



Waitangi Tribunal

TE MANUTUKUTUKU

TE RŌPŪ WHAKAMANA I TE TIRITI O WAITANGI

Pipiri/Hōngongoi 2004

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June/July 2004

Mohaka ki Ahuriri Report released

The Tribunal's *Mohaka ki Ahuriri Report* was presented to claimants at Te Haroto Marae on the Napier-Taupō road on Saturday 5 June 2004. It covers 20 Hawke's Bay claims spanning a district bounded by the Tutaekuri River to the south, Hawke Bay to the east, the Waiau River to the north, and the inland ranges and the old Hawke's Bay provincial boundary to the west. The claimants are predominantly Ngāti Kahungunu, although some identify more or equally with Ngāti Tūwharetoa.

The presentation marked the end of a long process for the Tribunal, which heard the claims over three years from November 1996 to February 2000 and first had to write its *Napier Hospital and Health Services Report*, which was published in September 2001. The release of the report is also a major milestone for the Tribunal in that Mohaka ki Ahuriri was the Tribunal's first district casebook inquiry. In other words, it was the first time all the claims within a particular geographic region were grouped together for hearing, with all essential claimant evidence being assembled into a casebook of reports before the hearings commenced.

In summary, the claims concern Māori land in two broad ways. First, they relate to:

- the loss of land through pre-1865 Crown purchases;
- the operation from 1865 of the Native Land Court;



Rere Puna, a claimant in the Mohaka ki Ahuriri inquiry, reading the Tribunal's report at Te Haroto Marae.

Photo: Paul Homer

- the 1867 Mohaka-Waikare confiscation; and
- later Crown purchasing (mainly conducted from 1910 to 1930).

Secondly, they relate to the barriers to the use and enjoyment of lands retained in Māori ownership, including:

- title disruption;
- the lack of development opportunities;
- the fragmentation and multiple ownership of tiny parcels of land; and
- the lack of access. **continued on page 4**

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Reflections of the Outgoing Acting Director

Back in November 2003, when I joined the Tribunal, I knew that the assignment I had been given would be challenging, interesting, and above all things, rewarding. Now, less than a year on, all of these expectations have come to pass.



During the last year, the Tribunal has progressed an enormous amount of work. At the district inquiry level, it has made significant progress on the Central North Island, Wairarapa-ki-Tararua, Urewera, Whanganui and Northern South Island inquiries, it has started up the National Park and East Coast inquiries, and made significant progress on its Gisborne, Kaipara, Tauranga Raupatu and Hauraki reports.

It has also issued its reports on the first district case-book inquiry, Mohaka-ki-Ahuriri, and the Foreshore and Seabed, which featured in the last issue of *Te Manutukutuku*. While the findings and recommendations of this report were variously received, they did undoubtedly contribute to the quality of the foreshore and seabed debate, and to public understanding of the issues for Māori inherent in that policy.

This progress is a clear reflection of the effectiveness of the Tribunal's New Approach. That new approach offers both claimants and the Crown an expeditious pathway towards settlement, without compromising the very real need of claimants to have their grievances

heard, and documented, and the opportunity for truth and reconciliation that that process brings. The Tribunal's New Approach continues to evolve, and continues to demand greater transparency and co-operation between parties to an inquiry. In this regard, the more that parties are able to agree on which issues are, and are not, in contention, the sharper the focus and more expeditious an inquiry, and ultimately a settlement negotiation, will be.

The resolution and settlement of claims is dependent on a well co-ordinated Treaty sector: a sector that focuses on the business at hand, and prioritises the needs and interests of parties to the settlement process. In the last issue of *Te Manutukutuku*, I commented that relationships within the sector were one of the priorities that I intended to focus on. There are many agencies working directly in the sector, and contrary to popular opinion, these agencies work constructively with each other. The most obvious example of this co-operation is the progress made with the parallel Tribunal and direct negotiations processes occurring in the Central North Island regional inquiry.

Because the Tribunal's progress is typically measured by the release of its reports, it is easy to lose sight of these wider achievements in the sector as a whole, in district inquiries, and in the extent of progress being made for individual claimants.

