



The Long Awaited Wellington Report: Te Whanganui a Tara me ōna Takiwā

The Waitangi Tribunal presented the report on Wellington and its environs, Te Whanganui a Tara me ōna Takiwā, to the claimants and about 1000 supporters at Pipitea Marae on Saturday 17 May 2003.

In essence, the Wellington claims are about a region extending from Wellington City to Heretaunga (the Hutt Valley), known as the Port Nicholson block from an earlier European name for Wellington. In the 1830s, a private company was set up in Britain, called the New Zealand Company, to colonise New Zealand.

In 1839, Company representatives signed a faulty deed with local iwi, which claimed to purchase within the Port Nicholson district for a few goods and the promise of reserving one-tenth of the land for Māori forever. When settlers arrived, they were at first welcomed and the land shared.

After the signing of the Treaty, the Crown had to investigate whether the Port Nicholson purchase was valid, and if so, to grant a legal title to the Company. The government appointed an English lawyer, William Spain, to investigate the claim, but ignored his findings and changed his inquiry into a compulsory arbitration. Unfair pressure was used to get Māori to agree that their land was sold. This was the start of a long series of Crown Treaty breaches, in which it attempted to give settlers a secure title at the expense of Māori. Ultimately, this resulted in iwi losing most of their Wellington lands despite never having alienated

them, getting very unsatisfactory reserves, and nowhere near the one-tenth promised them in 1839. The Crown even went to war to oust Māori from Heretaunga.

The Tribunal, consisting of Prof Gordon Orr (presiding), John Clarke, Prof Keith Sorrenson, and the late Bishop Manuhaia Bennett, found that:

- that the 1839 deed by which the New Zealand Company purported to have purchased the Port Nicholson block



Dr Ngatata Love receiving the report on behalf of Te Atiawa

was invalid, conferring no rights on the Company or its settlers – in effect it was illegal and should not have been upheld by the government;

- that the 1844 process for gaining deeds of release of 67,000 acres from Māori for settlement was seriously flawed. Despite the fact that decisions were

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Editorial

By Dr Grant Phillipson, Chief Historian

Tēnā koutou katoa

The Waitangi Tribunal is an organisation that looks both forwards and backwards. We look back to the grievances of the past with the task of making independent, impartial findings as to their truth. Then, we look forward to the healing of those grievances through Treaty settlements and the forging of an improved Treaty-based relationship between Crown and Māori. These fundamentals do not change, although processes, personnel and institutions do.

In April, the Tribunal members and staff said their farewells to Morris 'Morrie' Te Whiti Love, the former Director of the Tribunal administration. Morrie's contribution to the task of resolving Treaty grievances has been enormous over the past seven years, and that will not end with his change of job. He has left the Tribunal as a strong and capable institution, ready to face the challenges of the future. The report on Wellington and its environs, *Te Whanganui a Tara me ōna Takiwā*, which is featured in this issue of *Te Manutukutuku*, provides Morrie and the tribes of Te Whanganui a Tara with a sound foundation for the negotiation and resolution of their claims. We wish them well in a process that will heal the past and, we hope, improve the future of both Māori and non-Māori in Wellington.



Neville Baker, Acting Director

Also in April, the Tribunal welcomed its new Acting Director, Neville Baker, of Te Atiawa. Neville, who hails from Urenui, is a farmer and company director. He is a former public servant of many years' experience, including service at the Department of Lands and Survey and at Social Welfare. He was Deputy Secretary of Māori Affairs, and served as Māori Trustee from 1987 to 1990. Even with this impressive list of credits, Neville is proudest of his family. He has two daughters; Melanie, a barrister and solicitor, and Tracey, who works at the Correspondence School. His son, Brendan, is a parliamentary private secretary.

Neville will be acting as Director until a permanent appointment is made. His understanding of the Māori political world, and particularly of Māori organisations and structures, should be of critical value to the Tribunal over the next few months. There will be an emphasis on relationships with other organisations, especially the Crown Forestry Rental Trust, the Office of Treaty Settlements, and the Legal Services Agency, as the Tribunal makes changes to provide quicker inquiries into claims. The way in which these agencies do their business may change in some ways as a result of streamlined Tribunal inquiries, and vice versa. Some of the details of proposed changes are outlined in the article on the Central North Island, which follows later in this issue.

