

THE
NGĀTI AWA SETTLEMENT
CROSS-CLAIMS
REPORT

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WAI 958

WAITANGI TRIBUNAL REPORT 2002



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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app	appendix
ca	Court of Appeal
ch	chapter
doc	document
NZLR	<i>New Zealand Law Reports</i>
ots	Office of Treaty Settlements
p, pp	page, pages
para	paragraph

‘Wai’ is a prefix used with Waitangi Tribunal claim numbers

The Honourable Parekura Horomia
Minister of Māori Affairs



The Waitangi Tribunal
110 Featherston Street
WELLINGTON

and

The Honourable Margaret Wilson
Minister in Charge of Treaty of Waitangi Negotiations

Parliament Buildings
WELLINGTON

26 July 2002

Tēnā kōrua

Enclosed is the Ngāti Awa Settlement Cross-Claims Report, the outcome of an urgent hearing in Rotorua from 17 to 18 June 2002 and in Wellington from 20 to 21 June 2002. This report deals with claims by Ngāti Haka Patuheuheu, Ngā Rauru o Ngā Pōtiki, the Wai 36 Tūhoe claimants, and Ngāti Rangitahi in relation to the settlement offer made by the Crown to Ngāti Awa.

The claimants allege that the policies and practices of the Crown in regard to the settlement of claims, and in particular the policy of 'substitutability', are in breach of the principles of the Treaty of Waitangi. They oppose the offer of certain items of redress to Ngāti Awa on the ground that they have customary interests in, and claims to, these items that have yet to be heard by the Waitangi Tribunal. They claim that they will be prejudiced by the inclusion of these items in the settlement package offered to Ngāti Awa.

The contested items of redress include the transfer to Ngāti Awa of an area of Crown forest licensed land comprised in the Matahina A1B, A1C, and A6 blocks. In addition, the claimants object to items of 'cultural redress' relating to the Matahina A4 and A5 blocks, Kaputerangi, Ōhiwa Harbour, and Moutohorā Island.

The original settlement offer to Ngāti Awa was amended in response to representations made to the Crown by cross-claimants and on the basis of the Crown's own historical research. The revised offer withdrew approximately 25 per cent of the Matahina Crown forest licensed land, and adjustments were also made with regard to the contested items of 'cultural redress', such as making items of redress non-exclusive.

The Tribunal's focus in the inquiry was on whether the Crown's policies, as expressed in the content of the settlement offer to Ngāti Awa, and the Crown's practices, as expressed in its communication and consultation with affected claimants, are in accordance with the

principles of the Treaty of Waitangi. We address the Crown's policy on Crown forest licensed lands in Treaty settlements; the cross-claimants' view of the Crown's policy; why the Crown rejects the approach advocated by the cross-claimants; and the application of the Crown's policy to the Matahina Crown forest licensed lands. We also address the items of cultural redress offered to Ngāti Awa; the Crown's communication and consultation with the cross-claimants; and the Crown's duty to preserve amicable tribal relations.

We find that the Crown's policies on the inclusion of Crown forest land in settlements, and the management of cross-claims to that category of redress, do not breach the principles of the Treaty. We acknowledge that Ngāti Awa, Ngāti Rangitahi, and the Ngāi Tūhoe claimants have demonstrated a threshold interest in Matahina, and we are satisfied that the factual basis exists for the Crown to implement its policy with respect to the Matahina Crown forest licensed lands.

We could not discern, in the Crown's approach to the inclusion of cultural redress in settlements, flaws that amount to a breach of the principles of the Treaty. We think that the Crown properly reviewed its position in relation to the Matahina A4 and A5 blocks. Otherwise, the cultural redress seems to us to be structured in such a way that appropriately recognises Ngāti Awa's mana, but leaves room for other groups to be recognised in future settlements.

With respect to Kaputerangi, it is our understanding that the effect of the transfer of the fee simple estate to Ngāti Awa, combined with the preservation of the reserve status, is to make Ngāti Awa kaitiaki of this land. The reserve status means that the area remains available for public access. We think it important that other Mataatua groups continue to be entitled to visit this place in accordance with their traditional norms. If it proves that, in practice, the access of the general public to the land interferes with those norms, we think that consideration should be given to changing the nature of the reserve status to make special provision for Mataatua iwi and hapū.

We find, with regard to the Crown's communication and consultation with the cross-claimants, that some of the language employed by the Crown to describe its policy – or perhaps the language by which the Crown's policies have become known – is unfortunate. We note, in particular, the description of Crown forest licensed lands as 'commercial assets' that are in their nature 'substitutable'. We also find that the Crown did not adequately disclose its policy agenda to the parties affected by the proposed settlement with Ngāti Awa. This is partly, we think, due to the fact that the Crown was developing its policy during the period when it was communicating with the cross-claimants. While we think that the cross-claimants have a justifiable sense of not having been dealt with properly, we hesitate to find that the Crown was acting in bad faith. We are conscious that prejudice to

the cross-claimants does not appear to have resulted from the Crown's failure to manage well the communication of its policy and the reasons for it.