Kim Ngarimu
Acting Director, Waitangi Tribunal



Robyn Anderson is a New Zealand historian who did a PhD at the University of Toronto and worked at that university for a number of years, before returning to New Zealand in

NEW TRIBUNAL MEMBER

1991. She became a Treaty sector historian in 1992 when she joined the staff of the Crown-Congress Joint Working Party, and prepared historical evidence underpinning the return of railways land to Wellington Māori in 1993. Since then, she has carried out research projects for the Waitangi Tribunal and for claimants from the Hauraki, Kaipara, and Whanganui districts. From 2000 to 2003, Dr Anderson was the first History Concept Leader at Te Papa Tongarewa

(Museum of New Zealand), where she led research and exhibitions for the history and Pacific cultures sections of the museum. She is currently preparing an historical overview report on the history of Tongariro National Park for the Waitangi Tribunal's National Park inquiry, and assisting the Wairarapa ki Tararua Tribunal as a consultant historian. Dr Anderson brings a huge wealth of experience in Treaty history and issues to the work of the Waitangi Tribunal. ●

The Year That's Been (2003/04)

The Waitangi Tribunal has just completed its work programme for the financial year ending June 2004. It was a very demanding year, with a focus on completing Tribunal Reports, moving district inquiries into hearing, and advancing as many claims as possible through the New Approach. With speedier processes and multiple inquiries, the Tribunal had more claims under action than ever before.

Tribunal Reports

The Tribunal published two reports during the year, and completed a third (which is currently being published).

Report on the Crown's Foreshore and Seabed Policy

The Tribunal granted an urgent hearing of 178 claims relating to the Crown's foreshore and seabed policy, and published its report in March 2004.

Mohaka ki Ahuriri District Report

The Tribunal published its two-volume report on the 20 claims in the Mohaka ki Ahuriri inquiry district in June 2004 (see feature article in this issue).

Tauranga Raupatu Report

The Tribunal completed its report on those aspects of the 55 Tauranga Moana claims which relate to war and raupatu (confiscation), and the fate of those confiscated lands returned to Māori in individual title. The report is currently being published and will be released shortly.

Progress in other reports

Substantial progress was made in the drafting of the *Kaipara Report* (dealing with those claims not covered in the Te Uri o Hau settlement), the *Hauraki Report* (covering the 56 claims in the large Hauraki district inquiry), and the *Gisborne Report* (12 claims). All three reports should be completed in 2004/05.

Inquiries in Hearing

Northern South Island

The Tribunal completed its hearing of the 28 Northern South Island claims. It held six hearings during the year, covering the overlap between the Te Tau Ihu and Ngai Tahu claims, the Crown's evidence, and the closing submissions to sum up the positions of Crown and claimants. The final hearing was held in March 2004.

Urewera

The Urewera inquiry made very substantial progress. The interlocutory process was completed for most generic issues, and a Tribunal Statement of Issues finalised in August 2003. The interlocutory process provided the platform for a disciplined series of hearings on key points at issue between Crown and claimants in the 48 claims. The hearings began in November 2003 and have made rapid progress. Alongside the first hearings, Tribunal gap-filling research was commissioned and completed.

Wairarapa ki Tararua

The Wairarapa ki Tararua inquiry (29 claims) also made substantial progress, with the completion of the interlocutory process and a final Statement of Issues in February 2004. Since then, the Tribunal has held two hearings covering claimant and Tribunal evidence relating to the core generic issues raised by most or all claims, and two further hearings of claimant-specific evidence. They will be followed in 2004/05 by further group-focused and specific hearings, Crown evidence, and closing submissions. Tribunal gap-filling research was commissioned, and most of it completed before the start of hearings. One final, critical project on economic issues will be completed in August 2004.

Inquiries in the casebook research phase

Central North Island

The three districts of the Central North Island regional inquiry (Rotorua, Taupō, and Kaingaroa, with 154 claims) began the Tribunal's Modular New Approach in July 2003 (see the last issue of *Te Manutukutuku* for a description of the Modular New Approach). The Tribunal, claimants, Crown, and CFRT developed an agreed casebook research programme from June to August 2004, and CFRT commenced the 12 research projects (due to be completed in September 2004). In the meantime, the Crown has also started its research programme. During the year, conferences of Tribunal, claimants, and Crown have focused on research progress and claimant clustering. The claimants have pursued the dual path of pre-negotiations, and the Crown has approved mandates for claimant negotiating bodies. At the time of writing, an urgent hearing was due to be held on the question of mandating in the Rotorua district.

National Park

The Tongariro National Park (and associated land blocks) lies between the Whanganui and Taupō districts. The overlap was so great that a separate inquiry was set up to hear all claims fairly without prejudicing either the Taupō claimants (who are on a faster track to negotiations) or the Whanganui claimants. In addition to relevant Whanganui and Taupō research, two specific research projects were set up to cover National Park claims (due to be completed in September 2004). The Tribunal held its first conference to consult parties on process and research issues in May 2004, followed by a district research hui at the end of the month.

