are advantages in the latter. For example, many of the laws that apply to employees do not apply to contractors. Employees must be paid sick pay, holiday pay, statutory holidays and so on, whereas contractors have these provisions built into their hourly rate. You saved a good deal of administration time if you do not have these responsibilities.

The contractor has freedom in where and how they work. The claim committee can only decide what work must be done by the contractor and the date they want it completed by.

It is important not to treat a contractor in the same way you would treat an employee. If, for example, you insist that they work in the office, you are treating them as an employee. The contractor would then be in a position to use the personal grievance procedure under the Employment Contracts Act, if a problem arose between you. Inland Revenue could also insist that you are employing that person and must therefore pay the employers portion of the ACC premium for that person.

Feedback on the manual is appreciated—please let staff know if there are any parts that are not clear or if there is anything missing.

Claims Ready for a Waitangi Tribunal Inquiry or Negotiation by 31 December 1995

The following Trust clients have progressed their claims to a stage where they are either ready to proceed to hearing, will be ready to proceed early next year or can proceed into direct negotiations with the Crown.

Panekiri Tribal Trust Board

The claim is by Ngati Ruapani, a hapu based at Waikaremoana. It involves the confiscation of their lands in the Patunamu forest after the New Zealand wars. The claim is at the "pre-direct negotiations" stage with the Office of Treaty Settlements.

Pirirakau/Ngati Ranginui

Pirirakau is the northern-most hapu of Ngati Ranginui. The claim is based on the wrongful confiscation and alleged forced sales of land to the Crown. The land under claim includes the Athenree forest.

Athenree Forest Lands ki Tauranga

The seven hapu claimant groups are: Ngai Tamawaharua; Tuapiro; Tauti; Te Ngare; Tauwhao; Te Urungawera; and Nga Marama-Ngati Pu. The claim to the Athenree forest concerns raupatu and alleged forced sales to the Crown.

Te Runanga o Ngati Awa

The claim relates to the Rotoehu forest and the confiscation of Ngati Awa land under the New Zealand Settlements Acts.

Ngati Koheriki

Ngati Koheriki is a hapu of Waikato/Tainui. This is a raupatu claim which relates to the Maramarua forest. See the article in this bulletin for details of Ngati Koheriki's dissatisfaction over the Tainui Maori Trust Board's negotiations with the Crown on their behalf, without, it is claimed, a mandate.

Otamatea Maori Trust Board

The Trust Board represents the descendants of those who connect to the Mangawhai forest land. The claim concerns

the Old Land Claims Commission, the Crown's assumption of surplus lands, Crown purchases during the 1850s and 1860s, the Land Court, and post Land Court alienations to the Crown and third parties.

Te Uri o Hau o te Wahapu o Kaipara

The claim to the Pouto forest and surrounding lands concerns the actions of the Land Court, subsequent alienations to the Crown and third parties, and the taking of land by the Crown for public works.

Ngai Tahu Maori Trust Board

Ngai Tahu have had their claims reported by the Waitangi Tribunal and are waiting for a Tribunal recommendation for the return of Crown forest lands in Westland, Canterbury, Otago and Southland.

Te Runanga o Raukawa

The applicant group have the endorsement of the runanga's constituent hapu, iwi and whanau to prepare the Ngati Raukawa ki te Tonga claim for the Tangimoana and Waitarere forest lands. The claim revolves around the actions of the Native Land Court and subsequent alienations to the Crown and third parties.

Maungaharuru Tangitu Incorporated Society

The applicant group is made up of five hapu who have connections to the land on which the Esk forest grows. They are: Ngati Hineuru, Ngati Pahauwera, Ngati Tu, Ngati Tataru and Ngati Kurumokihia. This is a raupatu claim.

Ngati Pahauwera

The claim centres on a large 1851 Crown purchase and the way in which remaining Ngati Pahauwera land was subsequently dealt with by the Court and alienated to the Crown and third parties. The land under claim includes the Mohaka forest.

More Info on MapInfo

Many clients responded to the article in last month's bulletin on the MapInfo (Iwi-map) package. The Trust is now going to run a three month trial with several Trust clients to compare the costs, quality and effectiveness of the MapInfo package with other mapping services currently used by Trust clients. After consulting the user groups the Trust will select the most appropriate mapping package and make it available to those clients who require it.