The Tribunal is entering a challenging period of change. The Department for Courts, of which its administration is a part, will merge with an enlarged Ministry of Justice by October. This will involve administrative change. The Tribunal is also running its own internal realignment of positions and structure, to best serve the changing inquiry process. The new approach, described in the May/June 2001 issue of *Te Manutukutuku*, is currently running in the Urewera, Wairarapa ki Tararua, and Whanganui inquiries. It will be refined and improved. Alongside the new approach, a 'quantum change' is proposed for the Central North Island, which may be appropriate to extend to claimants in other districts. Grievances that most or all claimants in a district share in common could be researched and heard in a streamlined first-stage inquiry. Knowing each other's position on the big-picture issues, with representation tested and grievances aired at hearings, the Crown and claimants could get an interim Tribunal report and negotiate a settlement. If they need a more detailed inquiry, particularly on whānau and specific-issue claims, a second-stage inquiry could follow. The Tribunal thinks that its fair and public process can thus assist settlements and resolution of grievances without the long delays of the past.

This is a challenging and changing environment in which the Tribunal will strive to maintain a process that is fair to all and assists meaningful settlements, looking always both forwards and backwards. ●

Petroleum Report Released (Wai 796 & Wai 852)



Te Pūrongo Hinu

Tainanahi nei, i tukuna ki ngā kaitono me ngā Minita te Pūrongo Hinu, ā, i tautokona e Te Rōpū Whakamana i te Tiriti o Waitangi te tono Māori he wāhi tonu kei te Tiriti i roto i te rawa hinu.

I kī te Te Rōpū Whakamana i te Tiriti o Waitangi, i raro i te ture ka ngaro, ka whakakorea rānei ngā tikanga ki tētahi rawa, nā te mea i whati tōna hononga ki te Tiriti, ka puta he painga ake.

Ka karangatia tēnei, he 'painga o te Tiriti'.

He tino take tēnei mō te whakarato i ngā hua, he hinu te papa. Takitahi noa iho ngā rawa a te Karauna kei te rohe. Tēnā, ko te rawa nui o rātou ko te hinu.

Hāunga, kāore e kore he hononga kei tēnei - te murunga o ngā whenua o ngā iwi o Taranaki me ngā rawa hinu kei te Karauna e mau ana. Nā reira, ka noho ēnei hei rongoa pai mā ngā kaitono, mehemea rā e hiahiatia ana e rātou.

After receiving a letter in early May from the Associate Minister of Energy, Mr Duynhoven, indicating the Government's intention to sell the Crown's interest in the Kupe licence, the Waitangi Tribunal urgently released its *Petroleum Report* in mid-May 2003.

The Tribunal reported into claims Wai 796 and Wai 852 from groups in Taranaki (Ngā Ruahine and others) and the North Island's East Coast (Ngāti Kahungunu ki Wairoa, Heretaunga and Wairarapa). Both claimant groups asserted that

there was a Māori customary interest in petroleum that went with ownership of land, but that land was taken from Māori in breach of the Treaty of Waitangi by Crown acts and policies (including raupatu/confiscation). Furthermore, the Crown's decision in 1937 to nationalise the petroleum asset in the 'national interest' deprived the Māori owners of their full and exclusive possession, guaranteed in article two of the Treaty of Waitangi.

The Crown accepted the premise of Māori customary interest in

petroleum at the outset of the hearing, and also that the interest included a right to exploit the resource for economic gain:

"It is accepted that had ownership of land by iwi and hapū persisted it is difficult to see why pre-1937 there would not have been a right to benefit from exploitation of the petroleum resource." (section 5.2)

The Tribunal did not find evidence that petroleum was a taonga very convincing, but had no need to determine that point because the Crown had already accepted the existence of a property right. The Tribunal also accepted the Crown's rationale for the nationalisation of petroleum, effected by an Act of Parliament in 1937. But it agreed with the complaints of Sir Apirana Ngata and other Māori leaders of the time, that it was done with no compensation for the loss of property rights, or provision for the payment of royalties from exploitation of petroleum resources. This was a serious breach of the Treaty.

Furthermore, the Tribunal found that the breach was compounded and that Māori and Pākehā were not treated equally because so little land actually remained in Māori ownership by 1937, having already been lost by means which breached the Treaty.

