

Rangiteaorere Land Claim

2 - Overview

1 - Summary And Recommendations

Summary and Recommendations

Te Minita Maori
Te Rangatira

Tena koe, Nga mihi nui kia koe me to tatou Kawana kua tu nei. Tenei ka mihi atu hoki ki o tatou aitua maha kua huri atu ki tua te arai. Tu mokemoke ana te Kawana me te Roopu Whakamana i te Tiriti te hinganga o te totara-hae-mata a Turirangi Te Kani. Aue! Tatou katoa kua riro! Haere ra! Haere ra!

"Te tangata e mahi ana i tona oneone ka makona i te taro. Tena ko te tangata e whai ana i te hunga tekateka noa kahore ona ngakau."

Ngati Rangiteaorere's claim concerns events which began in the year before the signing of the Treaty. In the late 1830s the Anglican Church Mission Society was seeking a secure base to continue its missionary work with the iwi of Te Arawa. These were turbulent times and the mission had already lost its first home during inter-tribal warfare.

In September 1839 the missionaries entered into an agreement with Te Arawa over a piece of land at Te Ngae. The missionaries believed that they were buying the land but the Maori involved and the owners of the land, Ngati Rangiteaorere, considered they were transferring much less than the complete ownership of the block.

After the Treaty all land purchases which had occurred before the coming of the Crown were examined by a Land Claims Commission to see if they were valid. Only one of the Te Arawa signatories to the deeds, and not a member of the hapu who owned the land, was able to give evidence. The commissioner, Edward Godfrey, did not and could not recommend an award of land to the CMS. He did however consider that a sale had taken place.

In 1854 acting Governor Wynyard issued a Crown grant to the CMS, but there had never been a proper investigation of the original purchase. The Crown had not properly investigated whether Ngati Rangiteaorere had sold the land, before it issued a title to the Church. The issuing of the grant also appears to have been invalid. Ngati Rangiteaorere were deprived of their land without adequate consultation or consent, in breach of article 2 of the Treaty of Waitangi.

The land is still owned by the Church and administered by the Anglican Church Mission Trust Board. The mission abandoned the land even before the Crown grant was issued, and the tribe reoccupied the block until it was leased in the 1870s. It has continued to be leased until the present, and the revenue used for pastoral purposes.

The Church wishes to hand the land back to the tribe, an action which the tribunal fully endorses and commends. However there is a problem. When the Crown grant was issued, it was subject to a trust which said that the land was to be used for the benefit of the poor and needy throughout New Zealand and any of the Pacific Islands. For the land to be used by the claimants the title should be freed from this trust. Neither the Church nor Ngati Rangiteaorere were responsible for the imposition of this trust and the return of the land requires a new tribal trust be created. This is best achieved by legislation and the tribunal considers that the Crown should provide this legislation.

The tribunal has turned down a request by the claimants that it recommend punitive damages for the loss of the land, but it has recommended that compensation be paid to Ngati Rangiteaorere for loss of revenue over the period that the land has been leased by the Church.

There were a number of ancillary matters which the claimants raised as part of their claim. Two of these related to Lake Rotokawau and we are pleased to report that one of these has been resolved by negotiation between the tribe and the other party involved. A number of small claims relating to individual pieces of land lost to Ngati Rangiteaorere have also not been pursued by the claimants, as the evidence on these blocks has unfolded.

However the tribunal has considered a number of ancillary matters and made findings and recommendations where these were appropriate.

(a) The rating of Lake Rotokawau was the result of a deliberate attempt by the Crown to punish the owners for not parting with the lake. We have recommended that the Crown repay any rates which have been paid and make good any arrears.

(b) Some of Ngati Rangiteaorere's lands were taken for roading at the end of the last century under the Maori Land Court Act 1886, which allowed the Crown to take Maori land for roads without compensation. If European land was taken by the Crown under the Public Works Act, compensation was paid. We considered the taking of the tribe's land without compensation a breach of both article 2 and article 3 of the Treaty of Waitangi, and have recommended that this long standing breach be finally remedied by the payment of compensation.

(c) There are two pieces of land which the Crown is already considering returning to Maori ownership.

(i) A piece of closed road near the junction of the Rotorua-Tauranga Rotorua-Whakatane highways has been offered back at a sum of \$2000. The tribunal supports this offer as fair and reasonable.

(ii) A sliver of land between the main highway and Whakapoungakau 7 blocks is owned by the Crown as a result of road realignment. This strip prevents access to the Maori blocks. The Crown has offered to return this land to the adjoining blocks for \$7200. As this land was originally part of the CMS block we have recommended that this land be transferred at no cost to the owners.

The tribunal did not consider a claim relating to the taking of land for survey costs.

Lastly, the claimants have a long association with the Tikitere geothermal resource. They raised issues relating to the ownership and control of this resource. The tribunal did not investigate these matters. They may well be dealt with later by another tribunal in conjunction with claims by other Maori in relation to other geothermal resources.

