

## Chapter 1

# The Geothermal Claim

### 1.1 **What the Claim is About**

- 1.1.1 This claim concerns the ownership of and the right to control the Ngawha geothermal resource. It covers the hot springs at Ngawha and the whole of the underlying geothermal resource in the Ngawha geothermal field. The field is extensive, covering between 25 and 50 square kilometres. Most of the land overlying the resource is now owned by the Crown or non-Maori owners. The claim is for the Ngawha geothermal field in its entirety. The field is located some six kilometres east of Kaikohe. The resource has the potential to generate a significant amount of electricity. Such a development is strongly opposed by the claimants.

#### *The claimants*

- 1.1.2 The claim in its final amended form is brought by the trustees of Parahirahi C1 Maori reservation for the whanau and hapu having an interest in the Ngawha geothermal resource. More specifically it is brought by named claimants for and on behalf of some ten hapu of the Ngapuhi iwi. These hapu are Ngati Hine, Te Hikutu, Te Uri Taniwha, Te Mahurehure, Te Uriohua, Ngati Rehia, Ngai Tawake, Ngati Hau, Ngati Rangi and Ngati Tautahi. These claimants have been collectively referred to as "Nga hapu o Ngawha". The claimant hapu see themselves as kaitiaki of the hot springs at Ngawha while acknowledging that the resource is shared by all of the numerous hapu of Ngapuhi.

#### *Nature of the resource*

- 1.1.3 The geothermal resource comprises both surface and sub-surface manifestations at Ngawha. The hot springs which are said to have miraculous healing powers are the principal surface component of the resource. It is claimed that Maori believed there to be an inter-connectedness between the springs at Ngawha and other surface manifestations, for example at Omapere. The traditions explain this inter-connectedness through the taniwha Takauere who is said to live at Omapere but whose tail is said to 'whip' at Ngawha and at other places. This, it is said, in traditional terms was a recognition that the Ngawha springs were not a single isolated or discrete phenomenon. In traditional Maori terms the springs are the face or eye of the resource but its whatumanawa or heart is below the ground and connected to other surface manifestations in the district. Hence the Maori tradition that the underground aquifer and its primary surface manifestation at Ngawha are parts of a single phenomenon which, it is said, they have always considered to be a taonga.
- 1.1.4 There are numerous surface features within and around the Parahirahi C1 Maori

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reservation, the adjoining Crown-owned Ngawha Hot Springs Recreation Reserve and the privately owned Spa area and Ngawha Springs Hotel, all of which are located near the centre of the known geothermal anomaly (see figure 3). These features include areas of surface hydrothermal alteration, sinter deposits, hot and cold springs, gas vents and mercury deposits. There are upwards of 30 hot springs, many of which are used for bathing. There are several other sites in the region where warm springs have been identified. These include springs known as the Kaikohe Warm Springs on the Kopenui stream about three kilometres north-east of Kaikohe; Lake Omapere Hot Soda Spring, a man-made dug pool on the shore flats of Lake Omapere about six kilometres north-north-east of Kaikohe; Neilson's Soda Springs near Highway 12 about two kilometres north-north-west of Ngawha Springs village and Te Pua Springs located about four and a half kilometres north-north-east of Kaikohe. There appears to be a difference of opinion among scientists as to the relationship of these discharges to the Ngawha geothermal reservoir (A31:36; B37:9).

### *A taonga of nga hapu o Ngawha*

- 1.1.5 The claimants say the Ngawha geothermal resource is a taonga. They reject the notion that the resource is in some way severable or divisible. The resource is seen by them as one entirety, the surface and sub-surface components being inextricably linked one to the other. In short, it is viewed as one holistic whole.

### *To whom does the Ngawha geothermal resource belong?*

- 1.1.6 Kaumatua witnesses for the claimants consider that the taonga belongs to the hapu of Ngapuhi. From time immemorial it is said, the hapu of Ngapuhi and beyond have attended the springs of Ngawha to partake of their healing powers. The hapu of Ngawha, as kaitiaki of that resource, have nurtured it so as to ensure continued access. Management and control of the resource and hence rangatiratanga is, however, said to be the prerogative of the hapu of Ngawha, the people on the ground.

