

Taipa sewerage claim

2 The Claim

2.1 Background

PART II-BACKGROUND

2. THE CLAIM

2.1 BACKGROUND TO THE CLAIM

Of many grievances affecting Ngati Kahu, this report deals with only one - a sewerage scheme with its treatment works at Taipa. Because urgency attaches to the scheme, it has been necessary to isolate this part of the claim. It ought nonetheless to be seen as part and parcel of a number of concerns that are now briefly described.

(a) The Karikari Complex

When we were first informed of an intended claim in respect of the sewerage scheme, in January 1985, we were advised as well of a proposed claim affecting a projected resort development on Karikari peninsula. At the time however, the Karikari project was at an uncertain development stage and it was agreed that that matter should be deferred.

(b) Fishing Claims

The Ngati Kahu people were involved in the Muriwhenua fishing claim that has recently been reported on (Wai 22). Indeed it is with considerable regret to the other parties involved in this case, that the fishing claim had to take priority. Although the sewerage scheme is undoubtedly urgent too, the fishing claim affected a major industry and an important national policy in the process of implementation.

(c) General Land Claims

It is claimed in this case, that a number of early arrangements were contrary to the principles of the Treaty and that compensation should be given. A similar claim by Ngati Kahu is made with other tribes in what we have called the Muriwhenua Land Claim. Both of those claims could be heard together but in each case much research is first required. Commissioned research has begun but, because of other work, has not proceeded very far.

(d) Specific Land Claims

There is a separate claim in respect of the Taemaro block in the Ngati Kahu area, part of which is said to be included in the 'lands and survey' Stony Creek farm settlement. This claim could possibly be heard with the general claims as well.

The sewerage claim that is dealt with now, was amended several times. Its final form is printed as appendix 1. The proceedings are set out in appendix 2 which gives the dates and places of hearing, the notices posted, those who appeared and the documents produced. The final form of claim is document B24.

The claim is divisible into two parts, the first relating to the sewerage scheme, the second to the general land claims. This report deals only with the sewerage scheme, but because some issues relevant to the scheme arise from land matters, an introduction to the land claims is provided.

Waitangi Tribunal, Department of Justice, Wellington.

Taipa sewerage claim

2 The Claim

2.2 Issues

2.2 ISSUES IN THE CLAIM

The claim is made by MacCully Matiu and the Ngati Kahu Trust Board on behalf of Ngati Kahu and associated tribes. The claimants object to the siting of a sewerage treatment plant at Taipa with oxidation ponds to be constructed beside a creek that flows to the Taipa river.

The Mangonui County Council, the promoter of the scheme, argued that the claimants had every opportunity to raise their concerns before but at no stage had they objected to the siting of the ponds, which is the main complaint now upon the grounds of the land's ancestral significance. The works having proceeded a distance, it was argued that the Council would be prejudiced if new complaints were allowed at this stage.

Issue 1 (on estoppel) is whether the opposition to the siting of the ponds, because of the significance of the land, could and should have been raised earlier to be settled and resolved elsewhere and whether, as a result, this inquiry should proceed.

In reply, the claimants contend the objection procedures provided in planning laws do not adequately cater for their way.

Issue 2 (on objections) is whether the claimants have been prejudiced by the objection procedures that the Crown has prescribed, and if so, whether those procedures are consistent with the Treaty of Waitangi.

Issue 3 (on consultation) is whether the Treaty contemplated instead, prior consultation with the tribes, and whether the claimants are prejudiced by any omission to provide for consultation.

The farm, on part of which the treatment works are to be located, has recently been acquired by the Ngati Kahu Trust Board. Part is to be taken for the works. A buffer zone precludes any residential development on a surrounding part.

Issue 4 (on land use) is whether the works will unduly affect farming operations and long term development plans, and if so, whether that is consistent with Treaty principles.

It is claimed that seepage from the ponds will pollute an important aquifer, or underground water source lying close to the surface. It has been a reliable water supply for the Taipa people since ancient times and it is still the main water source for those on the flats today.

Seepage, it is contended, will also flow to the Taipa river, and will pollute the large seafood resource that has also been relied upon for centuries and which is harvested by New Zealanders to this day.

Issue 5 (on Taipa waters) is whether the claimants are likely to be prejudiced by seepage from the ponds, and if so, whether the prejudice arises from any omission of the Crown inconsistent with the principles of the Treaty.

Following treatment at the ponds, the effluent is to be pumped over a rise to an artificial marsh in the adjoining catchment. Seepage from the marsh flows to the Parapara river and eventually to the sea at Aurere beach. There were some objections to the use of that watercourse, because of the actual or cultural contamination that it was claimed would ensue, but for others the Parapara route was an acceptable compromise. The principal claimant considered that the treatment works as a whole should be sited by the marsh. Nonetheless, there were some objections on this count.

Issue 6 (on the Parapara stream) is whether the discharge to the Parapara stream is prejudicial to the claimants, and whether any omission of the Crown to guard against it is inconsistent with the Treaty.

More emphasis was given to the siting of the treatment ponds. It was claimed that the pond site has special significance for the Ngati Kahu people.

Issue 7 (on the pond site) is whether the pond site has such significance for the claimants that it would be inconsistent with the Treaty to use it for the purpose proposed.

The main concern however, was not with the significance of the particular site but with the area as a whole. The Taipa lands are highly important in local Maori custom and tradition, so important it is claimed that the treatment ponds and the sewerage pipeline that feeds them, should not be placed near Taipa at all. That contention is made although the Taipa lands have not been Maori owned for over 100 years.

Issue 8 (on ancestral associations) is whether, because of any significance of the area, the location of the treatment works on the Taipa flats is contrary to the principles of the Treaty, and whether the Crown has omitted to provide proper protection for the claimants' interests.

It nonetheless appeared that the gravamen of the complaint related to the Ngati Kahu circumstance as a whole. For a number of reasons, barely of their own making, Ngati Kahu own very little of their original tribal demesnes. They once spanned the whole of the district of Doubtless Bay. Again for diverse reasons, that need to be explained, they have not held land at Taipa for more than a century, though Taipa was the birthplace of the tribe and was central to their subsequent growth.

For obvious reasons the tribe places great store on such land as remains, but since the titles are fragmented and individually owned, it is difficult to exercise any tribal control. The tribal anxiety has intensified in recent years. Much of the Bay has seen the growth of holiday homes and resorts, as the need for a sewerage scheme shows, and further development is projected, It is more necessary than before for the tribe to

hold a secure footing, the more so since many of the tribe, for the lack of land, have been forced to move away.

It has been fortuitous that with the help of one family of early settler stock, the tribe has recently acquired land at Taipa, at precisely the place where the tribe first began. It is now held as a tribal endowment for the re-establishment of the tribe, and is the only Ngati Kahu land that is tribally owned. Not unnaturally, there is consternation that it is upon the farm that Ngati Kahu has acquired that the treatment works are proposed.

Though the site for the treatment ponds was fixed well before Ngati Kahu bought the land, it is contended nonetheless that the ponds should be shifted elsewhere.

Issue 9 (compulsory acquisition) is whether, having regard to the principles of the Treaty, the Crown should permit the acquisition of the site for a public work.

Because of the broad circumstances relevant to the last two issues, we begin by examining the background to the tribe and the disposal of its lands (in chapter 3). We then balance the tribal background with the protracted saga behind the sewerage scheme. That background, and the efforts of the Council to obtain a measure of ratepayer accord, is described in chapter 4.

Waitangi Tribunal, Department of Justice, Wellington.