We acknowledge that the management of cross-claims is a difficult area. We think that the Crown should be pro-active in doing all that it can to ensure that the cost of arriving at settlements is not a deterioration of inter-tribal relations. The Crown must also be careful not to exacerbate situations where there are fragile relationships within tribes.

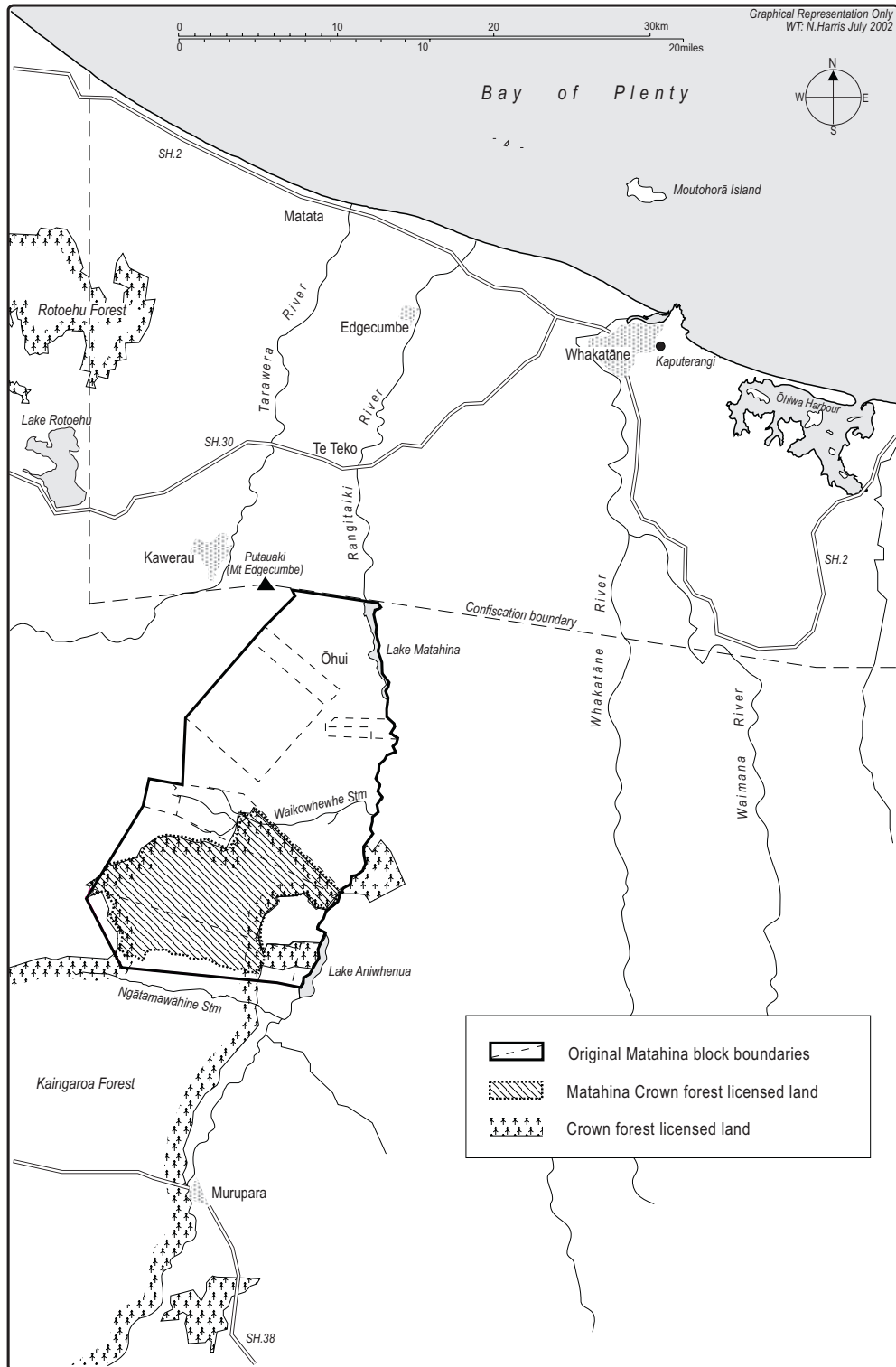
It was not clear to us to what extent the Crown officials see the Crown as obliged to take on responsibility for resolving conflicts arising from its offers of redress that are subject to cross-claims. We recommend that the Office of Treaty Settlements works to improve its officials' understanding of how this duty is fulfilled in practice.

Heoi anō e ngā rangatira, koianeī ngā whakaaro ka pupū ake i te hinengaro o te Rōpu Whakamana i te Tiriti o Waitangi hei tātaritanga, hei wānanga mā kōrua.

Nāku noa



nā Judge Carrie Wainwright
Presiding Officer



Map 1: Location map