The tribunal has made the following recommendations under section 6 of the Treaty of Waitangi Act 1975:

With regard to the Te Ngae mission farm

1 We recommend that the Crown at its expense in all things legislate to effect the following:

(a) The vesting of the Te Ngae Mission Farm, plus such other adjoining land that the New Zealand Mission Trust Board and Waiapu Board of Diocesan Trustees wish to add, in the eponymous ancestor of the claimants, Rangiteaorere.

(b) The status of such land be Maori freehold land as defined in the Maori Affairs Act 1953.

(c) The land be freed from the present trusts.

2 We recommend that the Crown should commission an actuary to calculate the rentals that Ngati Rangiteaorere would have received had they, rather than the Church, leased out the land from 1 July 1875, the commencement date of the first lease, until 1 September 1990, the culmination date of the last lease, with this sum adjusted to take into account the loss of the use of the rental money throughout the period. However the sum should be reduced by 5 per cent, in acknowledgment of the fact that Ngati Rangiteaorere received some benefit of church activities, partly funded by its rentals from Te Ngae, and because they also had some minor use of the land while it was leased, probably until the 1920s.

With regard to the rating of Lake Rotokawau

3 We regard the Crown's action in advising the Rotorua County Council to levy rates a clear breach of the principles of the Treaty. We recommend that the Crown refund the beneficiaries of Whakapoungakau 4C any rates they have paid over the years, plus interest, and also pay any outstanding arrears.

With regard to roads taken without compensation

4 We recommend that the Crown commission a registered valuer, acceptable to the claimants, to value the land in the public roads taken from Ngati Rangiteaorere without compensation, at the dates of acquisition, with the valuation updated by actuarial calculations to the present to take into account the loss of use of the money. The aggregate sum, to be paid as compensation to Ngati Rangiteaorere.

With regard to lands surplus to highway requirements adjoining Whakapoungakau 7

5 We recommend that these slivers be returned to the adjoining blocks, without any cost to the owners concerned.

DATED this 18th day of December, 1990.

H K Hingston, presiding officer

P K Sorrenson, member

Sir M E Delamare, member

Waitangi Tribunal, Department of Justice, Wellington.

Rangiteaorere Land Claim

2 - Overview

2 - A Claim From Ngati Rangiteaorere

A Claim from Ngati Rangiteaorere

2.0.1 On 14 April 1987 the tribunal received a claim from the following on behalf of Ngati Rangiteaorere of Te Arawa:

Te Aho Welsh
Amarama Te Kirikaramu
Tuku Hohepa
Ngana Te Kirikaramu
Ngawai Dulcie Hapeta
Dr Ngahuia Te Awekotuku
Montigue Rangiteaorere Curtis
Constance Mary Ganderton
Bonita Makarena Morehu
James Te Kiri
Pirihira J Fenwick
Rauawa Manahi

Their claim concerned the Te Ngae mission farm, a block of land consisting of just over 300 acres at the junction of the Rotorua-Tauranga and Rotorua-Whakatane highways. The block is illustrated in figure 1. The land had been granted to the Church Mission Society in 1854 on the basis of agreements made between their tupuna and Anglican missionaries in 1839, just prior to the Treaty of Waitangi. According to the claimants the land had not been sold, but was gifted to the church, for however long the tribe wished to maintain a mission on the site. The Church received a Crown grant, which gave it title to the land under the terms of a trust, which did not allow for the land to be returned should the mission station close. Nor did it acknowledge the tribe's right, as the claimants saw it, to continue to use the land. The claimants sought the return of the land:

To our way of thinking, we supported the Church in its time of need, the Church has had our Land for a century without benefit to us, we have the need now and it is right - morally and in custom - that that part of the Land as remains, should now return to us. (see appendix 1.1)

2.0.2 On 1987 Mr Paora Maxwell was commissioned by the tribunal to examine the history of the church mission farm at Te Ngae, both from written documentary records and from the oral traditions of the claimants. His report was filed on 11 February 1988 and was distributed to parties.

2.0.3 Mr Maxwell's report raised some doubts as to the validity of the original 1854 Crown grant. Because the land was the subject of a pre-1840 land purchase it appeared that the Crown grant should have been issued on the basis of the Land Claims Ordinance, following a hearing of the claim by a land claim commissioner. Mr Maxwell's research indicated that the Crown grant had been issued, despite the fact that the commissioner involved, Commissioner Godfrey, had not recommended a grant because he had insufficient evidence on which to make such a recommendation. The Crown historian, Ms Stephanie McHugh, later suggested that the Crown grant may have been issued on grounds other than the Lands Claims Ordinance.

2.0.4 On the basis of Mr Maxwell's research the claimants filed an amended statement of claim on 12 April 1989. They claimed that the issuing of the Crown grant was a unilateral act by Governor Grey, not based on the Lands Claim Ordinance, and done without consultation with Ngati Rangiteaorere. They further claimed damages from the Crown for the loss of use and occupation of the land and general damages for the alienation of the land without the tribe's consent.

