

THE  
TARAWERA FOREST  
REPORT



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REPORT

WAI 411

WAITANGI TRIBUNAL REPORT 2003



The cover design by Cliff Whiting invokes the signing of the Treaty of Waitangi and the consequent interwoven development of Maori and Pakeha history in New Zealand as it continuously unfolds in a pattern not yet completely known

A Waitangi Tribunal report

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CONTENTS

Letter of transmittal . . . . . xiii

**CHAPTER 1: THE CLAIMS, ISSUES, AND TREATY PRINCIPLES**

1.1 Introduction . . . . . 1  
1.2 Claims' relationship with eastern Bay of Plenty inquiry . . . . . 4  
1.3 Wai 411 . . . . . 7  
1.4 Wai 46. . . . . 12  
1.5 Wai 872 . . . . . 13  
1.6 The Crown's response to the claims . . . . . 15  
1.7 Issues for the Tribunal . . . . . 19  
1.8 Relevant Treaty principles . . . . . 20  
1.9 Summary. . . . . 32

**CHAPTER 2: THE CONTEXT FOR THE CLAIMS**

2.1 Introduction . . . . . 33  
2.2 Crown policy for Maori land development . . . . . 33  
2.3 Crown forestry development policy . . . . . 44  
2.4 Tasman Pulp and Paper Company Limited . . . . . 49  
2.5 Summary. . . . . 53

**CHAPTER 3: DEVELOPING THE JOINT-VENTURE PROPOSAL FROM 1960 TO 1964**

3.1 Introduction . . . . . 55  
3.2 The Tarawera Forest land. . . . . 57  
3.3 Origins of the joint-venture proposal . . . . . 69  
3.4 Crown–Tasman discussions to early 1963 . . . . . 69  
3.5 Forest Service evaluation of the Tasman proposal during 1963 . . . . . 71  
3.6 Crown–Tasman discussions to July 1964. . . . . 74  
3.7 Discussions with Maori owners to July 1964 . . . . . 76  
3.8 Involvement of Maori owners. . . . . 79  
3.9 The first meeting with Maori landowners, 28 July 1964 . . . . . 80  
3.10 The Forest Service continues its evaluation . . . . . 83  
3.11 The second meeting with Maori landowners, 1 October 1964. . . . . 84  
3.12 The Forest Service continues its evaluation . . . . . 87  
3.13 The third meeting with Maori landowners, 3 November 1964 . . . . . 88  
3.14 Summary. . . . . 96

CONTENTS

**CHAPTER 4: FINALISING THE JOINT-VENTURE PROPOSAL IN 1965 AND EARLY 1966**

4.1	Low level of activity to June 1965 . . . . .	97
4.2	Mid-1965: Crown views on Maori participation . . . . .	98
4.3	Development of the Grainger lease . . . . .	99
4.4	Tasman puts the pressure on . . . . .	100
4.5	Forest Service considers land values too low without conditions . . . . .	103
4.6	The Forest Service seeks a minimum guarantee, and Maori Affairs a holding company . . . . .	106
4.7	Forest Service compares minimum guarantee favourably with Grainger lease . . . . .	108
4.8	The fourth meeting with Maori landowners, 14 October 1965 . . . . .	109
4.9	The Savage and Edwards whanau meeting, 4 November 1965 . . . . .	114
4.10	Preparation for the final meeting with landowners . . . . .	117
4.11	The final meeting with landowners at Kokohinau Pa, 11 December 1965 . . . . .	121
4.12	Claimant views on the Kokohinau Pa meeting . . . . .	135
4.13	Developments between December 1965 and the Maori Land Court hearing in August 1966 . . . . .	140
4.14	Summary . . . . .	151

**CHAPTER 5: THE TRIBUNAL'S ASSESSMENT OF THE CROWN'S CONDUCT  
TO MID-1966**

5.1	Introduction . . . . .	153
5.2	Pressures on the participants . . . . .	153
5.3	Parties' submissions about the meeting process and the Tribunal's view . . . . .	157
5.4	The interaction between the Crown and Maori . . . . .	159
5.5	Crown attitude to the Treaty breaches . . . . .	167
5.6	Summary . . . . .	186

**CHAPTER 6: THE MAORI LAND COURT**

6.1	Introduction . . . . .	187
6.2	The application to the court . . . . .	187
6.3	Time and place of the hearing . . . . .	189
6.4	The parties and their lawyers . . . . .	189
6.5	The parties' participation in the hearing . . . . .	190
6.6	Evidence of the owners' involvement to date . . . . .	196
6.7	Evidence of the log price . . . . .	198
6.8	Evidence of the value of the Maori land . . . . .	206
6.9	Taxation concessions . . . . .	211
6.10	Evidence and submissions about a lease of the Maori land . . . . .	212
6.11	The inclusion of all 40 blocks? . . . . .	220
6.12	The court's decision . . . . .	231
6.13	Summary . . . . .	232