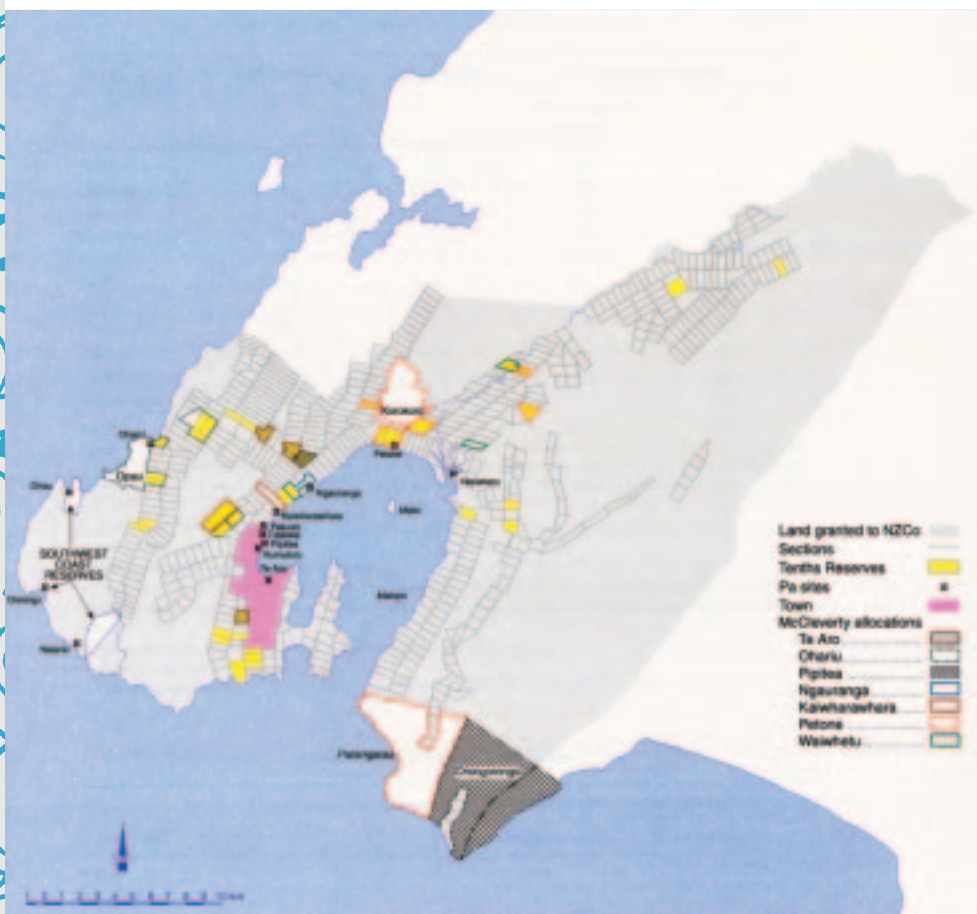
The Tribunal stated that, *"where legal rights to an important and valuable resource are lost or extinguished as a direct result of a Treaty breach, an interest of another kind is generated. We call this a 'Treaty Interest'."*

The Tribunal says such a 'Treaty interest' was created in favour of Māori when they lost legal title to petroleum. Redress for loss of this right should be additional to Treaty settlements on other matters.

As a result of its findings, the Tribunal recommends:

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Map 10 - McCleverty rural reserves

made contrary to advice from the Spain Commission of Inquiry, which had upheld that coercion had been used to gain Māori consent, Governor Fitzroy's Crown grant to the New Zealand Company proceeded in 1845;

- that the Crown failed to recognise the rights of Ngāti Tama and Ngāti Rangatahi in Heretaunga (Hutt Valley) and forcibly evicted them in 1846 to secure title to those lands. This led to war breaking out in the Hutt, which spread to Porirua;
- that 'one-tenth' of the acquired land agreed to be reserved for Māori in the deeds was never fully honoured – 110 'urban tenths' of one acre each were awarded in and around the Lambton Harbour area, but only 39 of the 'rural tenths' of 100 acres each were granted, a shortfall of 31

rural sections. A further three sections were subsequently granted to landless Ngāti Tama after their eviction from Heretaunga (Ngāti Rangatahi received nothing);

