Kei mua i Te Rōpu Whakamana i Te Tiriti o Waitangi
Taihape: Rangitīkei ki Rangipō Inquiry

Wai 2180
Wai 37
Wai 933

I te take o Te Tiriti o Waitangi Act 1975

Ā

I te take o The Taihape: Rangitīkei ki Rangipō Inquiry

Ā

I te take o Claims by Te Manuao (Terrill) Campbell, Margaret Poinga, Terrence Poinga, David Turanga, Melvin Turanga and Whakatere Whakatihi (Wai 37 and 933) on behalf of Ngāti Tuope

---

Closing Submissions in Reply for Ngāti Tuope

Dated Monday the 27th of September 2021

HOCKLY LEGAL
Counsel Acting: Cameron Hockly
cameron@hockly.co.nz
021 738 542
hockly.co.nz
PO Box 59211
Mangere Bridge
AUCKLAND 2022

May it please the Tribunal

1. These are the closing submissions in reply for Ngāti Tuope, claims Wai 37 and Wai 933.

Issues addressed in Reply

2. These submissions address a number of discrete issues that arose in the Crown's submissions that relate to;

    a. the response of the Crown to the petitions of the Mokai Patea rangatira;

    b. the Native Land Court process in relation to Awarua and Motukawa, specifically the proposals and out of Court agreements;

    c. the management of lands of Ngāti Tuope hapū and whānau lands in the 20th century; and

    d. Erewini Akatarewa and the taking of Māori customary land for the Moawhango Police Station.

The "response" of the Crown to the petitions of Mōkai Pātea rangatira

3. The series of proposals and indications of the views of Mokai Patea Rangatira were summarised in closing submissions.[1]

4. The Crown's response to this evidence was that, while there was no Crown response in writing to the proposal, there was a meeting as a direct response.[2] However, the evidence about the sequence of events does not completely bear that out.

5. There were a number of requests and recommendations from Mokai Patea Māori about Crown purchasing up to August 1892 with the title to Awarua to be settled that same month.[3]

6. In response the Crown, through the Native Minister and various government representatives met with the Awarua owners on the 7th of September 1892.[4]

7. Walzl points out that there are little if any substantial records of that meeting, other than the letter that followed which was sent by Utiku Potaka, Wiremu Paratene, Raumaewa Te Rango, Hiraka Te Rango, Wirihana Hunia on behalf

---

[1] Wai 2180, #3.3.61 Closing Submissions for Ngāti Tuope Wai 37, [50-72].
[2] Wai 2180, #4.1.25, 38, 44. At 44, Judge Harvey *"It is just surprising isn't that there is no specific response, even a "no"?* Rachael Ennor "*There are specific responses in that Ministers are visiting here within days or weeks of that letter. We don't have good records of what was discussed in those, but I think it would be quite wrong to draw there being no response to that letter, I think there was absolutely engagement with it."*
[3] Walzl, A46, 180-181.
[4] Walzl, A46, 181.

of themselves, Ngāti Whiti, Ngāti Hauiti, Ngāti Hinemanu and Ngāti Tama.[5]

8. This letter is the comprehensive statement of the rangatira on behalf of the hapū and iwi about how the land needed to be protected and dealt with. The development proposal from Mokai Patea rangatira was dated 9 September 1892.[6]

9. As Walzl points out, the proposal received only a "disinterested" letter of response as directed by the Minister's instructions about the response, to the effect that the Crown:

> *"hopes to be able with the ensuing month to begin the purchase of such shares as any of the owners may feel inclined to dispose of and that when all those who desire to sell have had an opportunity of doing [so] the land will be again brought the Court when with the reduced ownership it will probably be possible to get the title into a more satisfactory position."*[7]

10. That this response deliberately ignored the focus of the proposals, the inherent impact of the Court's initial decision on Awarua, can only be seen as cynical and irresponsible. That was the primary and most significant opportunity for the land to be treated in accordance with the views of those rangatira, but fundamentally it was also plan that enabled significant settlement and land acquisition. This was not enough for the Crown.

11. The Crown did not meet again with these rangatira until March 1894 in Moawhango, when Premier Seddon attended with them.[8]

12. Walzl points out that the record of the hui shows the same language and response from Hiraka Te Rango to the message the Premier was delivering.[9]

13. Despite the Crown's suggestion that these meetings were a direct response to the proposals of these rangatira, Walzl and other historians have pointed out, and the lack of documented written response, other than the dismissive one detailed above, shows that the proposal was not meaningfully engaged with at all. The proposal did not prompt further engagement by the Crown with Mokai Patea Māori and rangatira, it was largely ignored as the Crown continued on its agenda to acquire as much land as possible at the least

[5] Walzl, A46, 181.
[6] Walzl, A46, 181.
[7] Walzl, A46, 183.
[8] Walzl, A46, 184.
[9] Walzl, A46, 184.

possible cost.

