

Report of the Waitangi Tribunal on the Orakei Claim

02 The Claim

2.1 Background to present Claim

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The Orakei claim was first defined in a statement filed in February 1984 by Joseph Parata Hawke of Orakei and twelve others whose names are recorded at the end of appendix I1.

At that time this Tribunal's jurisdiction was limited to Crown policies and practices postdating 1975. The claimants were clearly concerned with matters before then but brought their claim on the basis that a settlement of grievances in 1978 was an unjust arrangement. The Orakei Block (Vesting and Use) Act 1978, which gave effect to that arrangement, was contrary to the Treaty in their view, for though it established and endowed the Ngati Whatua of Orakei Maori Trust Board, it failed to settle a wide range of outstanding issues. It should have provided a more handsome settlement, they said, and to establish that contention the history of Orakei was traversed in detail.

The proposed sale of Housing Corporation land on the Orakei block was also opposed. In their opinion, that land too should have passed to Ngati Whatua in the 1978 settlement. After public and individual notices the claim was heard at Orakei in May 1985.

In the course of that hearing another issue emerged, the control of Orakei marae. The marae contention was not apparent in the first written claim that was filed, but it soon transpired that to the chagrin of many the Orakei marae was vested in trustees comprised mainly of persons other than Ngati Whatua. The claimants, and many others who spoke sought the vesting of that marae in the Ngati Whatua of Orakei Maori Trust Board.

More public and individual notices had then to be given to advise those principally affected by this development, and the claim to Orakei marae was heard at a second hearing, in July 1985, in conjunction with other matters left over from the previous sitting. By then a Bill was before Parliament which proposed extending the Tribunal's jurisdiction to cover events from 1840. Rather than argue jurisdictional niceties on the basis of the 1978 settlement, the case was adjourned, at the claimant's request, to await the outcome of the Bill. The Bill was passed and the current new claim was then filed, a claim which seeks a full review of several events extending over a long period from last century.

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2.2 Nature of the Claim

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It needs to be stated that the claimants were not elected to bring the claim for Ngati Whatua of Orakei. Indeed, although the claimants are all Maori they are not all Maori of Ngati Whatua. They hold in common two convictions each for trespass on Bastion Point in 1982. They had grouped to bring this claim as a pardon for those convictions is an aspect of the relief sought.

Even the land claim however had not the concurrence of the whole tribe and at the first hearing there was tribal opposition.

We do not think tribal consensus necessary to enable a claim to the Waitangi Tribunal. The proof of a claim is not dependent on popular support but on evidence and argument adduced. It is sufficient in this case that J P Hawke and some of the others claim that they and the tribe are prejudicially affected in terms of the Treaty of Waitangi Act. Support, or the lack of it, is more relevant to assessing the extent of any proven prejudice and the consideration of appropriate remedies.

Before the end of the hearings however, opinions had changed. A tribal meeting was held during our last sitting in 1986 and declared unanimous tribal support for the claim. The result of that meeting was conveyed to us by the Acting Chairman of the Ngati Whatua of Orakei Maori Trust Board who added that the Board now also supported it. Some had been unhappy with the claim being made by a protest group that had acted outside the law. Since the claim had been filed however, the law had been changed and 'old land claims' could now be protested within the law! We shall see, in the course of this report, that adherence to the due process of law has been Ngati Whatua policy for 147 years. The policy has been maintained despite every influence to suggest that the people's faith in lawful process was misguided.

Waitangi Tribunal, Department of Justice, Wellington.

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The full text of the reformulated claim as filed on 7 April 1986, is set out in appendix 1.

In the first part of the claim those claimants who are of Ngati Whatua refer to a range of events that they say were contrary to the principles of the Treaty of Waitangi and allege that as a result of various policies and practices the tribe, of which they are members, was wrongly deprived of the 700 acre Orakei block. That block, they claim, ought to have been reserved for the tribe as a whole, in tribal ownership and control and in accordance with custom.

It is significant that the claimants do not seek the return of the whole of the 700 acre Orakei block, though it ought, in their view, to have been reserved for the tribe as an inalienable endowment. They say

... being cognisant of the Tribunal's obligation to make recommendations on the practical application of the Treaty of Waitangi to our claim, we do not seek the return of the entire 700 acre Orakei block to Ngati Whatua but we claim that the Tribunal should declare that we are rightly entitled to the whole of it.