Whanganui

The Whanganui district inquiry made substantial progress in preparing claimant evidence for hearing. The Whanganui casebook research programme included 8 CFRT commissions and 13 Waitangi Tribunal commissions started or under way during the year. All projects will be completed by September 2004, and the casebook then filed for review. All going well, the interlocutory process will start in October.

East Coast

The East Coast district inquiry also made progress, with a substantial CFRT research programme underway. The Tribunal held start-up conferences in April and May 2004 to identify claimants, decide the inquiry process, consider proposed research, and set the inquiry district boundaries.

New Claims and Legal Aid

The Tribunal registered 105 new claims in the year to 31 May. A significant number related to the Wai 1071 Foreshore and Seabed inquiry. These claims were either wholly or partially dealt with in that inquiry.

One hundred and six 'Section 44 reports' were prepared for the advice of the Legal Services Agency in the year to 31 May. Under section 44 of the Legal Services Act 2000, the Tribunal provides reports on when claims are likely to be heard, which claims are grouped to be heard together, and other relevant factors.

Overall, the Waitangi Tribunal had a very productive year and progressed upwards of 511 claims in research, hearing, or preparation of Tribunal Reports. ●

Mohaka ki Ahuriri Report released *continued from page 1*



Members at the first Mohaka ki Ahuriri hearing, Tangoio Marae, near Napier, November 1996. Left to right: Roger Maaka, John Clarke, Judge Wilson Isaac (Presiding), Sir John Turei, Professor Keith Sorrenson. Absent: Dame Evelyn Stokes.

Photo: Paul Hamer



Site visit near summit of Tatarakaia April 1998. Left to right: Roger Maaka, John Clarke, Nigel Baker (claimant), Judge Wilson Isaac.

Photo: Paul Hamer



Dame Evelyn Stokes, member of the Mohaka ki Ahuriri Tribunal.

The claims also fell into three broad geographical subdivisions, roughly equal in size:

- To the north is the traditional tribal territory of Ngāti Pahauwera, comprised of a number of blocks, some of which were purchased by the Crown before 1865 and others of which were subjected to alienation after they passed through the Native Land Court in the late 1860s and 1870s. In particular, the Crown purchased a large proportion of the already-reduced land base in the early part of the twentieth century.
- In the centre is the raupatu district, confiscated by the Crown after an alleged ‘rebellion’ by a pan-hapu body of Pai Marire adherents who were attacked and defeated by the Crown and its Māori allies in two engagements in lowland Hawke’s Bay in October 1866. Much of the confiscated land was returned to Māori ownership, but in a number of cases this was not to the rightful customary owners. The Crown was also vigorous in its purchasing of the more seaward of these blocks in the early twentieth century.
- To the south is the large Ahuriri block, encompassing the area between the Kaweka Range and the site of present-day Napier, which the Crown acquired in 1851 in what the claimants alleged was a transaction more akin to a ‘treaty’ than a straight forward agreement for sale and purchase.

Overall, the Tribunal found that the Crown had acted frequently in breach of Treaty principles in its dealings over these lands. It ruled that, while the 1851 land purchases at Ahuriri and Mohaka were not ‘treaties’, they were nevertheless important political compacts given the assurances of collateral advantages held up to the sellers by purchase officials. The Tribunal found that these assurances meant that the spirit in which the transactions were entered into was – alongside the Treaty of Waitangi itself – a yardstick by which to measure later Crown

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Map: Max Oulton

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conduct. The Tribunal also found that the Crown had breached Treaty principles in its purchase negotiations over such matters as reserves, price, and the inclusion of various lands that Māori were reluctant to sell. Certain breaches were also identified in the Crown's purchase of the Waihua block from Ngāti Pahauwera in 1865.

As for the native land legislation, the Tribunal found that section 23 of the Native Lands Act 1865, which provided for the award of title to ten or fewer owners, was 'in particular violation of Māori rights under the Treaty'.

