

# Taipa sewerage claim

## 1 Outline

### 1.1 Overview And Summary Of Report

#### PART 1-OUTLINE

#### 1. OVERVIEW AND SUMMARY OF REPORT

1.1 Ngati Kahu lost most of their land for settlement last century, shortly after the Treaty was signed, but they have made some recent gains. They developed a close relationship with certain of the settler families, and in 1974 G P Adamson of Taipa, of old settler stock, gifted a significant headland to the tribe. That was followed in 1986 with the sale to the tribe of the Adamson farm at what we understood to be a concessionary price.

This claim is about certain sewerage works. It will be followed by a land claim but the sewerage scheme raises immediate problems not least of which is the siting of the treatment ponds on the Adamson-Ngati Kahu farm.

Before the scheme is examined the Ngati Kahu position is reviewed together with the history that produced their current situation. Local tribal circumstances are invariably relevant when long term plans are made. Informed decisions require a full awareness of the tribe's background, and of the extent to which the principles of the Treaty have been and can still be upheld.

1.2 Tokarau or Doubtless Bay, in New Zealand's Far North, has been the Ngati Kahu homeland since time began. That at least is a tribal perspective for the tribe was founded some seven hundred years ago when Parata arrived at Taipa from distant Hawaiiiki to meet and dwell with Kahutianui, the ancestress for whom Ngati Kahu (the descendants of Kahu) are named. They made their home on the Otengi headland beside the Taipa beach, and at Taipa a tribe was born.

We have thus an indication of the importance of that place in the Maori planning scheme.

The children of Kahu spread across the whole of the Doubtless Bay lands adopting a variety of hapu or clan names. In broad terms their settlements were in three divisions, at Karikari, the northern sentinel of the Bay, at central Taipa, the gateway to the villages of Oruru, Peria and Parapara in the hinterland, and in the eastern Taemaro ranges, where Waiaua, Taemaro and Waimahana nestled into the coastal folds.

Those broad settlement divisions still prevail but unity was based upon central Taipa. Though distanced by the circumference of the Bay, signal fires on the hilltops of Karikari, Otengi and Taemaro were a reminder that they were kindled from a common hearth.

The valley behind Taipa was the choicest part, the Taipa-Oruru river serving a line of villages strung along 22 kilometres of watery highway. Eighteenth century explorers were warned of a fighting force there 2,000 strong, suggesting a total population of 8,000 or more, so densely encamped that messages were said to pass in moments by calling from pa to pa. It was possibly one of the heaviest concentrations of Maori in the country.

The evidence today of the former Maori presence in the Oruru valley is some 57 pa sites, but little else remains. The first European visitors brought diseases unknown to Maori to whom even the common cold could mean death. The devastation was worst in thickly settled places and the Oruru population is thought to have been reduced by well over a half in less than two decades!

That is not the reason why the valley was vacated by the survivors however. Essential to any comprehension of the Ngati Kahu presence in the Bay, is a knowledge of how they lost their lands. It cannot be assumed that they freely and willingly gave them or that the tribal sentiment for certain ancestral places should be diminished by the reality of current ownership.

1.3 Population losses exposed Ngati Kahu to attack from related tribes on their western and southern flanks. When settlers and the Crown arrived there were two rival conquerors neither of whom had scored a conclusive victory over the other; but nor had Ngati Kahu been removed. The conquerors were also their close kin. The two rival chiefs of the adjoining tribes purported to prove their rights to the Ngati Kahu lands by selling them. They did so although they in fact lived elsewhere in their own tribal areas.

The Native Land Court that was established much later, put far more weight on actual occupation to determine ownership, but at that time, when 'might was right', and although the Treaty proposed a safer rule of law, it was politic for the settlers and the Crown to treat with the mighty. Some blocks sold were so large that no small scale map could encompass them.

