

Ngai Tahu Land Report

Contents



Te Wai Pounamu

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Waitangi Tribunal, Department of Justice, Wellington.

Preface

Thou hast it now! land, rents, and favouring aid
From sublunary powers; and should heaven grant
That no historic eye shall spy the matter,
The Maori wrongs shall vanish in the past,
As Maori lives in present. They depart
Like mist-wreaths of the morning; but a book
Which graves the stubborn facts on winged leaves;
Guard thou 'gainst that! for it shall tell the tale
To countless generations, and 'twere better
To do no wrong than let the wrong be proved
In the eternal blazon of the truth
(G N Rusden, Aurere-tanga, 1888)

The report which we here preface not only sets out the grievances of Ngai Tahu and the tribunal's findings on these grievances, it also explores Ngai Tahu's background and the tribe's relationship with its vast territory and its rich and diverse resources. It examines in detail the circumstances surrounding the Crown purchases, the impact of settlement and the consequences that flowed therefrom. It is the story of Ngai Tahu's search for redress, of their grievances over the past 150 years and how the Crown has responded, or more often, failed to respond.

The narrative that follows will not lie comfortably on the conscience of this nation, just as the outstanding grievances of Ngai Tahu have for so long troubled that tribe and compelled them time and again to seek justice. The noble principle of justice, and close companion honour, are very much subject to question as this inquiry proceeds. Likewise, the other important equities of trust and good faith are called into account and as a result of their breach sadly give rise to well grounded iwi protestations about dishonour and injustice and their companions, high-handedness and arrogance.

The claim is brought by Rakiihia Tau and the Ngai Tahu Maori Trust Board. They are the claimants. But the claim is really from and about Ngai Tahu, an amalgam formed from three main lines of descent which flowed together to make the modern tribe. The earliest of the three tribes was described as Waitaha, this being also a collective name given to a number of ancient tribal groups which occupied Te Waka o Aoraki (South Island). The claimant Rakiihia Tau referred to the founding ancestor as Rakaihautu o te Uruao canoe.

Archaeological evidence indicates that Maori people were in the South Island about 1000 years ago. The second tribe, known as Ngati Mamoe came from the Heretaunga (Napier) area, moved to the South Island area about the sixteenth century and gradually filtered down through the South Island to intermarry with Waitaha and to assume control. The third tribe, known as Ngai Tahu, also migrated from the eastern region of the North Island. From the seventeenth century Ngati Mamoe and Ngai Tahu tribes gradually united. We shall look at Ngai Tahu tribal structure in chapter 3 of this report.

In the opening chapter we explain the nature of the Ngai Tahu claim. In all, about 200 grievances were placed before the tribunal over the approximate two and a quarter years it took to hear the evidence. The hearings are not yet finished. There remains the task of hearing further sea-fisheries evidence before the tribunal can report on that important area of claim. It will be presented as a separate report in due course. The tribunal also proposes to issue a third report on a large number of ancillary claims. This first report concerns Ngai Tahu grievances arising from eight regional land sale transactions between the Crown and Ngai Tahu over the period 1844 to 1864 and a ninth claim in respect of the loss of Ngai Tahu mahinga kai, their food resources. These nine general headings of claim were presented to us by counsel as the "Nine Tall Trees of Ngai Tahu".

On 31 July 1844, the Crown entered into an agreement with Ngai Tahu to purchase over half a million acres of land in Otago for the sum of £2400. Over the next 20 years the Crown completed further purchases from Ngai Tahu ending with the Rakiura (Stewart Island) purchase comprising 420,000 acres for £6000 on 29 June 1864.

In total, 34.5 million acres of land passed from Ngai Tahu to the Crown for the sum of £14,750. The total area of New Zealand is a little over 66 million acres so it can readily be seen that the land area involved in these transactions was most of the South Island and more than half of New Zealand. If we ignore the last sale in respect of Rakiura, which was quite disproportionate in price to the other seven regional sales, we see that some 34 million acres of land were purchased by the Crown for £8750. In effect the Crown paid six one hundredths of one penny for each acre it purchased. In North Canterbury, two years prior to concluding the purchase of 1,140,000 acres from Ngai Tahu for £500, the government actually sold a block of land containing 30,000 acres for £15,000 which on a per acre equivalent was 1142 times more than Ngai Tahu was paid two years later. It was also more than the Crown paid for all Ngai Tahu's 34.5 million acres.