## 1.2 **Development of the Claim**

### *First Ngawha geothermal claim (Wai 53)*

- 1.2.1 On 9 March 1989 a claim dated 5 February 1989 by Wiremu Tairua was received by the tribunal. The claimant was at the time chairman of trustees for the Parahirahi C1 trust. He is a member of Te Uriohua and Takotoke hapu of Ngapuhi and brought the claim on behalf of himself, his two hapu and other hapu of Ngapuhi namely, Ngati Rangi, Ngai Tawake, Ngati Kura, and Matarahurahu. The claimants sought the return of substantial parts of the former Parahirahi block on part of which were some of the Ngawha springs. In particular, they sought the return of four acres formerly part of Parahirahi C block. This is now vested in the Crown and known as the Ngawha Hot Springs Recreation Reserve. They claim that the owners did not agree to the sale of this land or of the hot springs situate on it. In addition the claimants sought a recommendation that the Crown should not enter into any arrangement or agreement with other parties to prospect for or license geothermal bores without the agreement of the Maori owners of those geothermal areas.

***Second Ngawha geothermal claim (Wai 123)***

1.2.2 In December 1989 a claim dated 12 December 1989 was filed with the tribunal by Charles Brown and Susanne Robertson both of the Te Uriohua hapu of Ngapuhi for themselves and certain direct descendants of their hapu. Their claim was made in association with that of Mr Tairua (Wai 53) and was said to be in essence the same as that of Mr Tairua with the added point that, with regard to the original ten owners of the Parahirahi block, they claimed direct connections to that group by virtue of the fact that one Rukia Koao was a member of the original ten owners.

***Third Ngawha geothermal claim (Wai 153)***

1.2.3 On 6 May 1991 an amended statement of claim, Wai 153, on geothermal resource rights was filed with the tribunal on behalf of the foregoing claimants in Wai 53 and Wai 123 and also some 18 other claimants belonging to Te Arawa and Ngati Tahu. The claim sought findings as to the ownership of the geothermal resource in areas covered by the various claims and recommendations that no geothermal licences or resource rights be granted or existing uses continued that affect hydro-thermal fields in which Maori retain an interest without the consent of the Maori owners and that appropriate amendments be made to existing legislation.

***Request for an urgent hearing***

1.2.4 On 2 September 1992 the tribunal received a request from counsel for the Wai 53 claimants for an urgent hearing of claims concerning the Ngawha geothermal field. The claimants were concerned that resource consents were being sought by a joint venture comprising the Bay of Islands Electric Power Board and the Taitokerau Maori Trust Board under the Resource Management Act 1991 to exploit the Ngawha geothermal resource for the purpose of electricity generation. They are opposed to such a development. The tribunal agreed to the request for an urgent hearing.

***Fourth Ngawha geothermal claim (Wai 304)***

1.2.5 On 8 September 1992 a new and final statement of claim was filed on behalf of the trustees of Parahirahi C1 Maori reservation as noted in 1.1.2 above. This followed the tribunal granting an urgent hearing. The new statement of claim was filed in substitution for claim Wai 53 and the amendment to that claim in Wai 153 referred to in 1.2.3. The new claim was separately registered as Wai 304.

1.2.6 The new statement of claim seeks findings by the tribunal that:

- the Treaty guarantees ownership and rangatiratanga in respect of the Ngawha geothermal resource ("the resource") to nga hapu o Ngawha;
- ownership and rangatiratanga of the resource do not depend upon title in the surface land;
- the resource may not be exploited by third parties without the prior consent of nga hapu o Ngawha;

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- the right to manage the resource is, in terms of Treaty principles, vested in nga hapu o Ngawha;
- nga hapu o Ngawha retain ownership of and rangatiratanga over the resource;
- the acquisition of surface title by the Crown pursuant to acts, policies and omissions in breach of principles of the Treaty did not involve the transfer of Maori ownership of the resource;
- the clear Maori intention to reserve Parahirahi C containing the Ngawha springs in Maori title is conclusive evidence of the Maori intention to retain the resource; and
- the grant of resource consents to the joint venture applicants would be in breach of the claimants' rights of ownership and rangatiratanga over the resource unless and until the consent of nga hapu o Ngawha is procured.

In addition, the claimants sought an urgent recommendation that the Far North District Council and Northland Regional Council should not proceed to consider the joint venture applications until the claim is heard and reported upon by the tribunal.

- 1.2.7 On 9 October 1992 an amended statement of claim (Wai 58) was filed by Sandra Gates on behalf of Matilda Saies and hapu and Tarawau Kira and hapu seeking that claim Wai 304 be extended to include the interests of the iwi of Ngapuhi ki Whaingaroa. No evidence was given or submissions made in support of this claim.