Taipa-Oruru was most at risk for it was the best land. Needless to say the main tribal wars were fought there. In fact the last battle in the district was a part of the Oruru war fought in 1843 on the Taipa foreshore to settle the very question of who had the selling rights. Forty-six died on the beach.

The result, a draw for the two rival chiefs, was a victory for the Crown. Though both chiefs sought land reserves for themselves, the Crown paid off each to remove the belligerent Maori entirely from the Taipa-Oruru scene, and to keep it clear for the settlers.

Thus did Ngati Kahu lose the Taipa-Oruru lands, eventually without so much as a reserve for their own needs. The most they could do, in the exigencies of the time, was to concur politely in the hope of being paid or to protest mildly and have nothing.

1.4 Ngati Kahu regrouped on the lands that remained but through much intermarriage with the neighbouring rival tribes it was not until several decades later that the common tribal name was restored. The central base was sold and the focus was on the

small areas retained. Those lands were held as before in the three districts described but the holdings were so reduced in size that the traditional economies could not be maintained. The remnants of those lands are still there, and in planning for Maori needs, any planner should know where they are. They are at Karikari in the north, at Peria and Parapara in the central hinterland with Okokori on the coast, and at Waiaua, Taemaro and Waimahana in the east with holdings at Kohumaru-Kenana nearer Mangonui.

Though it was inherent in the Treaty that each tribe would retain a sufficient area for its needs, in fact the reserves were grossly inadequate and people had to leave. Through subsequent successions and title fragmentation, some areas now support no more than one or two families. Small though the lands may be for the maintenance of a tribe, they are still the spiritual base for many who have moved away. Their cultural value has intensified through the other losses sustained.

The sale of Taipa particularly rankled for it was the birthplace of the tribe at the centre of the bay. It was extremely significant therefore when G P Adamson gifted back a part of the Otengi headland in 1974, and in 1986 when the tribe acquired the main farm. For many it symbolised hopes for a tribal rebirth, especially as in the colonisation process, the reserves had been broken up and individualised and none but that now regained at Taipa is tribally owned.

1.5 Such background is important to appreciate the tribe's concerns and to understand their objections to sewerage treatment works on the Taipa farmlands, and their opposition to the loss of one hectare when so little remains.

But the sewerage scheme is symptomatic of a wider problem. For a century or so, the remaining Ngati Kahu lands were freed from further demands. The Mangonui area began with a boom that soon petered out. It became a quiet backwater as the turmoil of development passed to the distant south. In this pastoral and coastal haven of the winterless Far North, Maori and settler families were to co-exist with comparative ease.

Today however, the ancestral lands of Ngati Kahu are once more our northern frontier. Though at the end of the road, the route is now wide and the carriageway well sealed. On every useable headland and splendid beach that line the southern aspects of the Bay, homes, motels and camping grounds jostle for a share of the Bay's isolation, and development is happening all around.

Subdivisions encroach upon the Waiaua reserve at the eastern extremity, and beside the ancient cemetery a 'For Sale' sign appears. At the northern edge, where Karikari dominates the Bay, holiday homes once more abut the last bastion of Maori lands and a major resort is proposed. There is a fear that the Maori will be rated from their lands. At the centre, the sewerage scheme with its treatment works at Taipa, is symbolic of what the future may portend.

We see no reason why major development and Maori settlements cannot both be maintained. Good planning should ensure that that can be so, but the strategies required for the protection of Ngati Kahu must extend beyond the planning that District Schemes provide.

Questions of rating arise. Restrictions may be needed on the sale of Maori land. The individualised titles, totally foreign to the Maori way, have often resulted in such unusable allotments that sales are the only practical option and there is no tribal control. Maori lands may need to be specially zoned. Ngati Kahu schools and holiday camps may be required if the children of Ngati Kahu now living away, are also to enjoy their tribal lands. Most of all, work is sought.

