

Te Roroa Claim

08 He Whakamutunga (The Ending)

8.1 Findings

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HE WHAKAMUTUNGA (THE ENDING)

8.1. Findings

Findings Take Page

In accordance with: Preface vii

(a) s5(2) of the Treaty of Waitangi Act 1975 Kaupapa 23 ff
authorising us "to determine the meaning
and effect of the Treaty, as embodied in
the two texts", and

(b) s6(1) which confers jurisdiction
to hear claims by Maori that they have been
prejudiced by Crown policies, practices or
omissions which have been or are
"inconsistent with the principles
of the Treaty",

we find that the Crown was or is in breach
of the Treaty as follows:

THE DENIAL TO TE ROROA OF THE BENEFITS OF THE CROWN'S POLICY OF BORROWING FOR DEVELOPMENT

The implementation of Vogel's policy in 2.1 55 ff
the claim area to the disadvantage of 3.3.4 126 ff
tangata whenua by directing public works 5.3.2 186 ff
to the development of extractive
industries and farming without
corresponding state assistance to existing
Maori communities.

THE UNFAIR METHODS EMPLOYED BY THE CROWN IN THE PURCHASE OF TE ROROA LANDS (1876)

(a) The undue pressures exerted by the 2 55 ff
Crown on tangata whenua to sell
MAUNGANUI-WAIPOUA-WAIMAMAKU lands,

for example, by paying tamana and exploiting traditional rivalries.

(b) The Crown's misrepresentation of 2.2-7 60 ff total acreages and boundaries of MAUNGANUI-WAIPOUA-WAIMAMAKU lands negotiated for sale by incorrect and undisclosed survey plans and deeds of sale.

(c) The Crown's failure to ensure that 2.4-6 74 ff vendors understood the deeds of sale in respect of the MAUNGANUI, WAIPOUA NO 1 and WAIMAMAKU NO 2 blocks before they signed.

(d) The Crown's failure to reserve 2.2-4 60 ff MANUWHETAI and WHANGAIARIKI as 3.3.2 121 ff agreed with tangata whenua from the sale of the Maunganui block.

(e) The Crown's failure to set aside 2.2-4 60 ff MAUNGANUI BLUFF as a reserve for 3.3.3-4 123 ff tangata whenua through its failure Appendix 4 351 ff to complete the survey prior to sale.

(f) The Crown's failure to reserve 2.2 60 ff KAHARAU and TE TARAIRE as agreed 2.6 81 ff with tangata whenua from the sale 3.3.5 128 ff of Waimamaku No 2 block.

(g) The Crown's failure to include an 2.7 86 ff additional piece of land on the 3.2.4 116 ff southern boundary of the WAIRAU 3.3.6 133 ff Native Reserve through the unilateral use of an earlier survey plan not agreed to by tangata whenua.

(h) The misrepresentation by the Native 2.3-4 70 ff Land Court as to absolute ownership 3.2.2-3 99 ff of WAIPOUA NO 2 and TAHAROA intended to be held as native reserves.

(i) The failure of the Crown to 3.2.1-3 93 ff implement the intentions of tangata whenua to retain KOUTU, WAIPOUA NO 2 and TAHAROA as hapu estates.

(j) The issue by the Crown of titles 3.2.2-3 99 ff to individuals in absolute ownership contrary to the intentions of tangata whenua that land be held in customary title.

THE CROWN'S FAILURE TO MAKE PROPER PROVISION FOR NATIVE RESERVES

(a) The failure of the Crown to set 2.4 74 ff aside sufficient land for the 2.6 81 ff present and future needs of tangata whenua in breach of its Treaty and 5 171 ff statutory obligations.

(b) The Crown's failure to exclude wahi 3.3.1-2 117 ff tapu from sale contrary to the 3.3.4-6 126 ff intentions of tangata whenua. 4.6 158 ff 6.5.2 229 ff

(c) The actions of the Crown in 4 139 ff purchasing land in WAIPOUA NO 2 (Waipoua Native Reserve) and in denying tangata whenua the means to support themselves.