But they also maintain that the 1978 settlement was not nearly enough. They claim ...

that any land in Orakei block which is presently vested in the Crown or which has been vested by the Crown in other bodies, corporations or authorities, and which remains unused for housing or roading purposes, [should] be vested in the Ngati Whatua of Orakei Maori Trust Board.

They therefore claim the extensive parks of Orakei - but not the Savage Memorial site (for as J P Hawke said, it is now a sacred urupa!). They claim the Housing Corporation land, though it has been developed for subdivision, and the Okahu Sports Domain, though they would seek that subject to existing leases and licences. They ask that the park land be held by the Board rate free so long as free public user is maintained. They claim the title to the marae of Orakei, extinguishment of a \$200,000 debt on Ngati Whatua land borrowed to meet the tribe's contribution to the settlement of 1978, and "such other and additional relief as to [the Tribunal] seems just." In the second part of the claim the claimants as a whole seek a pardoning of past convictions, remission of fines and compensation.

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2.4 Record of Proceedings

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The original claim was heard before the Tribunal as provided for under the then law and consisting of three persons. The Tribunal constituted under the amending Act of 1985, to hear the new claim, comprised six persons, the same Chairman but with five others all new to the case. To avoid repetition of the long and complicated history of the Orakei block, documented in 1985, it was proposed that the tapes of earlier hearings and the written submissions and documents filed be admitted as evidence in the new claim.

It was further proposed that a Report of the background history, as gleaned from the earlier evidence and additional research, should also be sent to interested parties well prior to the hearing of the new claim. Copies of that Report and a memorandum from the Chairman were distributed in August 1986. The Chairman explained the Tribunal would hear any objections to this procedure. Subject to any ruling the Tribunal would then hear argument on the content of the Report. Earlier witnesses could be recalled and fresh evidence could be given. The Tribunal would then consider the application of the principles of the Treaty, assuming prejudice was proven, and the recommendations that should be made.

To enable parties to research the compiled data and the Report the Tribunal did not sit until November 1986. There were then no objections to the procedure outlined and although much additional evidence was given, the Report was largely unchallenged. Part I of this report is substantially the same as that distributed to parties in August 1986.

This procedure, we consider, gave all persons affected a proper opportunity to challenge the background history that would form the data base for any findings and recommendations. A record of the proceedings, the notices given, the hearings held, and the material put in, are summarised in appendix II.

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2.5 Introduction to Orakei and Terms Used

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In this report some names have been shortened and some new terms applied. The Orakei block, the subject of this report, is part of Auckland or Tamaki Makaurau (Tamaki of a hundred lovers). We use the abbreviated name, Tamaki. Orakei itself has been literally translated as 'the place of adorning', but is probably named after Rakei, the east coast chief who once lived there.

We refer to Orakei block as the 700 acres as shown on appendix III. It appears however the Maori used 'Orakei' to describe a much larger area taking in quite a deal of what is now Remuera.

The block is a headland extending to Waitemata Harbour from a southern plateau in two distinct ridges. The western ridge, with Coates Avenue now running along its spine, leads to Pokanoa Point and the area now circumscribed by Paritai Drive. We call it Orakei ridge for it extends from what used to be Orakei Village.

The eastern ridge, with Kupe Street now marking its central line, we call Takaparawha ridge. It extends to the harbour in two points, Takaparawha point, where the Orakei jetty now stands, and Bastion Point where lie the remains of a defence battery. Opposite was a large stone outcrop sometimes called Bastion Rock, since flattened and with its base now occupied by the Tamaki Yacht Club. We prefer the Maori name for this area, Kohimarama Point, but because it had wide publicity as Bastion Point we sometimes use that name too. Kohimarama, literally 'a point of light', appears to be an abbreviation for the original name Kohimaramara which records that the remnants of many tribes once gathered there.

Collectively the plateaus and ridges are called the farm lands for throughout the greater period covered by this report the original people of the Orakei block once farmed them. The people themselves lived mainly in a secluded basin between the ridges fronting Waitemata Harbour at Okahu Bay. The communal village there was called Okahu Papakainga or the papakainga for short. But there was, until about 1870, another settlement on the southern plateau overlooking Okahu Bay. We refer to Orakei Village which lay between what is now Coates Avenue and Ruatara Street, near to Kepa Road.