To view the sewerage scheme in isolation is not to address the problem; it is only for reasons of urgency that we have severed this claim. Of greater interest is the relevance of the Treaty to the life at the new frontier. The situation is conceptually little different in 1988 from that in 1840 when the first settlers occupied the land. The substantive question is whether, after 150 years of experience, our understanding of the significance of the Treaty has improved, and whether our performance will still be found wanting.

1.6 In this context the Treaty is particularly important. The basic concept was that a place could be made for two people of vastly different cultures, to their mutual advantage, and where the rights, values and needs of neither would necessarily be subsumed. That is still the fundamental base from which we examine the sewerage scheme and from which we will later need to consider the developments in Doubtless Bay as a whole. It is obvious however that to achieve the objective, compromises on both sides are required and a balance of interests must be maintained.

Some things on the other hand, like lands and fisheries, could forever be retained, according to the Treaty's terms, for so long as there was a wish to keep them. It was such a small price to pay for the cession of sovereignty and perpetual settlement rights that this part of the Treaty must perforce be strictly construed. The enjoyment and continued possession of lands and fisheries was guaranteed.

1.7 The Treaty envisaged British settlements and the development of new towns. With high concentrations of people, sewerage schemes are required. We must balance in this case the record of Ngati Kahu concerns with the long saga of events behind the sewerage scheme, bearing in mind that such a scheme must proceed. The Mangonui County Council has been working to establish a sewerage scheme since 1959, but through unrelenting outside pressure the Council has had to change its plans many times and the scheme has been delayed. The Council's main problem has been to find the optimum scheme the ratepayers can afford.

Our focus however is on the Crown. The promise to protect Maori interests was made by the Crown and it is against the Crown, not the Council, that this claim must be made. It is the Crown's conditions for the delegation of its governance to a local level that require scrutiny. Did it properly pass on its treaty obligations?

The Crown has restricted local authority powers by establishing broad criteria against which district works, planning schemes and water uses can be assessed. A balancing of conflicting objectives is required but the local body is not the ultimate arbiter of its own plans. Independent bodies have also been appointed by the Crown to assess any proposals where required. They are mainly represented in the Planning Tribunal. Our concern is whether the rules laid down produce the right mix, having regard to the Treaty's terms. It is not our function to assess the performance of the judges.

1.8 Even at the outset there is a Maori complaint that the opportunity to be involved is merely by an objection procedure which operates after the local authority's plans have been drawn and publicised. The procedure is available to the public as a whole. The tribes were given a special status by the Treaty however, and the objection procedures are often inconsistent with their ways, compelling a confrontational stance.

The complaint is valid in our view but not because there is a duty to consult in all cases. It is the prior opportunity to discuss that is most especially wanting. Early discussions build better understandings in an area of cultural contact where the potential for conflict is high. Agreements may not be reached but new insights may be obtained and the subsequent debate may at least be better informed.

Nevertheless it is as wrong to blame the Council if Ngati Kahu were consulted too late as it is to discredit Ngati Kahu if their objections were not made sooner. There is a decided lack of structure by which to determine the proper tribal members to deal with, or by which an authoritative tribal position can be obtained. The Crown, in our view, has much work to do to complete its Treaty undertakings. It must provide a legally recognisable form of tribal rangatiratanga or management, a rangatiratanga that the Treaty promised to uphold.

Ngati Kahu have been prejudiced through the lack of such a design. At the time, in 1973, there was no provision for an objection to be made to the siting of the works upon the grounds of the ancestral significance of the lands. The cultural factors pertaining may well have become apparent however had prior consultations been held. The Council might at least have been forewarned, and may have taken better precautions to avoid the Taipa site despite the lack of any legal encouragement to do so.

But that in our view is not a ground for stopping the works. It does not follow that, had an enquiry been made for another location, a more suitable site would have been found.

1.9 Many matters are provided for under the general rules that the Crown has laid down, and, as we have said, independent and expert assessors have been appointed to determine debates about them.