### 1.3 **Reports Commissioned by the Tribunal**

- 1.3.1 At the request of the claimants the tribunal commissioned Nicole Butler, Thomas Lumb, Te Aroha Henare, Richard Boast and Morris Love, to investigate and report at the tribunal's expense into land history, scientific questions, kaumatua evidence, customary tenure and the geothermal resource and the impact of the Resource Management Act 1991 respectively. In addition the tribunal commissioned Rosemary Daamen, a tribunal researcher, to report on the title origin, devolution and block histories of the lands that encompass the Ngawha geothermal field;<sup>1</sup> Judge Kevin Cull to provide an overview of the work of Ms Daamen; Professor Patrick Hohepa to provide a report on his understanding of the linguistic and traditional background of the terms ngawha, waiariki, ngawhaariki and of the traditional evidence of the discovery of the Ngawha geothermal field and related matters and Dr David Williams to provide a legal opinion on certain statutory provisions relating to the Crown purchase of the greater part of the Parahirahi block.

All such commissioned reports were subsequently produced in evidence before the tribunal.

1.4 **When and Where the Claim was Heard**

1.4.1 The first hearing of the claim took place at the Kotahitanga marae, Kaikohe, between 12 and 16 October 1992. Prior to the hearing, extensive public notice was given and in addition notice was sent to interested persons and bodies. Particulars are recorded in the Record of Hearing (appendix 2). Opening submissions were presented by counsel for the claimants. The claimants were represented by Joseph Williams assisted by Victoria Petraska. Malcolm Parker assisted by Annsley Kerr appeared for the Crown. Peter Salmon QC represented the joint venture partnership of the Bay of Islands Electric Power Board and the Taitokerau Maori Trust Board. At this hearing extensive evidence was given by kaumatua (see appendices 2 and 3) and in addition by Mr Boast, Ms Butler, Mr Lumb and Mr Love. During the week the tribunal inspected the hot pools at the Ngawha Hot Springs Recreation Reserve and on the Parahirahi C1 Maori reservation and Lake Waiparaheka, Lake Omapere and well Ng 13.

The second hearing took place at Kaikohe between 14 and 18 December 1992 when Mr Williams assisted by Mrs Petraska appeared for the claimants; Mr Parker assisted by Harriet Kennedy appeared for the Crown and Mr Salmon appeared for the joint venture. Evidence was heard from witnesses on behalf of Wai 123 including the kaumatua Hita Hape and Victoria Brown, Mrs Robertson, Raymond Edwards and Te Ruru Ihaia Kahiwai. Evidence relating to Wai 304 was given by Professor Hohepa, Judge Cull, Ms Daamen and Dr Williams (the latter two read with consent of counsel by Thomas Bennion, a tribunal legal officer). Mr Salmon called evidence from Sir Graham Latimer, David George, Roger de Bray and Dr Arnold Watson. Margaret Beadle, one of the owners of the Spa Hotel property at Ngawha Springs on the adjoining Tuwhakino block, gave evidence in opposition to the joint venture and as to her family's ownership of their property including the hot springs thereon. Mr Parker made an opening statement for the Crown on 16 December and later called evidence from Craig Lawson, Dr Donald Loveridge and (by consent) the evidence of Dr Douglas Sheppard was read by Ms Kennedy. During the week the tribunal inspected the hot springs and lake on Mrs Beadle's Tuwhakino block property and also the Ngawha recreation reserve adjoining the Parahirahi C1 Maori reservation.

On 20-21 January 1993 in Auckland the tribunal heard final submissions from counsel for the claimants, Nicola Ngawati for Ms Brown and Mrs Robertson (Wai 123), counsel for the joint venture and for the Crown.

1.5 **Recommendations**

The role of the tribunal has been to determine whether, and if so to what extent, the Crown has acted in breach of Treaty principles in respect of its acquisition of the land and hot springs now part of the Ngawha recreation reserve and whether the provisions of the Geothermal Energy Act 1953 and the Resource Management Act 1991 are inconsistent with the principles of the Treaty and if so, whether claimants' interest in the Ngawha geothermal resource has been or is likely to be prejudicially affected by any such breaches. Our conclusions and recommendations are brought together in chapter 8.

**References**

1. This was later limited to the Parahirahi block.