CONTENTS

**CHAPTER 7: IMPLEMENTING THE JOINT VENTURE**

7.1	Introduction . . . . .	233
7.2	Reasons for the court's decision . . . . .	233
7.3	The prospects of an appeal . . . . .	237
7.4	The Court of Appeal's decision in <i>Hereaka v Prichard</i> . . . . .	237
7.5	Rapid legislative response – amendments to section 438 . . . . .	239
7.6	The Maori Trustee . . . . .	240
7.7	Execution of the heads of agreement – 2 October 1967 . . . . .	248
7.8	Incorporation and structure of TFL . . . . .	248
7.9	Management and sales agreements between TFL and Tasman . . . . .	249
7.10	The Tarawera Forest Act 1967 . . . . .	251
7.11	Incorporation and structure of MIL . . . . .	254
7.12	Tasman's payment of compensation to the Edwards family . . . . .	257
7.13	Summary . . . . .	259

**CHAPTER 8: THE TRIBUNAL'S ASSESSMENT OF THE MAORI LAND COURT,  
MAORI TRUSTEE, AND MAORI AFFAIRS ACT 1953**

8.1	Introduction . . . . .	261
8.2	Tribunal jurisdiction . . . . .	262
8.3	Submissions on jurisdiction: Maori Land Court . . . . .	262
8.4	The Maori Affairs Act 1953 . . . . .	267
8.5	Submissions on jurisdiction: Maori Trustee . . . . .	267
8.6	Tribunal findings: Maori Land Court process . . . . .	269
8.7	Tribunal findings: the result of the court's decision and sections 435 and 438 of the Maori Affairs Act 1953 . . . . .	280
8.8	Tribunal conclusions: Maori Trustee . . . . .	285
8.9	Summary . . . . .	288

**CHAPTER 9: PUTAUAKI MAUNGA**

9.1	Putauaki and the development of the joint venture . . . . .	289
9.2	Putauaki and the implementation of the joint venture . . . . .	306
9.3	TFL's management of the mountain reserve . . . . .	309
9.4	Protest and efforts to secure the return of the mountain reserve, 1972–81 . . . . .	317
9.5	The guardians of Putauaki . . . . .	326
9.6	Summary . . . . .	329

**CHAPTER 10: THE OUTCOME OF THE JOINT VENTURE AND THE TRIBUNAL'S  
FINDINGS AND RECOMMENDATIONS**

10.1	Introduction . . . . .	331
10.2	The financial outcome of the joint venture . . . . .	332
10.3	Hypothetical alternatives to the joint venture . . . . .	345
10.4	The land loss grievance . . . . .	357
10.5	Tribunal recommendations . . . . .	362

CONTENTS

**APPENDIX: RECORD OF INQUIRY**

Record of hearings . . . . .	365
Record of proceedings . . . . .	366
Record of documents . . . . .	372

MAPS

Map 1: Location of Tarawera forest . . . . .	xvi
Map 2: Eastern Bay of Plenty confiscation area, 1866 . . . . .	2
Map 3: Tarawera Forest land – areas formerly owned by Tasman, Maori, and the Crown . . . . .	54
Map 4: Tarawera forest land – block names . . . . .	58
Map 5: The 40 blocks of Maori land amalgamated into the Tarawera 1 block . . . . .	64
Map 6: Blocks in which the Savage–Edwards group owned shares, plus Matata 59B2B . . . . .	222
Map 7: Putauaki’s two peaks . . . . .	313
Map 8: Putauaki burial reserve and roads. . . . .	315

## ABBREVIATIONS

a	acre
app	appendix
c	circa
CA	Court of Appeal
ch	chapter
cl	clause
d	penny
doc	document
ed	edition, editor
fol	folio
inc	incorporated
J	justice (when used after a surname)
LEV	land expectation value
ltd	limited
MIL	Maori Investments Limited
NZED	New Zealand Electricity Department
NZFS	New Zealand Forest Service
NZIER	New Zealand Institute of Economic Research
NZLR	<i>New Zealand Law Reports</i>
NZPD	<i>New Zealand Parliamentary Debates</i>
OBE	officer of the Order of the British Empire
P	president of the Court of Appeal (when used after a surname)
p	perch
p, pp	page, pages
para	paragraph
PC	Privy Council
QC	Queen's Counsel
r	rood
rev	revised
ROI	record of inquiry
s	shilling
s, ss	section, sections (of an Act)
sch	schedule
sec, secs	section, sections (of a book, Tribunal report, etc)
TFL	Tasman Forest Limited
VHF	very high frequency
vol	volume

'Wai' is a prefix used with Waitangi Tribunal claim numbers

Unless otherwise stated, references to claims, papers, and documents in the footnotes are to the record of inquiry, which is reproduced in the appendix.