(d) The actions of the Crown in 3.2.3 108 ff purchasing the TAHAROA NATIVE 5.2.3 173 ff RESERVE and denying tangata whenua possession of a traditional food resource.

(e) The failure by the Crown to reserve 3.3.1 117 ff the traditional and complementary 5.2.6-7 176 ff kai moana source for tangata whenua at Kawerua.

THE FRAGMENTATION AND PURCHASE OF WAIPOUA NO 2 BY THE CROWN

(a) The Crown's adoption of 4 139 ff unprincipled land purchase methods and abuse of statutory power in the acquisition of land in WAIPOUA NO 2 block.

(b) The Crown's failure to extend to 4.2.8 148 ff tangata whenua the same rights as 4.2.10 149 ff were enjoyed by British subjects 4.3-5 149 ff generally, by the establishment and 4.7.3 160 ff

the administration of the Native Land Court without ensuring that the legislation required that persons appointed as judges and commissioners had proper qualifications for the competent performance of their functions.

(c) The Crown's imposition of excessive charges and court costs enforced by survey liens for the investigation and issue of title denying to tangata whenua the access to justice enjoyed by British subjects generally.

(d) The Crown's purchase from tangata whenua of land and timber at unconscionable prices.

(e) The Crown's abuse of its power to issue proclamations denying tangata whenua the rights of ownership enjoyed by British subjects generally.

(f) The Crown's attempts to justify its policy of acquiring interests in WAIPOUA NO 2 by creating and perpetuating the myth that tangata whenua were a menace to the Waipoua Forest Sanctuary.

LOSS OF MANA AND THE DESTRUCTION OF A COMMUNITY

(a) The Crown's denial to tangata whenua of their traditional garden area by the acquisition and retention of the alluvial flats adjacent to the WAIPOUA RIVER for forestry operations.

(b) The Crown's trespass on tangata whenua property for the purpose of extracting gravel from the WAIPOUA RIVER.

(c) The Crown's progressive depletion of sources of traditional food and fresh water at WAIPOUA by the

excessive removal of gravel from the river.

(d) The Crown's persistent harassment of 4.4 151 ff residents of the WAIPOUA SETTLEMENT 5.3.2,7 186 ff by the withdrawal of practical and legal access to their homes and properties.

(e) The Crown's restrictive management 5.2.6,7,9 176 ff of the WAIPOUA KAURI AND STATE FORESTS denying tangata whenua access to natural and cultural resources.

(f) The Crown's failure to prevent the 5.2.1-2 171 ff depletion of Te Roroa's traditional 5.2.4-7 175 ff coastal fisheries by the public generally and commercial fishing.

(g) The Crown's denial of access, 5.3.1-6 184 ff public utilities and social services 5.4 207 ff to tangata whenua in the Waipoua Settlement provided to the community generally.

(h) The Crown's subjection of the 5.3.2-6 186 ff Waipoua settlement to dependency on the New Zealand Forest Service.

(i) The Crown's failure to make 5.2.3 173 ff provision for tangata whenua 6.5.2 229 ff participation in the administration 6.5.7-8 243 ff of the WAIPOUA FOREST SANCTUARY, the MAUNGANUI BLUFF SCENIC RESERVE, the TAHAROA PUBLIC RECREATION RESERVE and the WAIOTEMARAMA SCENIC RESERVE.

(j) The Crown's failure to protect the 5.2.3 173 ff traditional fishery for tangata whenua in the TAHAROA PUBLIC RECREATION RESERVE.

THE VIOLATION OF TAONGA

(a) The Crown's failure to enforce the 6.4 213 ff law in respect of acts of desecration of wahi tapu and indignities to human remains.

