

CHAPTER 3

TE WHANAU O WAIPAREIRA AND THE TREATY

In the light of the evidence in the previous chapter, the Tribunal is able to answer the vital questions it identified at the end of chapter 1:

- (a) Did the Waipareira trustees provide care and development assistance to a significant number of Maori beneficiaries (the ‘clients’ whom they nurtured), were they properly accountable to them, and did the community support its leaders?
- (b) If this was the case, did the manner in which the trustees operated also reflect Maori cultural values?

It is the answers to these questions that allow the Tribunal to answer the further question, which is central to its examination of the claim: Is Te Whanau o Waipareira itself a community deserving special recognition in terms of the Treaty of Waitangi?

3.1 EMERGENCE OF A COMMUNITY

At Waipareira, a sense of community grew out of the circumstance of some people meeting the needs of others. The needs were those of the ‘orphaned and the lost’, who had drifted into the city, looking for work and out of touch with home. In West Auckland, they found a core of people much like themselves, who, however, had survived the rigours of relocation and had turned to membership of welfare committees to help others.

The ‘whanau’ of individuals brought together by material, physical, and emotional need were scattered over a wide area from Waterview to Helensville. It was not, therefore, a co-residential community. Most members were not tangata whenua of West Auckland; they had come from far and wide, so the whanau was not kin-based, and it had no marae. Yet the welfare work done by the few continued to engender a spirit of whanau and a will to survive the challenges of West Auckland suburbia.

It was a marae, however, that eventually consolidated and focused the Maori ethos and identity of Te Whanau o Waipareira. Over the years that the Hoani Waititi Marae took to be created – and to be defended against the sceptics – more than just the fabric of the buildings and their symbolism were put in place. It was evident to the Tribunal that the principle of reciprocity and loyalty between kin in a tribal group had been transposed into a group of non-kin at Waipareira and enhanced through their

common endeavour of building the marae. On its completion, there was thus an effective network of kaumatua and kuia, of rangatira, of rangatahi and mokopuna, all bound together by a Maori spirit unique to Te Whanau. It was not the bond found at a deeper level of spirituality that is inherent in the reverence among kin for their ancestors. But Waipareira was indeed a community, one in which there were both leaders and the led, where there were rewards of approval and promotion, protected by sanctions of rebuke and exclusion, and where voluntary service was the high ideal. While not at all limited to the marae, these values and attitudes were brought to a focus on the marae, where debate could be joined, hospitality offered, cultural exercises practised, and grief for the departed shared.

And it was on the Hoani Waititi Marae that the principles and practice of the Community Management Group were set down, to be followed later by the formation of the trust itself in 1984. Where the whanau philosophy had brought together individuals, it now brought 'together under one umbrella' fragmented groups operating in the social welfare and educational domain, the better to integrate the services they offered and to maximise economies of scale.

3.2 TIKANGA MAORI

However, the multi-affiliate group still conducted its affairs according to Maori protocol and through its regime of monthly hui gave opportunity for communal decision-making and personal accountability, as well as intersectoral exchanges. And affiliate autonomy still allowed programmes specific to locality and welfare field to continue to flourish. Whanau values were not to be stifled by 'big business' management.

Where the trust's operations had developed initially with departmental support – Kokiri units, Tu Tangata groups, and the like – it was not long before it was able to wean itself away from direct dependence on the State sector, as the status of its Mana business development programme, for example, indicates. But the whanau character of the trust's welfare work continued, as encapsulated in the following extract from claimant evidence:

We tried to get our kids back with their Whanau. Our kids didn't know who they were. That is the root of many of the problems today. These children have no Marae, kawa or identity . . . We wanted to tie these kids in with their tribal networks to give them a sense of belonging and identity. We wanted them to have strong positive role models who would mentor them and that they could relate to.¹

Perhaps an even more fundamental whanau dimension was provided by the roopu kaumatua: elders who helped to link such children in need with their wider kin through their intimate knowledge and understanding of the workings of whakapapa. What was activated in practice was the customary bond uniting alternate generations: that is to say, where patterns of authority and subordination between parent and child

1. Document A25, para 49

had given way to a relationship of affection and nurturing in the lessons of life between parents and their children's children.