FREQUENTLY MENTIONED TASMAN AND GOVERNMENTAL FIGURES

**TASMAN PULP AND PAPER COMPANY LIMITED**

Mr DW Timmis, managing director

Mr GJ Schmitt, general manager, managing director (following Mr Timmis) (also first chairman of Tarawera Forests Limited)

Mr MH McKee, general manager, Kaingaroa Logging Company Limited

Mr IG Clinkard, secretary

Mr BW Neutze, solicitor

Mr JA Okeby, finance officer

Mr MH Kjar, commercial manager (second chairman of Tarawera Forests Limited)

Mr JM Mitchell, chief forester

Mr HD Chambers, assistant to commercial manager

**NEW ZEALAND FOREST SERVICE**

Mr AL Poole, Director-General of Forests

Mr AP Thomson, director of forest management, then Assistant Director-General of Forests

Mr AD McKinnon, assistant director of forest management

Mr D Kennedy, conservator of forests, Rotorua

Mr J Ure, assistant conservator, Rotorua

Mr M Buist, solicitor for Forest Service

Mr MB Grainger, forest economist

Mr HJ Beattie, forest economist

Mr GC Jupp, chief accountant

Mr JF Lysaght, forest management officer

**DEPARTMENT OF LANDS AND SURVEY**

Mr R J MacLachlan, Director-General of Lands and Survey

Mr EJ Lynskey, Assistant Director-General of Lands and Survey

Mr FS Beachman, commissioner of Crown lands, Hamilton

Mr W Roberts, investigating officer

FREQUENTLY MENTIONED TASMAN AND GOVERNMENTAL FIGURES

**DEPARTMENT OF MAORI AFFAIRS**

Mr J M McEwen, Secretary for Maori Affairs and Maori Trustee

Mr B E Souter, Deputy Secretary of Maori Affairs and Deputy Maori Trustee

Mr J H W Barber, district officer, Rotorua, and registrar, Waiariki district Maori Land Court

Mr H Martin, assistant district officer and deputy registrar, Waiariki district Maori Land Court

Mr J A Dye, special titles officer

Mr R G Lockie, land utilisation officer

Mr D M Forsell, office solicitor

Mr A G Hercus, office solicitor

Mr A Mitchell, field supervisor

**THE TREASURY**

Mr N R Davis, Deputy Secretary to the Treasury

The Honourable Parekura Horomia  
Minister of Maori Affairs  
Parliament Buildings  
WELLINGTON



The Waitangi Tribunal  
110 Featherston Street  
WELLINGTON

12 February 2003

Ko Te Ao e rere ana

Ko Te Ao tū

Ko Ao rere

Ko Ao pōuri

Ko Ao Pōtango

Ko Ao whēkere

Whakamaru te ati nuku

Ko te putanga

Ko Te Ūira

Ko Te Waiau

Ko Te Ao Mārama

Tāne tokorangi

Ranginui e tū nei

Kātahi ka whai mārama

Tū kē ana a Rangī puna

Tū kē ana a Papa

Ka tangi te hau mātao i raro rā

He ao mārama.

Ki te Hōnore Te Minita,

Piki mai kake mai ki te pīnakitanga kua pikitia e te wā, kua whakamātauria e ngā whakapēhi e ngā mānukanuka o te ngākau o te hinengaro tangata kia noho ai koe ki te tihi o Maungatūmanako e kore a muri e hokia ruatia.

Tēna koe i roto i te whakatao a te tangata nei a Aitūā me mate tūturu tātau te tangata, kia tangihia ai o tātau mate kia tipu ai te aroha i waenga i a tātau. Kāti rā ki o tātau waka whakarei kua pae ki uta, ngā hei māpuna kua riro tītapu, ngā timu herenga waka, ngā whakatōwaiwai o ngā kamo, kua parauku ngā marae ngā papa takahanga i nga kaiutu a Aitūā a hūpē raua ko roimata. Takoto i roto i te whakaritenga o te urunga tē taka, o te moenga tē whakaarahia, okioki i te whenua taurikura i te whenua houkura o te āke āke.