- that the Crown failed adequately to recognise Ngāti Toa interests in the Port Nicholson block by failing to allocate them any Wellington 'tenths' reserves;
- that in 1847 Māori lost 23 valuable 'urban tenths' in Thorndon, appropriated by the Crown for hospital, educational and religious endowment purposes. There was no consent, and no compensation until 1877, and even that was inadequate;
- that Colonel McCleverty negotiated new deeds in 1847, which further coerced Māori to move from prime land in the city centre. This affected their ability to participate in the economic growth of the burgeoning capital;

- that the administration and the perpetual leasing regime imposed on the Wellington 'tenths' reserves was a system which not only alienated Māori beneficial owners from their land, but provided below-market rents. While rents could rise to reflect increased land values only once every 21 years, rates were reviewed and raised every five to six years;
- that the Crown acquired the town belt and other reserves (including Matiu and Makaro – Somes and Ward Islands) without consent or payment; and
- that the 1848 Crown grant to the New Zealand Company deprived Māori of a further 120,626 acres of land which they never sold or consented to surrender. This land was subsequently vested in the Crown on the New Zealand Company's collapse.

The Tribunal found: *"The Treaty breaches set out in this report combine to entitle the various claimants to substantial compensation. In considering the nature and scope of the remedies appropriate, given the many serious Treaty breaches by the Crown, regard should be had to the loss by various claimants of almost all their land in the Port Nicholson block. The Tribunal considers that a significant element of such compensation should be the return of Crown land in Wellington City and its environs."* (p493)



John Clarke and Sir Paul Reeves

The Treaty breaches outlined above are only some of those identified, which affected Te Atiawa, Ngāti Toa, Ngāti Tama, Ngāti Rangatahi, Taranaki, and Ngāti Ruanui. The Tribunal recommended that representatives of these groups enter negotiations with the Crown to settle these Treaty grievances.

Treaty breaches accumulated and compounded after the early 1840s and initial settling of title, as the Crown took action to accommodate the growing number of settlers in Wellington City. Māori land was being encroached on, from all sides. In 1847 a series of new reserves were assigned for Māori who were required to relinquish their cultivations on 467 acres of sections claimed by settlers. It was taken for granted that Māori, not settlers, would have to move. All existing cultivations were on good land, chosen for their aspect and location. Māori



Waitangi Tribunal reports ready for presentation

received larger areas of inferior land that did not suit their purposes, were distant from their pā, and away from the heart of development and the port.

These exchanges, arranged by Colonel McCleverty, came almost exclusively from three sources: the town belt, 'tenths' reserves converted to specific hapū reserves, and unsurveyed 'waste' land – all land Māori already rightly owned. The bulk of the McCleverty reserves were later either sold or taken for public works.

Furthermore, in 1848 a Crown grant was issued to the New Zealand Company covering not just the 67,000 acres in the deeds of release,

but the whole of the Port Nicholson block, said to contain around 209,000 acres. Māori retained only some 20,000 acres of reserves. The Crown grant deprived Māori of over 120,000 acres which they had never sold or consented to give up, and the Tribunal found this to be a serious breach of their Treaty rights.

The 'tenths' reserves were administered by government officials on behalf of the Wellington Māori who were the beneficial owners of these reserves. However, the practices adopted included perpetual leases to settlers at a set rate for 21 years, acquisition of uneconomic shares by the Māori Trustee without consultation, and freeholding of reserves to facilitate their sale. The legislation providing for these policies was found by the Tribunal to be in breach of the Treaty.

The effects of these measures were very evident: *"Only 42 rural tenths reserves were set aside in the Port Nicholson block. 71 rural tenths of 100 acres each should have been allocated. One hundred and thirty-five years later, only 124 acres – scarcely more than one rural tenth – of those original rural tenths remained, and it was next door to a rubbish dump."* (p403)

The Tribunal strongly felt that retaining a land-base for Māori is *"a means of preserving racial identity, of sustaining Māori mana and self-respect, contributing towards a sense of community by uniting large numbers of Māori people in a continuing common*

enterprise, and enabling them to identify as an integral part of New Zealand society and economy" (p398). It recommends that the return of Crown land to Wellington Māori should be a significant element of compensation.

Other matters discussed in the report include Crown taking of land for public reserves without the consent of, or payment to, Māori; the creation of reserves in Palmerston North for some Wellington Māori to replace 'tenths reserves' in Wellington which had been sold by the Crown; the taking of Māori reserved land for public works purposes; and issues relating to the management of Wellington harbour. The latter include the destruction of Māori-owned fisheries during the reclamation of much of the harbour foreshore.