This claim is not primarily about the inadequacy of price that Ngai Tahu was paid, although as we will see in respect of the North Canterbury, Kaikoura and Arahura purchases, the claimants strongly criticised the arbitrary imposition and unfavourable terms of the purchase price. Ngai Tahu have certainly a sense of grievance about the paucity of payment they received for their land but then Ngai Tahu have always regarded the purchase price not as a properly assessed market value consideration in the European concept but rather as a deposit; a token, a gratuity. Ngai Tahu understanding and the substance of their expectations was that they agreed to share their resources with the settler. Each would learn from the other. There was an expectation that Ngai Tahu would participate in and enjoy the benefits that would flow from the settlement of their land. As part of that expectation they wished to retain sufficient land to protect their food resources. They expected to be provided with, or to have excluded from the sale, adequate endowments that would enable them to engage in the new developing pastoral and commercial economy.

This claim and this story is about that expectation. Ngai Tahu grievances therefore are directed at the Crown's failure to keep its promises, its failure to provide the reserves, the food resources and the health, educational and land endowments that were needed to give Ngai Tahu a stake in the new economy. This claim is also about Ngai Tahu's

comprehension of those areas of land they considered they did not sell to the Crown despite what the written agreements might have said. And of course, this claim is about Ngai Tahu expectations of their rights under the Treaty of Waitangi and how those rights were disregarded by the Crown in its dealings with the tribe.

In opening his claim, Rakiihia Tau spoke about his claim and the Treaty:

I hereby claim upon the principles of justice, truth, peace and goodwill for and on behalf of my peoples within the principles of the Treaty of Waitangi. (A17:5)

He later said:

It has been stated to me on many occasions by our Pu Korero that the European had offered the Maori a world free of conflict, free of barbaric practices, where all men would be equal. This was but one of the attractions advanced to encourage our ancestors to sign the Treaty and the Southern Deeds of sale. These noble thoughts were agreed to by our people in faith and trust, in expectation of the agreements made with our Treaty partner, that further lands would be allocated to our ancestors.

...On the other hand much discussion has taken place since the signing of the Treaty and the Southern deeds as to the material needs that people require for survival. This Marae, this wharenuī has heard the echoes of these complaints, the non fulfilment of the contractual agreements between the Maori and the Crown, within the Treaty of Waitangi and the Southern Deeds. That is why we appear before you so that the liabilities can be assessed as to what was intended, and to address the remedies so that we can truly say Justice has been done. (J10:2-3)

As the narrative unfolds two important features will emerge. The first is that Ngai Tahu have, throughout their active attempts to seek redress, always abided by the rule of law and used constitutional avenues to pursue their claims. The tribe has displayed restraint and dignity before this tribunal. Secondly, Ngai Tahu have always demonstrated their loyalty to the Crown and their affection for the sovereign. The head stones of two Ngai Tahu rangatira, Hone Karetai and Matenga Taiaroa, spell out that loyalty. In 1860 Taiaroa represented Ngai Tahu at the Kohimarama conference called by the governor to sound the loyalty of the tribes to the Crown. He said:

I will speak about my own Island. My Island is with the Queen. There is no person to say, Turn to one side. (F11:7)

We will see in chapter 18 several references to statements of loyalty made by Ngai Tahu leaders (18.2.3). The evidence of an historian, Bill Dacker (F11) enumerated many declarations of Ngai Tahu loyalty to the sovereign and of their acceptance of the Queen's laws. During the late part of the last century, as Ngai Tahu parliamentarians and leaders pressed for recognition of their land grievances they constantly acknowledged allegiance to the Crown. In 1903 Tame Parata said this:

the Ngaitahu tribes, the residents of the South Island, have always been loyal, and continue to be loyal and faithful to their allegiance. (F11:12)

After referring to the continuing loyalty of Ngai Tahu, Dacker concluded:

It is a sad commentary on the history of New Zealand that their loyalty was rewarded with no substantial recognition of their grievances despite nearly 150 years of effort on their part to obtain justice. (F11:12)

Ngai Tahu's attitude to the Treaty is also explained in this statement by Rakiihia Tau of his inherited understanding of the Treaty.