With respect to the military engagements and confiscation, the Tribunal found that there was much more the Crown could have done to keep the peace, and that there was no 'rebellion' which could have justified the confiscation. There was thus no basis for the Crown keeping certain lands out of the confiscation (since, in any event, they were not used for military settlement as the confiscation

legislation required). The Tribunal found that, in its 'return' of the rest of the land to Māori, the Crown failed in large part to grant it to the customary right-holders and, in any event, failed to return any of it under customary title. Into the twentieth century, inadequacies in their return led to a series of costly and disruptive alterations to the Tarawera and Tatarakaia block titles. The Tribunal observed that the Crown simply sanctioned this wholly unsatisfactory process, rather than solving the problem by making its own lands available to compensate those who had wrongly missed out on inclusion in the titles.

In the meantime, the Tribunal related how, both in the seaward 'returned' blocks and in Ngāti Pahauwera's remaining land-holdings, the Crown had embarked, from about 1910, on a determined land-purchasing programme that drastically reduced remaining Māori land holdings. The Tribunal found that some of the Crown's purchase methods were 'simply coercive' and that the purchasing in large part

stemmed from an 'entrenched mindset' on the Crown's part that 'saw Māori as having the potential to be little more than rural labourers or bare subsistence farmers'. The Tribunal found that assistance to Māori to develop their remaining land-holdings came more than three decades after it had been made available to individual (invariably Pākehā) land owners, and this failure to treat Māori equitably represented a breach of article 3 of the Treaty.

Overall, the Tribunal found that, where Māori retained land in the Mohaka ki Ahuriri district, it was usually infertile and remote. It concluded that 'Mohaka ki Ahuriri Māori never had the opportunities to derive full benefit from the developing Hawke's Bay economy'.

Finally, the Tribunal examined the Crown's policy of settling with 'large natural groups' of claimants. Expressing support for this policy, the Tribunal noted that it could be applied to three such groups in the inquiry district. ●

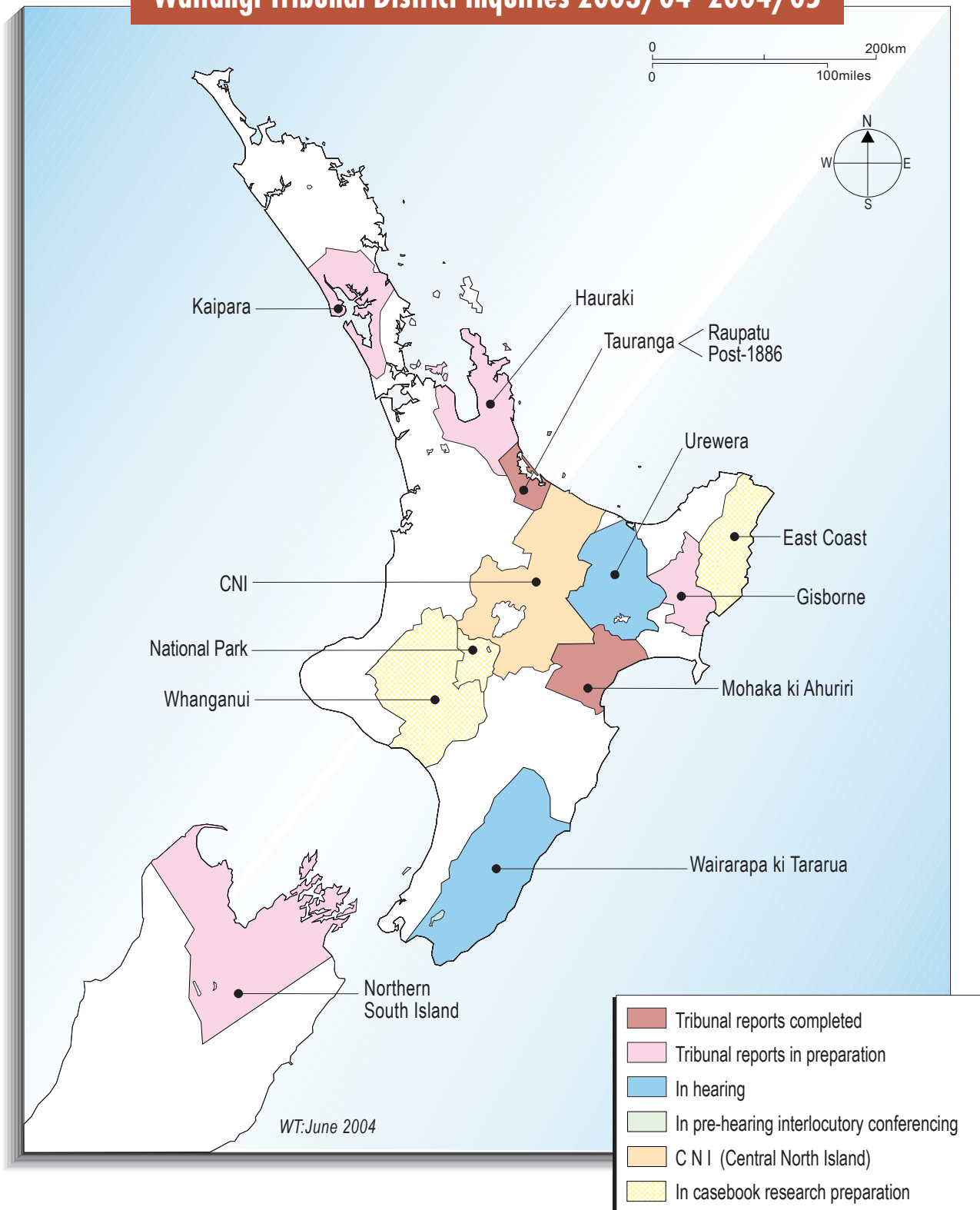
The Year To Come (2004/05)