(b) The Crown's actions in depriving 6.4 213 ff
tangata whenua of their moveable
cultural artifacts.

(c) The Crown's use and management of 6.5 227 ff
its land in such a manner as to
deprive tangata whenua of their
kaitiakitanga over taonga.

(d) The Crown's failure adequately to 6.5.2-10 229 ff
protect and care for wahi tapu in
the use and management of its land
for exotic forests and farm
settlement.

(e) The Crown's denial of the rights of 6.5.2-10 229 ff
tangata whenua to control and
protect wahi tapu.

(f) The failure of the Crown 5.2 171 ff
sufficiently to respect the 6.5-9 227 ff
spiritual and cultural values of
tangata whenua in the use and
management of its land, forests,
and fisheries.

(g) The Crown's failure to provide 6.5.3-10 231 ff
adequate means for the effective 6.6 256 ff
participation of tangata whenua in Appendix 4 351 ff
the administration of its
conservation estate.

THE FAILURE BY THE CROWN TO LISTEN TO TE ROROA GRIEVANCES

The failure of the Crown to provide a 2.5-6 75 ff
prompt, effective system of redress for 3.3.1 117 ff
legitimate grievances of tangata whenua, 3.3.6 133 ff
sensitive to Maori cultural values. 4.4 151 ff
4.5 154 ff
7 263 ff

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8.2 Recommendations

8.2. Recommendations

On the basis of our findings we recommend the return to tangata whenua of all the land which should have been set aside from Crown purchases of Maunganui, Waipoua, Waimamaku and Wairau lands (see findings 8.1.2 and 8.1.3). The particulars are as follows:

(a) MANUWHETAI AND WHANGAIARIKI

We adopt Judge Acheson's findings in 1942 when he said that the "circumstances of this case ... cry aloud for redress for the Natives. The two reserves are theirs and should be returned to them, no matter what cost to the Crown this may involve" (see findings 8.1.2(d); 8.1.6(d); 8.1.7).

(b) KAHARAU AND TE TARAIRE

We apply Judge Acheson's findings referred to above to Kaharau and Te Taraire (see findings 8.1.2(f); 8.1.6(a) and (b); 8.1.7).

We recommend that the Crown take all steps to acquire these lands in (a) and (b) above, which should not have been included in its purchases, and to return the same to tangata whenua as hapu estates.

(c) MAUNGANUI BLUFF

We recommend that Maunganui Bluff Scenic Reserve cease to be Crown land and be vested in tangata whenua in accordance with precedents set by the return of Hikurangi to Ngati Porou and Taupiri to Tainui (see findings 8.1.2(e); 8.1.5(i); 8.1.6 (c)-(g)).

(d) TAHAROA

We recommend that the 250 acre Taharoa Native Reserve, granted as from 8 February 1876 to Parore Te Awha, be restored "as wahi tapu, papakainga and mahinga kai for tangata whenua" as originally intended (see findings 8.1.2(h) and (j); 8.1.3 (d); 8.1.5(i); 8.1.6(c) and (e)-(g)).

(e) WAIRAU WAHI TAPU RESERVE

We recommend that the Crown return to tangata whenua that area of land omitted from the Wairau Native Reserve by survey on its southern boundary (see findings 8.1.2(g); 8.1.6(e) and (f); 8.1.7).

(f) KAWERUA

We recommend that approximately 30 acres of land at Kawerua cease to be Crown land and, together with access, be vested in tangata whenua as a Maori reservation (see findings 8.1.3(a) and (e); 8.1.5(f); 8.1.6(f); 8.1.7).

Waitangi Tribunal, Department of Justice, Wellington.

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8.3 Our Proposals to Assist Parties in Formulating Submissions on Remedies

8.3. Our Proposals to Assist Parties in Formulating Submissions on Remedies

Having reviewed all the evidence, there are findings upon which we are unable to make informed recommendations. There will be a further hearing to receive submissions from the Crown and claimants on these findings. These submissions will assist us in completing our recommendations.