Article Three of the Treaty offered fellowship and brotherhood, a world where all men would be free, that we may be one people (kotahitanga) for these were the rights of all British citizens.

Article Two of the Treaty would give protection to the Maori and this was to include the protection of Maori property rights, i.e. Rangatiratanga over our mahinga kai that we desired to retain.

Articles Two and Three were our Treaty partner's commitment that would earn them the right to Kawanatanga, the right to Govern under Article One of the Treaty.

From a Ngai Tahu perspective this meant that our social order had to change from that of the rule by an Arikitunga under the old order to equality of all mankind under British justice under the new order.

By attaching their signatures to the Treaty and Southern purchase deeds, our Ancestors bound our people to the fulfilment of these undertakings. As in our view, so did the representatives of the Crown bind the Crown with their signatures. Maori custom was such that the word was our bond. The Southern Maori, as well as I think all Maoridom, were required to implement a social order recognising their commitment to the Treaty of Waitangi.

It is for this reason that Ngai Tahu Whanui had to improvise what we know as the Runanga structure. The Arikitunga of inherited rights was replaced by free elections of persons to represent their people who by the 1850s were confined to small and scattered reserves awaiting our Treaty partner to honour his word to Article Two and Three of the Treaty, to the contracts within the Southern purchase deeds, being the return of our lands, our mahinga kai.

The function of the Runanga Officers elected evolved according to Maori commitment to the principles of democracy, the equality and mutual respect of all mankind. The function of Runanga Officers was one of advising and assisting our people to those principles, being the voice of our people, to pursue and assist our Treaty partner to retain his commitment and his dignity, according to the Treaty.

Power over people was suspended voluntarily, which included abandoning the power of tohungaism. Such was the Maori understanding and commitment to the Treaty.

Our people expected that our Treaty partner would proceed in the spirit of the Treaty to protect and support our Rangatiratanga over our property rights, but instead, these rights were removed. (J10:37-38)

As we discuss the events surrounding the relationships between the Crown and Ngai Tahu at the time of signing the Treaty and as land purchases proceeded, we shall see how that history started honourably. In chapter 4 of this report we shall examine in detail events surrounding the Treaty and the directions of Colonial Secretary Lord Normanby to Governor Hobson. The instructions were explicit. Hobson was required to secure fair and equal contracts which were to be negotiated through an official protector appointed to watch over the interests of the aborigines. The duty of the protector was to prevent Maori from entering into any contracts which might be injurious to them, and no land was to be bought from them that was essential or highly conducive to their comfort, safety, or subsistence. These instructions clearly heralded the need to protect Maori from the highly adverse effects of settlement.

In chapter 5 of the report the tribunal will look in detail at the background to the purchases and the Crown's policy which directed the actions of the Crown's representatives and negotiators during the various sales. We shall see how Governor Grey and his agents ingeniously used the Crown's right of pre-emption to extinguish Maori rights to vast tracts of land in the South Island for nominal sums and pave the way for settlement. In the following 10 chapters the tribunal examines the principal grievances of Ngai Tahu arising from the respective purchase deeds. It is here that the tribunal looks very closely indeed at each of the purchases. It is here that the tribunal reaches its conclusion that the Crown failed time and time again to honour the principles of the Treaty of Waitangi. And it is here that the honour of the Crown is impeached by the actions of a few men. Instead of ensuring that Ngai Tahu were left with ample land for continued access to food resources and for developing agricultural and pastoral farming alongside the new settlers, they were confined to very small reserves barely capable of providing a subsistence living. Land which they sought to retain was denied them. Access to their mahinga kai was largely cut off.

In chapter 16 we overview the 20 years of land negotiations and how those events related to Treaty principles earlier enunciated by the tribunal in chapter 4.