The Tribunal has an ambitious programme set down for the next financial year. We will need to complete major district reports and district casebooks, maintain momentum in the programmed hearings, and facilitate claimants and the Crown through the process choices that need to be made. In particular, we hope to resume

the Wai 262 Indigenous Flora and Fauna inquiry, and to assist claimants and the Crown to a successful negotiation of the Central North Island claims. The Tribunal's programmes for both of these inquiries depend in part on choices yet to be made.

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Waitangi Tribunal District Inquiries 2003/04-2004/05



During 2004–5, the Tribunal plans to:

Tribunal Reports

- Publish the completed Tauranga Raupatu Report
- Complete the Gisborne, Kaipara and Hauraki district reports
- Complete Part 2 of the Petroleum Report
- Substantially advance the Northern South Island Report

Hearings

- Complete hearings for the Urewera and Wairarapa ki Tararua districts and begin the writing of their reports
- Hear and report on the Wai 55 Te Whanganui a Orotu Remedies claim
- Hear and report on any claims granted urgency

Casebooks of Evidence

In conjunction with claimants, the Crown, and CFRT, to complete casebooks for the

- Stage One Central North Island inquiry
- National Park inquiry
- Whanganui inquiry
- East Coast inquiry

Interlocutories

- Start and complete the interlocutory process for the Whanganui inquiry
- Start the interlocutory process for the East Coast inquiry

Choices to be made: Central North Island

Having completed the CNI casebook in October 2004, the claimants and Crown may opt to withdraw from the Tribunal process and negotiate a settlement. Alternatively, they may opt to continue the dual path of Tribunal hearings and negotiations in tandem. If so, the Tribunal will proceed to hear the generic issues, with hearings to be completed in March 2005. Having completed hearings, parties may opt to negotiate without benefit of a Tribunal Report, or they may opt to continue the dual path and negotiate in anticipation of a Tribunal Report. If so, the Tribunal would make its best endeavour

to meet the parties' timetable by producing a report by the end of June 2005.

Choices to be made: National Park

Having completed the National Park casebook in October 2004, the claimants may opt to withdraw from the Tribunal process and negotiate a settlement. Alternatively, they may opt to continue with the Tribunal and have their claims heard and reported. The Tribunal will endeavour to hear and report as speedily as possible, depending on the needs and preferences of the Whanganui and Taupō claimants, and the Crown.

Choices to be made: Wai 262 (Indigenous Flora and Fauna)

The Tribunal intends to put out a draft Statement of Issues for consultation with claimants and the Crown, after which a final definition of the issues would be made. Depending on the outcomes of this process, the Crown will then define its research programme for Wai 262, and inform the Tribunal of how long it will take. Depending on the timing of Crown research, the Tribunal intends to hear Crown research, third parties, and, if possible, closing submissions. It is not clear yet how much of this proposed programme can be achieved in 2004/05.

Choices to be made: Tauranga post-1886

Having reviewed the Tribunal's Tauranga Raupatu Report, claimants and the Crown will have the option of negotiating on the basis of that report and the evidence in the casebook, or of returning to the Tribunal for hearings and a report on post-1886 claims.

As will be clear from the above, the Tribunal will not be able to set its full programme for 2004/05 until parties have made their process choices in CNI, Tauranga, Wai 262, and National Park.

Who's next in the queue?

Next in the Tribunal's work programme are the Wairoa district and Northland districts. ●



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