Tēnei te tāpaetia atu nei ki mua ki tou aroaro te whakataunga a mātau o Te Taraipiunara o Waitangi i ngā take whakapae a te hunga e noho rā hei huruhuru mo ngā waewae o tō rātau tipua maunga o Putauaki hei whakamāui i ngā mauri o o rātau waikaukau, waitapu, waikarakia waiora hoki o Rangitāiki o Tarawera. E Te Minita, ka tukua atu ēnei kōrero ki a koe i runga i te mōhio ki ngā tūtukinga waewae ki ngā pīere nuku ki ngā iwingohetanga i whakawhiua ki runga i a rātau i ngā hunga nei i kimihia ai e rātau ngā whakamahutanga i o rātau māiki mā roto atu i Te Tiriti o Waitangi.

Nā reira e Te Minita, kua whāia atu te pae tawhiti kia tata, ōhiti tūturu whakamaui kia tīnā, tīnā.

We present to you our report on claims relating to the development, finalisation, and implementation in the 1960s of the Tarawera Forest joint-venture scheme, a tripartite forestry scheme involving private enterprise (originally Tasman Pulp and Paper Company Limited), the Crown, and several thousand Maori. In essence, the claims assert that the Crown secured the involvement of the Maori participants in the scheme by means which were in breach of Treaty principles and which caused them prejudice. The relevant Treaty principles are those of active protection and partnership. The claimed prejudice is, first, the unnecessary and non-consensual loss from Maori ownership of more than 38,000 acres of land, including the sacred maunga Putauaki and, secondly, the loss of financial benefits that, it is said, should have been obtained from the joint venture by the Maori participants but were not.

The primary group of claimants (the Wai 411 claimants) represent the former owners of the 38,000 acres of Maori land and the current shareholders and debenture stock holders of Maori Investments Limited (MIL). MIL is a holding company created in 1968 for the specific purpose of administering the 10.8 per cent stake in Tarawera Forests Limited (TFL) that was obtained by the former owners of the Maori land in return for contributing their land to the venture. Supporting the Wai 411 claim but focusing specifically on the loss of ownership of Putauaki were the Ngati Awa (Wai 46) claimants. The other claim reported on here (Wai 872) was made by an individual Wai 411 claimant during the course of the Tribunal's hearing.

A key feature of the Tarawera Forest joint venture was that the ownership of the land contributed by the three venturers passed to TFL in return for a stake in that company. The claimants' land loss grievance rests on their view that the owners of the Maori land would have much preferred to lease it than lose title to it, and that a lease could have been achieved in place of the joint venture if only the Crown had acted consistently with its duty actively to protect Maori interests. Instead, the claimants allege, the Crown put its own interests ahead of those of the Maori landowners and secured their involvement in the

joint venture by a variety of unfair tactics, the effect of which was that the Maori owners did not sufficiently understand or consent to the venture's terms. The sense of grievance that surrounds the loss from Maori to private ownership of such a large area of land, including the taonga Putauaki, is exacerbated by the fact that the Tarawera Forest joint venture has proved to be a 'one-off' scheme. All other forestry projects utilising Maori land have involved leases, and some have enabled the Maori lessors to own the forest on their land at the end of the lease's term.

The claimants' second grievance is that the joint venture has not given to the Maori participants the returns promised to those who knew of it, let alone the returns that they claim they would have obtained if the venture had been negotiated fairly. At the heart of this grievance, too, is the view that the Crown put its own interests first and, by various unfair tactics, ensured that the Maori landowners became party to a venture on terms that were not to their greatest advantage.

The nature of the claims has required the Tribunal to undertake a detailed examination of the events surrounding the development and implementation of the Tarawera Forest joint venture. The first issue is the fairness, in terms of the Crown's obligations to protect Maori interests, of the process by which the joint venture was conceived and became a reality. The second issue is the attitude of the Crown throughout that process. We have found that the process followed in establishing the joint venture was inconsistent with what the Treaty principle of active protection requires of the Crown. We have also found, however, that the Crown was not motivated by bad faith in that process. Further, we are satisfied that the two claimant groups have been prejudiced by the loss of ownership of the former Maori land and the sacred mountain, and that the financial returns to MIL from the joint venture do not offset that loss. We are not satisfied, however, that the claimants have lost financial benefits due to them from their participation in the joint venture. Finally, we consider that the prejudice resulting from the loss of land ownership requires redress from the Crown, and we have made recommendations on that matter at the conclusion of this report.

Heoi ano