In various chapters of the report as the tribunal looks at Ngai Tahu's social and economic situation both before and after the Treaty and the land purchases, we will examine the tribe's relationship with its resources. More particularly in chapter 17 we look at the impact of settlement after 1840 on mahinga kai, which as you will see, is defined by the tribunal as "those places where food was procured or produced" by the tribe.

Tipene O'Regan writes about the Ngai Tahu claim in Waitangi: Maori and Pakeha perspectives of the Treaty (1989). In his essay he states that the Ngai Tahu claim involving mahinga kai is one of the most emotionally charged elements of the tribe's grievances and further explains how commercial exploitation and use of natural resources both for tribal consumption and trade was basic to the Maori economy and to the whole social fabric of tribal and intertribal life. Although the tribunal has had to sever the sea-fisheries from this present report, nevertheless, it heard comprehensive evidence from tangata whenua and a host of professional witnesses with a wide

spectrum of skills. This section of the report is really all about the conflict that arose from the tribe's need to retain its resources and the settlers' need to develop the land. We will look at the compatibility of those respective needs and the consequences of the clash.

Following the purchases and the growing Ngai Tahu discontent with their lack of land and loss of resources including pounamu (greenstone), a series of parliamentary committees and Royal commissions investigated Ngai Tahu's complaints. From 1872 through to 1920 at least 17 separate inquiries took place. The tribunal examines the work of these various select committees and commissions of inquiry in chapter 21. It also plots the consequences of Ngai Tahu landlessness on the social and economic conditions of the tribe. The tribunal also looks at promises made in respect of schools and hospitals and at events both leading up to and emerging from the "landless natives" grants. At the end of this survey the tribunal overviews the Crown response to Ngai Tahu grievances and in a short, concluding passage, gives its finding that Ngai Tahu have established that they have major land and associated grievances. In that brief conclusion the tribunal encompasses all the findings that emerge from the detailed studies in chapters 6-21 inclusive and which are also encapsulated in chapter 2. It then remains for the tribunal to give some indication of how it sees the Crown and claimants should approach the question of redress which primarily involves the restoration of rangatiratanga. As the tribunal sees this question, the honour of the Crown can only be restored if first the honour of Ngai Tahu is restored. That is the issue which chapter 24 of this report addresses.

On 3 June 1987 the tribunal to hear the Ngai Tahu claim was constituted and it commenced its proceedings with a pre-hearing conference of counsel on 20 July 1987. The first hearing took place on 17 August 1987 and the final hearing on 9 October 1989. It can fairly be said that at the outset the seven-person tribunal, drawn from a range of professional, academic, commercial and people related backgrounds, had little knowledge of the claims and grievances they were charged to investigate. Most of the tribunal members also had scant knowledge of the constitutional history and background surrounding the land purchases of the South Island. Over the past three and a half years, as a result of the diligence of counsel and their researchers, the tribunal has received 900 submissions, has heard from 262 witnesses and 25 corporate bodies. It has been no easy task to sift and analyse the mountain of evidence. Although no tribunal conducting any historical investigation spreading back over 150 years can say with certainty that every material fact has been discovered, there is no doubt that the present inquiry has been a much more extensive and searching investigation than any earlier inquiry. But having said that, it is interesting to note the similarity of the principal findings of this tribunal and those of some earlier commissions, especially those conducted by Commissioner Alexander Mackay in 1887 and 1891.

The tribunal has been very much aware of the need to look at the situation as at the time and in light of the circumstances in which events occurred. We look at the explanations and excuses that may have justified or influenced the actions of those administrators who are now subject to serious criticism. In the end the tribunal has to apply the test provided by section 6 of the Treaty of Waitangi Act 1975. That is the function of this tribunal and by which it must be directed.

The facts related in this narrative must at least correct the widely held public view that this claim only arose because of the 1985 statutory amendment opening up claims back to 1840. That of course is not so. It has been in the hearts and minds of Ngai Tahu since 1848 and repeatedly advanced since that time by one generation after another. It is a claim that could have been avoided and should have been settled before the turn of the century. It still can be settled. The final chapter giving effect to that settlement is yet to be written.