Native Land Court process in relation to Awarua and Motukawa, specifically the proposals and out of Court agreements;

14. The Crown's submissions note that the out of Court agreements reached by Taihape Māori were not able to be used to resolve the investigation of the Court.[10]

15. The submissions suggested that the concession about the Native Land Court process exacerbating tensions and relationships between people and between groups and within groups addressed that issue.[11]

16. Those discussions focussed on Awarua, but the submissions for Ngāti Tuope set out a further example of this out of court agreement process taking place in relation to Motukawa 2. Again, despite that agreement resolving many of the issues in relation to boundaries, the full hearing was still required, even though the agreement was relied on for the decision of the Court as to boundaries and allocations of land.[12]

17. This shows that there was some inconsistency of the Court as to how these out of Court agreements were handled, ranging from ignoring them completely to effectively setting them in place *following* the full hearing of evidence. Fundamentally though, the Court permitted no mechanism for Taihape Māori to elect to resolve and decide how land should be allocated other than in the Native Land Courtroom.

18. The point needs to be made though that the allocation of land in these cases had largely been agreed, in a process that upheld tikanga and had there been recognition of Taihape Māori tino rangatiratanga over whenua, this could have avoided all of the hearings and re-hearings for both Awarua and Motukawa.

20th Century land management and the Akatarewa whanau

19. The Crown's submissions on economic development[13] refer to Tony Walzl's report on the 20th century, and summed up that research as showing that although Māori owned land "significantly reduced…was nonetheless of sufficient quality and quantity to provide a viable economic land base for the

[10] Wai 2180, #4.1.25, 60-61.
[11] Wai 2180, #4.1.25, 61.
[12] Wai 2180, 3.3.61, [118-120], and Wai 2180, A006(f), Decision of the Native Land Court on Motukawa 2, Whanganui Herald 21 February 1896, 4-5.
[13] Wai 2180, #3.3.100

population size here."[14]

20. That summary and the written submissions at length, contain two fundamental errors. One relates to the nature of the land holdings, the second relates to an assumption about what the Māori population here might be entitled to.

21. The first issue concerns the nature of the land holdings and it was Mr Walzl's view, based first on those indications in the proposal from the rangatira themselves, that the land ownership and allocations needed to be organised amongst them to best serve the whānau, hapū and iwi.[15]

22. Stirling makes the very same point:[16]

> percent of the land in the district, and by 1900 Maori were left with about 433,000 acres of land. This is a significant area of land, but it was not as substantial a resource for the future as the acreage figure indicates; most of the land was suited only to occupation as extensive sheep runs, especially the almost 300,000 acres of land remaining in the Owhaoko, Oruamatua-Kaimanawa, and Rangipo Waiu blocks (as well as about 22,000 acres of hill country in eastern Awarua). In particular, the Owhaoko and Oruamatua-Kaimanawa lands were already tied up in leases to a just two early runholders at low rents and even if the blocks were in unfettered Maori ownership, they were not capable of supporting more than a fraction of the hundreds of owners (just as the two sheep stations supported only two owners and a handful of workers).
>
> Other significant landholdings in the Awarua and Motukawa blocks (about 50,000 acres and 21,000 acres respectively) had better economic potential but their large numbers of owners were already encumbered with unwieldy Native Land Court titles in fragmented, individualised titles comprising thousands of disparate interests, making them difficult to utilise in a rational and economic fashion. This was precisely the outcome the owners had sought to avoid when they formed a committee to manage their last remaining lands in 1886.

23. Walzl points at the disparate and segregated parcels of land that the Akatarewa whānau owned, amongst others, and shows how this arrangement was the result of Native Land Court decisions relating to succession, partition and Crown purchases, and resulted in a deeply uneconomic arrangement.[17] The land holdings cannot and should not be seen in the abstract as an allocation of acres per owner.

24. Secondly, and Stirling's point above addresses this also, the submissions that after all the land acquired by the Crown and private purchasers by the start of the 20th Century, 662,000 acres,[18] that Taihape Māori had enough to sustain "the population size here".