3.3 MAORI SPIRIT

Notwithstanding an increasing complexity and sophistication in organisation, leading in time to its own restructuring, the trust continued to focus on fundamental human and social needs. For instance, there were the Alternative Education Unit's work in the rehabilitation of 'at risk' youth, Maori language immersion courses, and general employment and training programmes, all of which were aimed at raising self-esteem as a first priority. Help could also be highly personalised, as in budgetary advice and anger management, but again conceived and executed within the philosophical framework of the whanau. And even in the exacting, contractual world of commerce, the underlying stance of the trust was still one of nurturing; for example, in small business development.

It is noteworthy that, when funds were curtailed, the social service response was to continue voluntarily 'for pure aroha', for those concerned could not 'bear to see the work being left undone' – a reflection, therefore, of the bond of spirit between caregiver and receiver that went far beyond the legal requirements of the trust, in the way that one might expect of kinship ties.² So much, then, for the nurturing and fostering dimensions of rangatiratanga and the ethic of whanautanga. Finally, in the trust's corporate plan in existence at the time of the hearing, three of the five management strategies emphasised accountability and consultation – of the kind maintained by the monthly hui and the institutions embedded in Hoani Waititi Marae.

3.4 RANGATIRATANGA ESTABLISHED

In the light of the above, the Tribunal is of the clear view that the Waipareira trustees did indeed care for their beneficiaries, and were properly accountable to them and that the whanau was a community that not only reflected Maori cultural values but operated according to tikanga Maori. Thus, Waipareira did exercise rangatiratanga, albeit in a modern setting, and was therefore deserving of special recognition in terms of the Treaty of Waitangi. It was justified in expecting Crown protection under the Treaty; in particular, protection of the rangatiratanga that it exercised in fact.

We emphasise that we reach this conclusion from an overall assessment of the facts of this case. It is neither desirable nor, we think, possible to create a checklist of the ingredients for the recognition of a Maori group in terms of the Treaty. Such an approach would do nothing to enhance rangatiratanga, which must be the Crown's aim.

2. Document B3, para 2.2

3.5 BALANCING RANGATIRATANGA AND KAWANATANGA

We add a footnote. In the present case, the Crown saw its responsibility to Waipareira as being to ensure that the allocation of funds was made on the same basis as that which applied to non-Maori; namely, proven need for a particular service and proven capacity to deliver that service. That is, the emphasis was on equality of eligibility as perceived by the Crown, rather than on mere equality of opportunity. In the event, however, that a given need reflected a disparity in existing levels of attainment between Maori and non-Maori, the allocation of funds was expected to take this disparity into account, though still constrained by the overall budget. It is a principle widely known as affirmative action.

On the other hand, where a group deserves special recognition in terms of the Treaty, the Crown's responsibility would be to protect their interests and the exercise of their rangatiratanga. Where this protection entails an allocation of the Crown's own resources, it is never expected by Maori to be on the basis of a comparison with non-Maori. The Crown is simply bound to recognise the identity and kaupapa of such a group, its rangatiratanga, as articulated by its representatives – kaumatua, boards, councils, chief executive officer, and the like – because that is the basis on which Maori granted the Crown the right to govern. With Waipareira, it would have been the trust's representatives with whom the Crown under the Treaty should have consulted in a way commensurate with the rangatiratanga that they exercised. This kind of recognition, then, has nothing to do with comparisons (or dealing with 'disparities') between Maori and non-Maori.

The Crown resisted this approach, arguing that it represents an 'open cheque' situation, a way for Maori groups to avoid the constraints on public funding for welfare services. However, as noted in our findings on the nature of the Treaty partnership, rangatiratanga is constrained by kawanatanga, and vice versa. Although the claimants said their dream is that one day the trust would be able to provide for all the needs of all its people and would not require any State money, this level of absolute rangatiratanga is far from the current reality. In the meantime, the aim must be to strike a proper balance between the demands of rangatiratanga and kawanatanga through consultation and negotiation. Without the cooperation and support of the Crown, Maori have little chance of solving the disproportionate share of the problems that have been thrust on them.

Having found that Waipareira did indeed enjoy the protection of the Treaty, we turn at this point to consider whether the Crown exercised kawanatanga so as to protect Waipareira's interests and the rangatiratanga it in fact exercised. In the next chapter, we look at the CFA; in chapter 5, we consider the import of *Puao-te-Ata-tu* to this claim; and, in chapter 6, we assess the impact of the restructuring of the wider State sector, before considering in more detail in chapter 7 the CFA's relations with Te Whanau o Waipareira.