Kepa Road marks the first route across the Orakei block. It was developed as a link between the township of Auckland and the church owned Mission Bay on the opposite side. Indeed Orakei village may have grown through its nearness to that road.

At Orakei village was built the first school house and church on the Orakei block. We refer accordingly to the Orakei schoolhouse and Orakei Church. Though the latter was more correctly 'St James' (Hana Hemi) it is called Orakei Church in most other reports on Orakei, and we call it that too. It also serves to distinguish the church built in the papakainga about 1903. We call that the Okahu Church.

The main village, the papakainga, was without road access for most of the period covered in this report. The harbour was its main highway. Today the papakainga area adjoins Tamaki Drive, an elevated arterial route that severs the site from its former coastal aspect. But the village is no longer there. Indeed all that remains of either village is the Orakei Urupa (cemetery) on Ruatara Street, and the Okahu Urupa on Tamaki Drive. Even the tribal marae of the papakainga has gone.

For the people of Orakei Village shifted off many years ago, and more recently those who then lived in the papakainga, were relocated at Kitemoana Street on Takaparawha Ridge, where they are today. Near to them is a new marae. We refer to the old marae which was once in the papakainga to distinguish it from the new one, called Orakei marae.

Central to this claim are the large open spaces of the Orakei block and in particular the following parks -

- M J Savage Memorial Park on Kohimarama Point, dominated by the memorial to Prime Minister Savage overlooking the entrance to Waitemata harbour,
- Takaparawha Park which is largely undeveloped,
- Okahu Park, an open space of trees and lawn where the papakainga once stood, and
- Orakei Sports Domain, a name we employ to describe the active recreation part of the Orakei Domain.

The areas above described are depicted on a map at appendix III.

The native people, or tangata whenua, are known as Ngati Whatua of Orakei. They are called Ngati Whatua unless it is necessary to distinguish them from their Ngati Whatua 'cousins' of Reweti, Haranui, Kakanui, Araparera, Putahi and other parts of Kaipara.

From amongst them many emerged to take predominant roles.

Following custom one name only is sometimes used to describe them, like Te Kawau for Apihai Te Kawau Te Tawa, a leading chief in the 19th century, Tuhaere for Paora Tuhaere, Te Kawau's nephew and political successor, Pateoro for Te Hira Pateoro, Te Kawau's grandson, and Otene for Otene Paora, Ngati Whatua's persistent advocate for tribal ownership.

The relationships of the tangata whenua figuring in this report are given in a genealogical table at appendix IV.

This century saw the proliferation of organisations with something to do with the Orakei Maori community and it has been convenient to shorten their names - the Orakei Maori Committee to the Maori Committee, the Orakei Maori Committee Action Group to the Action Group, the Orakei Marae Centre for Education and Cultural Exchange Inc (and its several predecessors using various similar names) to the Education Centre, the Orakei Marae Reserve Trustees to the Marae Trustees and certain others that are introduced in the report.

Similarly, many Acts and orders affected the land and its people and their proper titles have been abbreviated. The Order of the Native Land Court on Investigation of Title to the Orakei Block 1869 is shortened to the Orakei Order 1869, the Orakei Native Reserves Act 1882 to the Orakei Act 1882, and the Orakei Block (Vesting and Use) Act 1978 to the Orakei Act 1978 for example. The Act last mentioned constituted the Ngati Whatua of Orakei Maori Trust Board which is referred to in the chapters following as the Ngati Whatua Trust Board.

There were many inquiries into the affairs of the Orakei people. The Commission on Native Lands and Native Land Tenure is called the Stout-Ngata Commission 1908, the Native Land Court Inquiry into the Petitions of Pateoro and Others is called the Acheson Inquiry 1930, the Committee of Representatives of Government Departments and Auckland City Council appointed by the Native Minister to report on the Orakei Church site, Papakainga, Roadlines, Battery Reserve, Health and Development is called the Lee Committee 1936 and the Royal Commission to Inquire and Report on Grievances alleged by Maoris with regard to certain lands at Orakei is called the Kennedy Commission 1939.

This claim by J P Hawke and twelve others is called the Orakei Claim. A bibliography in appendix V records various publications referred to in the text in abbreviated form.

Waitangi Tribunal, Department of Justice, Wellington.