The report provides extensive insights into the decision-making that formed our legislation, and our capital City. It contains robust analysis that requires serious consideration.

When presenting the report, Tribunal member John Clarke said: "I trust you will all see the report as a new starting point, and that it will assist with negotiations ahead."

Nō reira e ngā iwi o Te Whanganui a Tara me ōna takiwā, kua whakamāramatia te tika, te pono o ngā kōrero o ō koutou tūpuna. Kia kaha tonu i ā koutou mahi kei mua, kia whakatau ngā take kua kōrerotia katoatia e tātou. Tēnā koutou, kua oti.

The Executive Summary and the Findings and Recommendations of this report are available on the Tribunal's website at:

www.waitangi-tribunal.govt.nz/reports/niwest/wai145/

Links to further information on the ownership of the town-belt, and the foreshore are also available. The full report will be posted late June.

For previous articles, see *Te Manutukutuku*, issues 34, 36, 42, 46, 48, and 55. ●

A New Process for the Central North Island?

The Minister in Charge of Treaty of Waitangi Negotiations, the Hon Margaret Wilson has met with Central North Island claimants for preliminary discussions about a negotiated settlement. The hundreds of claims in the Volcanic Plateau have been grouped into three districts for inquiry: Rotorua, Taupo, and Kaingaroa. The Tribunal inquiring into these claims is made up of Judge Caren Wickliffe (presiding), John Clarke, and Joanne Morris.

In order to assist the Minister and claimants, the Central North Island Tribunal has proposed to modify its inquiry process. In a paper issued on 25 March 2003, the Tribunal put forward the option of hearing the claims in two stages. The first stage would consist of 'overview research covering all the generic issues'. By generic issues, the Tribunal means the actions of the Crown, alleged to have breached the Treaty, which have affected most or all claimants in a district. These big-picture grievances could be researched in about a year, and then made the subject of a swift, abbreviated hearing process and an interim Tribunal Report. This would enable a thorough airing and investigation of claims to an agreed level of detail. Groups would demonstrate who they represented in front of the Tribunal. The end result would be a fair, publicly-reached basis for negotiations.

The proposal does not specify how the negotiations and Tribunal process would interact. Claimants and the Crown have the option of negotiating some issues while having others heard, using both processes at

the same time, or getting what they need from the Tribunal and moving solely into negotiations. In all cases, the Tribunal believes that its fair and public process will assist the effectiveness and durability of settlements.

At the end of the first stage, the Crown and claimants would have the option of conducting further research on specific claims (such as grievances about a particular land block or Crown action), and additional detail on issues left unsettled from stage one. A second-stage Tribunal inquiry with a second report would be possible, although the choices of claimants and the Crown may make it unnecessary. The emphasis is on parties' choices and the tools needed to negotiate a lasting settlement.

Currently, claimants and the Crown are discussing matters and responding to the Tribunal's proposals. Both sides appear, on the whole, to agree to the proposal, though many details remain to be worked out. Tribunal historians are assisting by reviewing available research and recommending what needs to be done for stage one of the Rotorua, Taupo, and Kaingaroa casebooks. Tribunal conferences with the Crown and claimants will discuss matters in depth in June and July, and reach decisions about the path to be followed in the Central North Island claims.

The claims allege serious grievances about:

- the Crown's undermining of the political leadership and wishes of the claimant tribes, especially after the Rohe Pōtae was set up in the 1880s,
 - the Native Land Court's destruction of tribal titles, and the damage done to Māori society, land retention, and land-use as a result,
 - the Crown's alienation of the geothermal resource from Māori ownership and control, and serious damage done to the resource,
 - the Crown's negotiation of unfair and inappropriate agreements about ownership of lakes, fisheries, and rivers, and serious environmental damage done to waterways,
 - the Crown's mismanagement of development schemes, its forestry leases, and other twentieth-century land issues, resulting in loss of Māori land, or prevention of Māori from using their lands effectively,
 - the taking of land for scenic reserves, National Parks, electricity generation, and other public purposes, through undue pressure and without adequate compensation,
 - the overall and lasting damage done to Central North Island Māori as a combination of all these alleged Treaty breaches.
- It will be a challenge for the Tribunal to craft processes to deal with the claims according to the parties' objectives. Future district inquiries can expect to benefit from the results. ●
- the Crown's purchase of the great majority of Māori land, by unfair means and at unfair prices, to the lasting detriment of all Central North Island Māori,