2.0.5 A number of ancillary matters were also raised concerning Lake Rotokawau. This lake is shown in figure 2. It was claimed that when the land surrounding the lake had been converted from bush to farm land, under one of Sir Apirana Ngata's land development schemes, Ngati Rangiteaorere had been concerned to preserve their lake in its natural state ensuring that the bush was retained from the shore of the lake to the skyline. According to the tribe, when surveys were applied to the surrounding farm blocks it was found that one of the adjoining farms had title right to the shoreline of the lake. This the claimants alleged, was wrong. They maintained that the chief surveyor, in approving the plans of the survey for the lake and surrounding blocks, denied Ngati Rangiteaorere the full, exclusive and undisturbed possession of their lake and surrounding lands. Furthermore they claimed that a road had been built up to the lake without consulting the tribe and without consent, allowing public access to the lake as if it was a publicly owned lake and not the property of Ngati Rangiteaorere. The claimants sought return of the land running down to the lake and no longer in their possession, or right of access across this land. They also sought the closing of the public road and return of title to them, and that the lake be exempt from rating.

2.0.6 Mr Bill Patrick, a retired registrar of the Maori Land Court, was commissioned by the tribunal to prepare a report on this issue and his report was received by the tribunal and distributed to parties. Following the first hearing the claimants and Kiwi Ranch, the present owners of the block concerned, reached agreement over these problems and this part of the claim was withdrawn, although the tribunal heard further evidence on the rating of the lake and has considered the issue in this report.

2.0.7 The first hearing was held at Mataikotare marae and the Maori Land Court in Rotorua in the week beginning 4 December 1989, following a conference of parties held in Wellington on 13 November 1989. Details of notice and appearances are provided in appendix 4. At that hearing the tribunal heard submissions from kaumatua of Ngati Rangiteaorere and the research reports of Mr Maxwell and Mr Patrick were presented. The tribunal also took the opportunity to examine the mission farm, Lake Rotokawau and other blocks of interest to the claimants.

2.0.8 At this hearing a number of additional matters were raised, including Ngati Rangiteaorere's rights to thermal resources located on or about the Tikitere B block, commonly known as "Hell's Gate". It was alleged that the Crown was shortly to introduce resource law management legislation, and the claimants maintained that they were entitled to be consulted on this issue prior to the introduction of any such legislation. Following these representations the tribunal issued an interim report to the Minister of Maori Affairs, recommending that government not introduce legislation that dealt with geothermal resources issues until Maori who had customarily utilised these resources had been consulted.

On 2 April 1990 the claimants provided further particulars of their geothermal claims (appendix 1.3). They maintained that the geothermal resource associated with Tikitere B block, owned by Ngati Rangiteaorere, was a taonga, as described in article 2 of the Treaty of Waitangi. They also maintained that any management regime that did not take full account of the views of the tangata whenua was contrary to the principles of the Treaty, and that the Geothermal Energy Act 1953 was contrary to these principles in that it vested the right to use and control geothermal resource in the Crown. They claimed the right to control the Tikitere resource, either alone or in conjunction with the regional authority, called for licences to use the resource to include a requirement that the licensee conduct research on the capacity of the resource. They also claimed that the tangata whenua should be an equal party to the licensing of the resource and be entitled to an equal share of any licence fees or royalties.

The claimants requested that the tribunal defer hearing of this issue until they had had the opportunity of making submissions to the select committee examining the Resource Management Bill and of seeing if any further amendments to the Bill took their view into account.

2.0.9 A number of issues which arose from the two commissioned reports were also raised at this hearing. These included lands taken for survey cost and lands taken for roads without compensation. A number of small ancillary matters which were of concern to some of the claimants were also raised. These related to small pieces of land taken mainly for roads and now no longer used for these purposes. The tribunal issued a memorandum on 15 December 1989 (A9), which listed some of these ancillary matters and the Crown and claimants filed joint memoranda on these matters in 23 February 1990 (A11). Preliminary papers were filed for the Crown by Sister Josephine Barnao on Lake Rotokawau (A15) and on the survey costs for the Whangapaungakau-Pukepoto blocks (A17), and Ms Stephanie McHugh on the Te Ngae mission block (A14). A paper was also filed for the Crown by Mr David Alexander on an allegedly "lost" portion of the Tikitere B block (A16). As a result of this paper the claimants did not pursue this matter further.

2.0.10 The second hearing was held at Mataikotare Marae, Rotorua, from 16 to 17 July 1990, to hear evidence from the Crown. Very detailed reports were presented by Ms McHugh, on the Te Ngae church mission block, and by Mr Alexander on other matters relating to Ngati Rangiteaorere lands, including lands taken for roading and for survey costs.

2.0.11 Final submissions were made at the Maori Land Court at Rotorua on 27 August 1990. The claimants' final submissions, in response to the final submissions of the Crown, were filed by memoranda on 4 September 1990.

2.0.12 Although this claim involves only a few blocks, the history of these blocks is involved and complicated, much of it going back to the time of the Treaty itself. That the tribunal has been able to examine these matters in such detail has been due to the professional research presented by Messrs Maxwell, Patrick and Alexander and Ms McHugh. The Crown's witnesses presented their evidence as they found it, openly acknowledging fault where the evidence indicated it and ensuring that the tribunal had before it all relevant evidence that could be located.

Waitangi Tribunal, Department of Justice, Wellington.