It has been argued for example that the treatment works will unduly restrict the farming and future development of what is now tribal land. In fact the Planning Tribunal has already determined that present and future uses will not be unduly impaired. The Maori plans being no different from those that any other land owner might choose, it is not for us to find otherwise. Similarly it was contended that seepage from the treatment ponds may pollute an underground water supply and the estuary that supports fish life. That matter however has been addressed by the Regional Water Board and it has required no more than that the ponds be sealed to its satisfaction. That being the finding of a specialist body, and there having been no appeal to the Planning Tribunal, it is not for us to find otherwise. Though we have grave doubts about the sealing operations proposed, we can do no more than relay them to the Board that has undertaken to maintain a surveillance of the work.

1.10 The same may now be said of claims based upon the cultural significance of land. The planning laws now require District Schemes and Works to have regard to Maori ancestral associations and, since claims that ancestral associations, have not been adequately considered can be taken to the Planning Tribunal, there ought generally to be no need for this Tribunal to intervene.

In this case however, we must intervene. At the time this scheme was before the Planning Tribunal, it was bound by a ruling that ancestral values could not be considered unless the land were Maori owned, and spiritual values relating to water could also not be raised. That may not have constrained the particular Planning Tribunal in this case, but we accept that it may have restricted the claimants from raising contentions that might otherwise have been made. The law has since changed but in this case the damage has been done. To resolve the problem we review the complaints ourselves, though in our case, from the perspective of the Treaty, not the planning laws.

In the first instance it was said that sewerage works were inconsistent with the ancestral significance of the Taipa area. It was the birthplace of the tribe, central to the tribe's existence and the gateway to the important hinterland. Having regard to the significance of the land to Ngati Kahu and the strong cultural views on human wastes, another site should be sought in our view, if one can reasonably be found.

We would not impose an absolute prohibition on the use of the site however. Regard must be had to the actual impact. The works are proposed on the distant perimeter of a large flat where they are mainly obscured from view. In addition, the original proposal to discharge treated effluent in the Taipa area has been abandoned. It is now to be piped elsewhere. Further regard must be had to the need for the works and the financial limitations of the ratepayers. Because of the topography of the reticulated area and the longitudinal spread of the smallish population, the scheme as it stands imposes a relatively heavy cost burden. The Treaty, as we have said, envisaged a place for two peoples. To provide for that, the cultural mores of one ought not overly to restrict the needs of the other where reasonable compromises have been sought.

The second concern was that the treated effluent is now to be piped to a wetland marsh in the adjoining catchment. It was contended by some that the eventual flow of a residue of water to the Parapara Stream is offensive to Maori of the Parapara area and would affect traditional sources of food.

We accept entirely that the discharge of human wastes to water regimes that support food is abhorrent in the Maori scheme and that, in their view, such wastes should pass to the land. There is a strong biological base for that opinion but it is the breach of the spiritual ethic that causes concern. Other races share this world view; for example it is an aspect of Jewish rabbinical law.

The wetland marsh proposal however is a reasonable compromise. The effluent, already highly treated, is purified further by natural land and plant processes, to a greater extent than if the effluent were sprayed on the hills, where in this locality a high run off could be expected. It has the benefit of the earth's cleansing systems and, with good management, the Regional Water Board observed, the quality of the residue flowing to the stream should be better than the waters already there.

The complaint illustrates the need for some tolerance. Taipa is significant for many, Parapara has significance for some. It was even considered during the course of our proceedings that the whole scheme should be directed the other way, with the discharge point near Mangonui or Hiha where the reticulation scheme is to begin. But at that end we find another important Maori reserve, at Waiaua. The reality is that the ancestral lands cover the whole of Doubtless Bay.

1.11 To complete the works the site must be purchased or, if need be, compulsorily acquired. In that respect we deeply share the Ngati Kahu feeling that with so little land remaining on which to re-establish the tribe, not one hectare of their land should be affected, including that recently purchased.