Te Pūrongo Hinu continued from page 3

- that the Crown and affected Māori groups negotiate for the settlement of petroleum grievances; and
- that the Crown withhold from sale its 11 per cent interest in the Kupe petroleum mining licence until a policy has been developed to safeguard Māori interests, or until

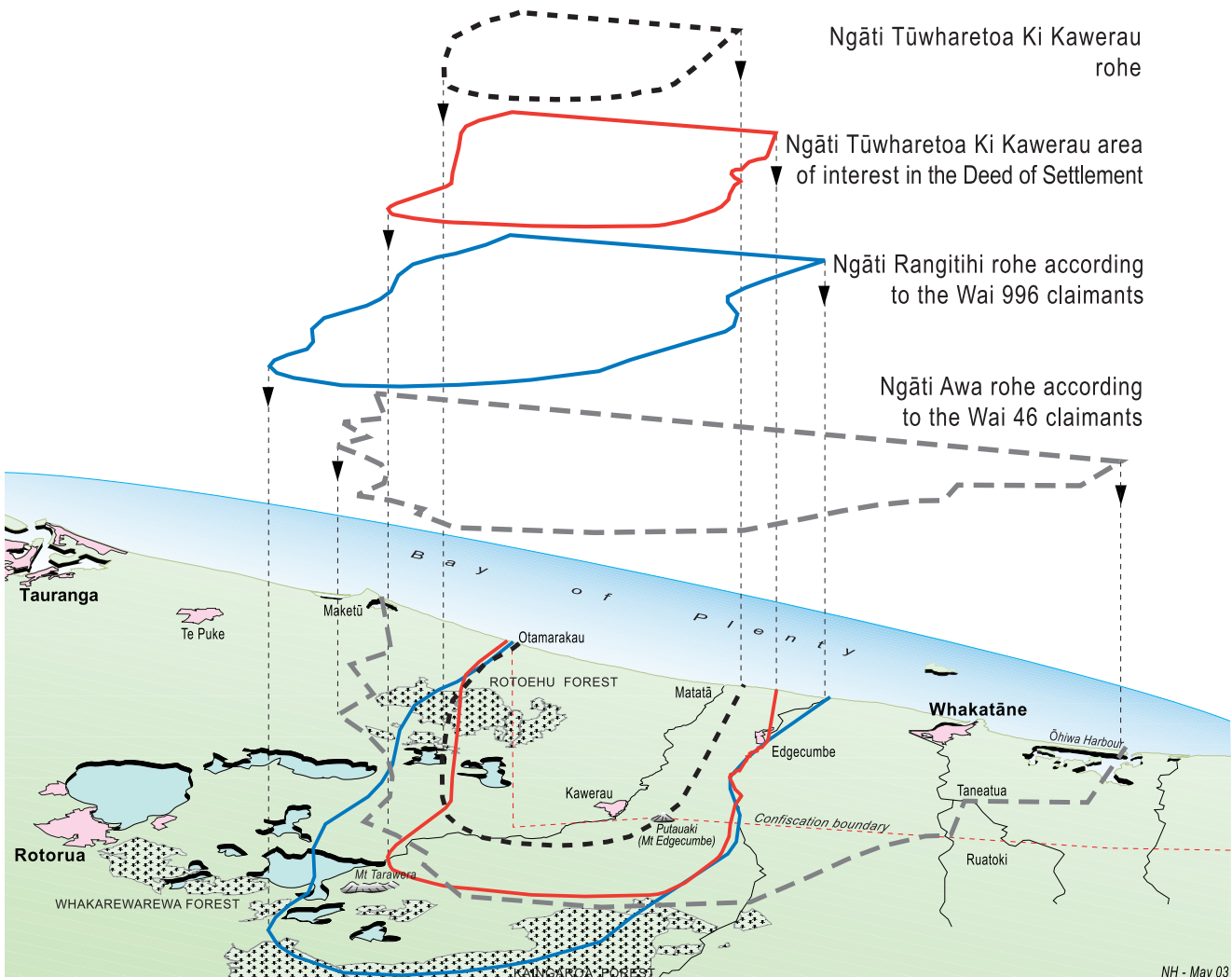
the petroleum claims are settled.

