

Ngai Tahu Land Report

25 Tribunal Recommendations

25.1 Introduction

Chapter 25

TRIBUNAL RECOMMENDATIONS

25.1. Introduction

In this chapter the tribunal sets out its recommendations made pursuant to section 6(3) of the Treaty of Waitangi Act 1975 on five matters only.

The tribunal also makes a number of other recommendations which although not directly arising from or remedying breaches of the Treaty nevertheless flow from the tribunal's inquiry and need to be addressed by the Crown.

As stated earlier in this report the tribunal at the commencement of the claim was urged by both the claimants and the Crown to make findings on the issues and to determine whether there had been breaches of any Treaty principles. We were asked to defer the question of remedies. We agreed to that course for two reasons. First, it obviated possible waste of time in both parties addressing remedies prior to the tribunal establishing whether breaches had occurred. Secondly, and more importantly, it gave the parties an opportunity, after having received the tribunal's findings, to negotiate a settlement.

The tribunal did however reserve the right to make recommendations on matters of urgency or in those cases it deemed appropriate. To that extent therefore the following recommendations are preliminary and limited. It may be necessary for the tribunal to come back to this question later should the parties fail to reach a settlement. The question of remedies is therefore reserved.

The recommendations are listed in the same chronological order as the grievances to which they relate. The reference given at the end of each recommendation is to the relevant section of the report.

Waitangi Tribunal, Department of Justice, Wellington.

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25.2 Recommendations Pursuant to Section 6(3)

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Pounamu:

1 That to remove doubts as to the ownership of the pounamu in or on the land described in section 27(6) of the Maori Purposes Act 1976 the Crown take appropriate legislative action to vest all such pounamu in the Mawhera Incorporation or such other body as may be nominated by Ngai Tahu.

2 That section 27 of the Maori Purposes Act 1976 be amended so as to vest the beds of all tributaries of the Arahura River in the Mawhera Incorporation or such other body as may be nominated by Ngai Tahu.

3

(a) That the Crown, after consultation with Ngai Tahu, negotiate for the purchase of a reasonable amount of land on either side of the Arahura River and its tributaries to their respective sources. Such land to include the banks of the rivers and to be sufficient in area to include any changes in course of such rivers and to provide access to reasonable quantities of pounamu where such may exist in or on such adjacent land.

(b) That the Crown transfer ownership of all such land so acquired and any such land already owned by the Crown to the Mawhera Incorporation or such other body as may be nominated by Ngai Tahu.

4 That the Crown transfer ownership and control to Ngai Tahu or such other body as may be nominated by Ngai Tahu (including the right to mine) of:

(a) all pounamu owned by it in land within the boundaries described in the Arahura deed of purchase dated 26 May 1860, other than any pounamu already vested in Ngai Tahu or which is vested in Ngai Tahu pursuant to our recommendations numbered 1 to 3; and

(b) all other pounamu owned by it in the Murihiku and all other blocks purchased from Ngai Tahu by the Crown.

Such transfers to be subject to the condition that all existing mining or other licences should run their normal course, to ensure that the holders of such licences are not adversely affected.

5

(a) That the Crown pursuant to section 7 of the Mining Act 1971 by order in council declare in respect of all pounamu which is the property of proprietors of privately owned land on or under the land in the districts described in the preceding paragraphs 4(a) and (b), that pounamu on or under such land shall be prospected for or mined only pursuant to the said section 7.

(b) An appropriate amendment should be made to the Mining Act that no prospecting, exploration, mining or other licence relating to pounamu shall be granted under that or any other Act to any person or body other than Ngai Tahu or such other body or person as may be nominated by Ngai Tahu (13.5.31).

Mawhera perpetual leases

6 That the Maori Reserved Land Act 1955 be amended so that the leases prescribed in that Act will:

(a) Over two 21-year lease periods convert to term leasehold those lands subject to the leases prescribed in the above Act;

(b) Immediately change from a fixed percentage rental basis to one of a freely negotiated rental subject to the Arbitration Act; and

(c) Immediately change the present rental review period of 21 years to a rental review period of 5 years in respect of commercial and rural land and 7 years in respect of private residential land (14:9:7).

7 That the lessees be reimbursed by the Crown for any provable loss suffered by them as a result of the legislative changes recommended above (14:9:7).

Waihora (Lake Ellesmere)

At the option of the claimants either:

8(a) That the Crown vest Waihora for an estate in fee simple in Ngai Tahu and contemporaneously enter into a joint management scheme with Ngai Tahu which would include such matters as:

(i) controlling the opening of the lake to improve the fishery; and

(ii) improving water quality by controlling bird population and use of land margins around the lake, control of lake usage and control of sewage disposal. The joint management scheme binding the Crown to provide financial, technical, scientific and management resources;

or

8 (b) That the Crown, in manner similar to the Titi Islands, vest beneficial ownership of Waihora in Ngai Tahu but remain on the title as trustee. The Crown then, in consultation with the beneficial owners, to make regulations for the future control and

management of the lake in manner similar to the Titi Islands regulations and to provide the resources of the kind mentioned in the first alternative to improve the fishery and water quality (17.5.2).

Wairewa (Lake Forsyth)

9 That the existing fisheries regulations giving Maori exclusive eel fishing rights over Wairewa be amended to substitute "Ngai Tahu" for "Maori" so as to return the rights to the tribe.

10 That the same regulations be amended to give Ngai Tahu exclusive rights to fish the waters leading into the lake and to cancel any other existing licences.

11 That an area of land be reserved around the eel trenches at the southern outlet which will secure Ngai Tahu rights of access.

12 That a management plan be prepared, involving Ngai Tahu as part of the decision making process along with the Department of Conservation, Regional Authority, Ministry of Agriculture and Fisheries, for the improvement of the water quality with the Crown providing the same resources as recommended in respect of Lake Waihora (17.5.3).

Financial Assistance to Ngai Tahu

13 That a sum of not less than one million dollars be made available to Ngai Tahu Trust Board to enable it to engage the necessary professional and related administrative services to prosecute its negotiations with the Crown on the question of remedies (24.6.2).

14 That the sum of \$399,168 being the costs incurred by Ngai Tahu Maori Trust Board up to 6 October 1989 in the preparation and presentation of its claim to the tribunal and as set out in a statement filed on 13 November 1989 be reimbursed by the Crown to the Trust Board. (24.7.4)

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25.3 Other recommendations

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1 Whenua Hou (Codfish Island)

That subject to prior notification and to arrangements with conservation authorities, free access be available to Rakiura Maori to visit the island but consistent at all times with the security of the wild-life on the island (15.7.4).

2 Crown Titi Islands

That beneficial ownership of the Crown Titi Islands be vested in such persons or bodies as may be nominated by Ngai Tahu and be subject to similar management regime as the beneficial Titi Islands (17.5.4).

3 Pingao

That the question of reserving the pingao plantation for Ngai Tahu on Kaitorete Spit be brought to the notice of the Minister of Conservation for consideration and action. (17.5.5)

4 Consultation in environmental matters

That remedial action be taken by government in these four fields:

(a) amendment to statutes to ensure that Maori values are made part of the criteria of assessment before the tribunal or authority involved;

(b) proper and effective consultation with Maori before action is taken by legislation or decision by any tribunal or authority;

(c) representation of Maori on territorial authorities and national bodies; and

(d) representation of Maori before tribunals and authorities making planning and environment changes (17.5.8).