---

[14] Wai 2180, #4.1.25, 78-79.
[15] 2180, #A46, Tony Walzl, *Twentieth Century Overview Report*, 17-18.
[16] Wai 2180, #A43, 6.
[17] 2180, #A46, Tony Walzl, *Twentieth Century Overview Report*, 348-355, 1057, Appendix VI.
[18] Wai 2180, #A43, 5.

25. The point is nuanced but if the emphasis is placed on that aspect of the submission it suggests that Māori are only entitled to what they *need*, and that the Tiriti guarantees and the retention of tino rangatiratanga, only goes so far as to allow Māori to survive and address their "needs".

26. Perhaps such a position is necessary for the Crown at this point in history, but it remains disappointing, as it is clearly apparent that Taihape Māori expected to be able to manage their affairs and their whenua in a fulsome way for the purpose of the flourishing of the current and future generations, and that it was their interpretation that this is precisely what Te Tiriti described was protected in Article Two.

Moawhango Police Station Taking

27. The Crown's submissions specifically address this taking[19]and respond to the generic submissions on this point, but do not appear to address the submissions from Ngāti Tuope which address the issue more directly.[20]

28. Those submissions from the Crown conclude that "the compulsory acquisition and subsequent dealings appear better characterised as a voluntary arrangement being given effect to through public works provisions than as a compulsory acquisition against community opposition."[21]

29. The taking was effected in 1896, but it was two years prior; 1894, that the Premier had been asked to supply a police station to the district, importantly the location was not detailed at that hui or immediately following, and it remains unclear why this site was chosen.[22]

30. The first issue with these Crown submissions is that Erewini Akatarewa was Hiha Akatarewa's brother, not his tupuna.[23]

31. Secondly, at the time of the objection, November 1894, and arrest, March 1895, the land was still Māori customary land, and it was being used by Erewini Akatarewa.[24] Erewini was arrested and placed in prison in Napier twice, first for removing the survey pegs, and again for not paying the £50 fine for that removal following the hearing of the charges against him.[25]

32. The description of "owners" used by the Crown refers to those owners

---

[19] Wai 2180, #3.3.82, Closing Submissions of the Crown on Issue 13:Public Works (General Takings)12-15.
[20] Wai 2180, 3.3.61, 26-29
[21] Wai 2180, #3.3.82, 15
[22] Wai 2180, #A043, B Stirling, *Nineteenth Century Overview*, 482.
[23] Wai 2180, #3.3.82, Closing Submissions of the Crown Relating to Issue 13:Public Works (General Takings)12.
[24] Wai 2180, #A9, Phillip Cleaver, 220-223, Wai 2180, #A043, B Stirling, *Nineteenth Century Overview*, 483.
[25] Wai 2180, #A043, B Stirling, *Nineteenth Century Overview*, 483.

identified later on as the owners by the Native Land Court following the protracted hearings into Motukawa.[26]

33. The action against Erewini Akatarewa was taken in response to his removal of survey pegs.[27] However, given the lack of Court issued title and that customary ownership in effect at the time, there is a prima facie argument that the protest was both reasonable and well founded. Stirling points out that these were cultivated lands, which up until October 1894, could not be taken without notice.[28] There is no evidence of any more consultation with the local Moawhango Māori community about the matter, or a discussion about the best location of the station.

34. The suggestion here is that it is not unreasonable to expect that greater engagement was needed with those occupying the land and living in the surrounding area to finalise the precise location of the land suitable for the taking, especially where this site was being occupied and cultivated. That is what we submit was required in these circumstances, but is precisely what was lacking from the sequence of events.

35. Instead, the officials proceed with the extreme approach of fining and imprisoning, twice, someone who was occupying and cultivating Māori customary land in plain open sight of the entire Moawhango community.

36. This sequence of events is one more example of lack of proper engagement and consultation with Taihape Māori, leading to Tiriti breaches and extreme prejudice in the form of imprisonment.

Dated at Māngere this Monday the 27th day of September 2021

Cameron Hockly
Counsel for Ngāti Tuope

[26] Wai 2180, #3.3.82, Closing Submissions of the Crown Relating to Issue 13:Public Works (General Takings)13.
[27] Wai 2180, #A043, B Stirling, *Nineteenth Century Overview*, 483.
[28] Wai 2180, #A043, B Stirling, *Nineteenth Century Overview*, 483, the Public Works Act 1894 did not require notice or give owners' rights to formally object to a taking, see Cleaver #A9, 220.