The Tribunal did not support the Crown's view that petroleum assets (royalties and the Kupe licence interest) ought to be excluded from settlements. The Crown's remaining petroleum assets ought to be on the table in any settlement negotiations with affected claimants. The

conclusion in this regard has general application, but applies with particular force in the case of Taranaki.

The Tribunal will report on the remaining issues raised by the claims, concerning the regulation and management of the petroleum resource since 1937, in a further report.

The Ngāti Tūwharetoa Ki Kawerau Settlement Cross-Claim Report (Wai 996)



Urgency was granted in February 2003 to a claim brought on behalf of Ngāti Rangitahi, challenging the Crown's proposed settlement with a neighbouring iwi, Ngāti Tūwharetoa ki Kawerau. The claimants said their customary in-

terests overlap the proposed settlement area, and that they would be prejudiced if cultural redress was provided to Ngāti Tūwharetoa ki Kawerau before they could have their claims heard by the Waitangi Tribunal.

The Tribunal agreed with the Ngāti Awa Settlement Cross-Claims Report where it said that claimants should be able to proceed to settlement even where cross-claims are not fully articulated or researched.

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From left: Anaru Rondon (witness), David Potter (claimant), Venus Paterson (wife of André Paterson, absent) and others at the hearing 5 February 2003, Waitangi Tribunal, Wellington.

Accordingly, it limited the scope of the inquiry to the Crown's policy and practice as it relates to cross-claims to cultural redress. Through cultural redress, the Crown aims to protect wāhi tapu, give claimant groups greater ability to participate in management of areas with which they have a special relationship, and provide visible recognition of the claimant group in their area of interest.

In the *Ngāti Tūwharetoa ki Kawerau Settlement Cross-Claim Report*, released to claimants in mid-May, the Tribunal found the Crown's consultation process with Ngāti Rangitahi was deficient, and breached the principles of the Treaty of Waitangi.

It found that the Crown departed from its usual policy set out in the Office of Treaty Settlements publication *Ka tika ā muri, ka tika ā mua/Healing the past, building a future: A Guide to Treaty of Waitangi Claims and Negotiations with the Crown*, where the onus is on the settling claimants to convene cross-claim discussion. This did not happen. Also, the settlement process was too far along the track before the Crown attempted to ascertain

the nature of Ngāti Rangitahi interests at Matatā, and it did not devote the necessary resources to researching that interest. Overall, the communication and consultation were inadequate.

However, the report also sends a clear message to claimants and counsel that consultation is a two-way process and both sides need to engage early. It points to the late response from Ngāti Rangitahi to the proposed settlement package, and confusion about its representation, as important factors in the Tribunal's decisions.

Although the Tribunal identified the process as deficient, it was unable to make a clear finding that prejudice had resulted to Ngāti Rangitahi, because of the lack of articulated support for the claim from the wider claimant community. The Tribunal lacked that confidence.

"In order to be prepared to recommend that the settlement with Ngāti Tūwharetoa ki Kawerau should now be halted in order for these procedural shortcomings we have identified to be remedied, we would need to be confident of a high level of support within Ngāti Rangitahi."

The Tribunal recommended:

- that the Crown ensures early consultation with cross-claimants during settlement negotiations in future,
- that an avenue is available for Ngāti Rangitahi to be represented on the joint advisory committee for Matatā Scenic Reserve and Te Awa a Te Atua, prior to their own settlement negotiations and once their mandate is clear, and
- that the Crown is specific in notifying all relevant local authorities that the settlements with Ngāti Awa and Ngāti Tūwharetoa do not preclude the on-going role of Ngāti Rangitahi as tangata whenua in the area.

The Tribunal also expressed concern that the contemporary political landscape not be unbalanced by the settlement. Currently Ngāti Awa, Ngāti Tūwharetoa and Ngāti Rangitahi all hold tangata whenua status in and around Matatā. As the first two are being recognised through settlements with the Crown, the Tribunal warned that the comparative status of Ngāti Rangitahi might be perceived to be diminished. Their chance for recognition through settlement with the Crown is still several years away, and some form of formal recognition now was recommended to maintain the balance. The Tribunal cautioned the Crown, stating: *"It is the old story: in righting one wrong, the Crown must be scrupulous to ensure that it is not creating another. This is vital not only for the honour of the Crown, but also for the integrity and durability of settlements."*



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