It may be that Maori land should be exempt from compulsory acquisition having regard to the Treaty's terms, but we do not address that question here. A distinction must be made between land long held and that recently acquired. Land later gained may also require protection in some cases to achieve the Treaty principle that each tribe should have a proper land endowment for its needs. Planning laws in our view ought properly to recognise the retention of Maori lands and the maintenance of tribal endowments as proper national objectives, but an allowance must still be made for lands acquired subject to proposals already in train.

The treatment works have been proposed for this site since 1973, well before the land was purchased. The works have proceeded a distance, in good faith, based on the planning consents obtained, and it would be overly prejudicial to the Council if the existing rules were changed at this stage.

1.12 The main argument has been that because of the cultural significance of the land, the works should be sited elsewhere. Our concern has been that that matter was not argued at the relevant time because of the then state of the law, and that it may be too late to raise it as an objection to the taking of the land, so as to compel a greater search for alternatives than might otherwise be required.

Without wishing to encroach on the Planning Tribunal's jurisdiction, it appeared to us that the tests to be applied on an objection to the taking of the land, after its designation, may be circumscribed. The adequacy of the search for alternative sites and methods is to be assessed against the Council's own objectives, and it could be that the test is not whether there are reasonably practical alternatives that avoid the chosen site.

We therefore commissioned a consultant to review alternatives near to the Taipa area, the works having progressed in that direction beyond a point of no return. None of the alternatives proposed was clearly superior, and although each costed less at the construction stage, they required another form of treatment and greater operating expenses. They also posed other problems that could very well result in further objections from Maori and non-Maori alike, when planning consents were sought. We consider none is sufficiently free of other problems to warrant Parliamentary intervention to require the relocation of the ponds. We have weighed the alternatives with the reality that the works on the proposed site will be largely obscured from view and that the discharge will be effected elsewhere.

We find more particularly that the omission to consider the ancestral significance of the site in the planning arena, because of the then state of the law, and the possibility that the ancestral significance will not be weighed in the balance under procedures yet to be pursued, is not in all the circumstances prejudicial to the claimants having regard to the Treaty's terms. We emphasise that we make that assessment solely upon the principle of the Treaty that, to accommodate two peoples, an even balance is required. Whether the Public Works Act in fact compels a higher standard of consideration is for the Planning Tribunal to decide.

1.13 The Treaty as we have said, requires a balancing of interests in some cases, and a priority for Maori interests in others. This is one occasion where a balancing is needed and some compromises must be made. We have considered at length the background to both the tribe and the scheme and we have noted that the land was acquired after the designation was made. The scheme, we note, has been arranged and changed to reduce the cultural impacts, and the continued possession and enjoyment of tribal land and fisheries is not in the circumstances unduly encroached upon.

We therefore decline to make recommendations on this part of the claim.

1.14 That is not to say we are unmindful of the Ngati Kahu concerns. The need for Ngati Kahu to re-establish themselves on a more secure economic footing is readily apparent in reviewing their lands and the families they support. The reality too is that the relationship of Maori, their culture and traditions with their ancestral land, is best achieved if they own a fair share.

We can appreciate therefore the sad irony for Ngati Kahu. Having just recovered a most significant part of their ancestral land, they are about to lose a part for a sewerage scheme where the greater number to benefit are from the new beach settlements.

The works are thus symptomatic of a wider concern, as new developments encroach upon the formerly isolated Bay, that without proper care, Kahu's descendants may yet be condemned to city pavements as others move to the tribe's homeland. It may be crucial, if the Treaty is to work well in our time, that the tribe be better involved in planning for the Bay and that new arrangements be made for the protection and use of existing Maori lands. Those issues however ought properly to be addressed in the land claim.

1.15 The above opinions are more particularly given and are more especially based on the findings in the balance of the report that follows.

---

*Waitangi Tribunal, Department of Justice, Wellington.*