This tribunal came to the claim with much to learn but we leave it in no doubt and in accord. We are relatively certain that, like us at the outset, the people of this nation do not understand the Ngai Tahu claim. In chapter 2 we have attempted to summarise the main grievances and the tribunal's findings on these grievances in this large claim including the eight separate purchases and mahinga kai. Our summary includes our main findings as to breaches of the Treaty and Treaty principles and on other aspects of the claim. An in-depth discussion follows in the remainder of the report. We hope our fellow New Zealanders will find time to read on.

Waitangi Tribunal, Department of Justice, Wellington.

Introductory letter to the Minister

The Honourable Minister of Maori Affairs
Parliament Buildings
WELLINGTON

Te Rangatira Winston

Te Minita Maori

Tena koe, kua eke atu nei hei piki i nga taimahatanga o te iwi i pehi tonu nei.

Ka tahi ano mai rano i a Apirana Ngata ka noho he roia Maori hei Minita Maori. Nui rawa atu nga mihi kia koe. Me te mohio iho ko koe te Matua o te iwi.

Tenei ka tangi atu ki te hunga kua riro kua ngaro ki te po. Ratou katoa, te totara, hae mata, te tawatawa titi a Turirangi Te Kani ka riro. Nga mate mai te Rerenga Wairua, ki Murihiku whiti atu ki Wharekauri. Haere! Haere! Haere ra! Toia mai! Te Waka! Ki te urunga! Te Waka! Ki te moenga! Te Waka! Ki te takotoranga! I takoto ai Te Waka-o-Maui! "Te Tino Rangatiratanga o Ngaitahu."

We place before you the tribunal's report on the Ngai Tahu claim.

The report does not contain recommendations to give full effect to the findings of the tribunal on the major grievances. We have made recommendations pursuant to section 6(3) of the Treaty of Waitangi Act 1975 on only five matters. The claimants and the Crown requested the tribunal to issue its findings on the principal issues and then leave the parties to negotiate a settlement. We agreed to that course and will review the progress made in negotiations at the end of 12 months. We shall report to you on that question in due course.

The report is also incomplete in that it does not include the sea-fisheries claim nor does it address the further 108 ancillary claims which were raised during the hearing. Both those matters will be dealt with in two later reports. We propose to report on the sea fisheries claim next as the High Court has indicated that our report may be helpful to it in several fishery actions now adjourned sine die.

Further evidence is to be placed before the tribunal on sea fisheries. Overview reports on that evidence as well as submissions from the parties and the fishing industry will be presented at hearings set down to commence on 18 March 1991.

This report examines grievances arising from the Crown purchases of Ngai Tahu lands commencing in 1844. Most of those grievances are long-standing. Many are continuing grievances. Some are of recent origin.

This claim has traversed a time-span of 142 years since Ngai Tahu first voiced protest in 1848. It has been no easy task.

The tribunal hopes that this report will provide a sufficiently definitive base to enable settlement negotiations to proceed. We are conscious that most New Zealanders, like the tribunal itself at the outset of this inquiry, know very little about the nature and extent of Ngai Tahu's grievances.

The sheer volume of evidence and submission has unavoidably resulted in a lengthy report. Because of this, and in an endeavour to create a climate of informed understanding, we have encapsulated the major grievances and findings in the first part of the report. This also has been no easy task.

The tribunal believes that with goodwill it should be possible for the parties to settle their grievances sensibly and honourably.

We believe that in the conduct of this inquiry the tribunal, with the help of the parties, has done everything possible to establish a strong goodwill base for negotiations to succeed.

May we respectfully urge however that a successful settlement will only be achieved if a responsive and far-sighted approach is adopted by both parties as an acceptable compromise is sought. We also feel that the negotiations should take place at a high level once explanatory discussions and research are complete.

We trust, sir, that you will find this report of value and that the recommendations which are contained herein, particularly those relating to the funding and reimbursement of the Ngai Tahu Maori Trust Board, can be implemented speedily.

Waitangi Tribunal, Department of Justice, Wellington.