Our proposals are directed to taking into account the present social and economic climate and, in particular, the need to resource and promote the development and welfare of Te Roroa.

(a) RETURN OF WAIPOUA NO 2

That the Crown enter into negotiations with the claimants for the return of lands alienated in Waipoua No 2 block in its entirety to provide an economic base for the re-building of the Waipoua Settlement (see findings 8.1.2(a)-(b), (h)-(j); 8.1.3(c); 8.1.4; 8.1.5(a)-(h)).

(b) WAIPOUA FOREST HEADQUARTERS

That the Waipoua Forest Headquarters be vested in tangata whenua as compensation for the purposes of promoting Te Roroa economic and social development (see findings 8.1.1; 8.1.4; 8.1.5(a)-(h); 8.1.6(a)-(g)).

(c) REQUIREMENTS FOR DEVELOPMENT

We propose that the Crown provide financial resources for the following purposes:

- i To provide legal and adequate access from Katui to the Waipoua Settlement and Kawerua. The question of whether it should be private or public access should be a matter for tangata whenua to decide (see finding 8.1.5(d))
- ii To install a reliable method of radio telephone communications for the residents of the Waipoua valley (see finding 8.1.5(g))
- iii To meet the special educational needs of children in the Waipoua valley (see finding 8.1.5(g))
- iv To meet the special needs of the people in the Waipoua valley for community health services (see finding 8.1.5(g))

- v To reactivate the Waipoua Archaeological Project (see finding 8.1.6(d)-(g))
- vi To initiate an environmental training scheme for young tangata whenua that enables them to acquire skills in environmental and conservation management (see finding 8.1.5(g))
- vii To train and employ tangata whenua in fisheries protection work (see finding 8.1.5(f) and (j))
- viii To provide resources for the labour required for community-based employment schemes (see findings 8.1.3(a), (c)-(e); 8.1.4; 8.1.5)
- ix To settle all unpaid rates of Te Roroa within the claim area. To obtain remission by the Kaipara District Council until access by private or public road is provided to the Waipoua Settlement (see findings 8.1.3(c); 8.1.4; 8.1.5(a)-(h))

(d) CONTROL AND PROTECTION OF WAHI TAPU

That the Crown re-affirms the traditional and Treaty rights of tangata whenua to control and protect their own wahi tapu and requires the Department of Conservation and other of its agents concerned in the management of national and cultural resources to give practical effect to this commitment (see finding 8.1.6).

(e) RESOURCE MANAGEMENT

- i That the Crown take urgent action to amend the procedural provisions of the Resource Management Act 1991 to ensure that all Maori with interests in multiply-owned Maori land have the right to be informed on all matters affecting their land
- ii That the Crown resource an advocacy service to represent all Maori with interests in multiply-owned Maori land and provide advice to Maori in relation to resource management and conservation issues
- iii That the Historic Places Trust Bill 1992 should not be proceeded with until we have had the opportunity to study it in accordance with s9 of the Treaty of Waitangi Act 1975 and in the light of our findings and recommendations in respect of this claim (see findings 8.1.6(c)-(g))

(f) MANAGEMENT OF PUBLIC RESERVES

- i That the Crown direct the Kaipara and Far North District Councils to ensure that proper provisions are made for effective participation of tangata whenua in the management of any reserves in its district (see findings 8.1.5(i); 8.1.6(c)-(g))
- ii That the Crown direct the Department of Conservation to ensure the effective participation of tangata whenua in the management of the Waipoua Forest Sanctuary and other conservation estates (see findings 8.1.5(e) and (i)).

Dated at Wellington this 3rd day of April 1992

Mary Boyd, member

Monita Delamere, member

Ngapare Hopa, member

John Kneebone, member

Andrew Spencer, presiding officer

Waitangi Tribunal, Department of Justice, Wellington.