

# **Updating Ngāi Tumapuhiarangi (WAI 429)**

## **Moving to Negotiations**

**Bob Hill**

## Ngāi Tumapuhiarangi (WAI 429) moving to negotiations

### Background Information

The Wairarapa claim was recorded with the Waitangi Tribunal as: Ngāi Tumapuhiarangi WAI 429 and the broader claim process involving Tararua and Wairarapa under the Wairarapa ki Tararua inquiry district (WAI 863).

Nine weeks of hearings occurred between March 2004 and March 2005. Wairarapa ki Tararua Tribunal members Judge Carrie Wainwright (presiding), Professor Wharehuia Milroy, Dr Ranganui Walker, and Dame Margaret Bazley heard evidence and submissions on a total of 17 claims (covering 28 WAI numbers) filed by members of Ngāti Kahungunu and Rangitāne hapū and other claimant groups.

In 2010 the Waitangi Tribunal released its report following a lengthy process of collating and documenting evidence, the report is available in three volumes and electronic copies can be accessed on the Waitangi Tribunal website or the three volumes can be purchase direct from the publishers, Legislation Direct ([www.legislationdirect.co.nz](http://www.legislationdirect.co.nz)), or accessed through the public library network.

### The Ngāti Kahungunu ki Wairarapa Tamaki Nui a Rua Trust

Ngāi Tumapuhiarangi has entered into a cooperative trust settlement arrangement with a number of related Wairarapa hapū, whanau groups in respect of Crown breaches of the Treaty of Waitangi.

The Trust had its inaugural meeting in January 2011, and at that meeting the Trust members accepted the Trust Deed in its draft format with the need to refine and seek clarification from various Government Departments and follow up with any legal advice as required.

The establishment Trust members were

Hapū/Marae	Trustee	Alternate
Hurunuiorangi Marae	Ron Mark	Henare Manaena
Ngāi Tumapuhiarangi Hapū	Ian Perry	Bob Hill
Ngāti Hinewaka	Haami Te Whaiti	Niniwa Monroe
Papawai Marae	Marama Tuta	Malcolm Mulholland
Te Hika o Papauma	Robin Potangaroa	Tom Wilton
Te Oreore Marae	Pani Himona	Rex Hemi
Wairarapa Moana	Kingi Smiler	Mark Rutene
Tamaki Nui a Rua 1	Kahu Pene	Rangimarie Taite
Tamaki Nui a Rua 2		

Akura<sup>1</sup> at that stage was only a silent participant and would become a full participant approximately two months later.

### **Officers of the Trust**

Ian Perry was elected as the Chair and Diane Rewi as the Trust Secretary.

### **Trust legal counsel:**

Grant Powell of Powell Webber & Associates

### **Trust Project Teams**

A number of project teams in most cases consisting of Trustees have been set up to either research specific topics to support the Trusts progress or to consult with various government agencies on specific topics. At the same time the Trust would also begin consultation with the Rangitāne team on working together or specific topics common to both groups.

The composition of the Rangitāne group can be seen on the iwi website [www.rangitane.co.nz](http://www.rangitane.co.nz)

Other aspects of reporting on progress of the claims process can be found on the Ngāi Tumapuhiarangi website.

### **Moving towards negotiations**

As was noted in an earlier document (see the Ngāi Tumapuhiarangi website) the length of the life of the current Trustee is limited - the suggestion has been to extend their work from the original 12months to 18 months. That will give continuity to the work at hand and a consistent work stream leading to negotiations. Included in this consistency of work will be the selection/appointment or elections of negotiators, the determination of a negotiation strategy and a range of other tasks.

The focus of trustee work to date is to

- Develop and finalise the Trust Deed
- Mobilise and enter into negotiations with the Crown, and
- Work with and along side the partner trustee group from Rangitāne.

At the point of entering into negotiations the role and functions of the trustees changes. The work of the negotiators takes over. When the negotiations have been completed the Post Governance Settlement Entity (PGSE) is formed and the job of this group is to manage the outcomes from negotiations.

The role and function of the PGSE will be different to the activities current trustee carry out. As the current trustees are mandated to set up the Trust, consult with members and set up the process to negotiations, the PGSE will be mandated to manage the assets. The PGSE, may reinvest any assets from the Crown, and may

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<sup>1</sup> I am guessing that the term Akura refers either to a tipuna or alternatively the use of the hīnaki and the action of locating the hīnaki during the tuna season in the stream. In practical terms Akura refers to the funnel type entrance of the hīnaki

work with hapū on ancillary claim matters. The actual role and function has yet to be considered<sup>2</sup>.

As with other iwi settlement entities, the employment of specialist skills are matters the PGSE may consider.

### **Trust Deed**

The Ngāti Kahungunu ki Wairarapa Tamaki Nui a Rua Trust Deed is a document that:

- Details the nature of the Trust
- The initial trust signees and who they represent
- A brief on the wider Wairarapa Tamaki Nui a Rua claim focuses on:
  - a. The Crown's actions in breach of the Treaty of Waitangi have resulted in the loss of mana, the loss of Ngāti Kahungunu ki Wairarapa-Tāmaki Nui ā Rua land and other resources, and the loss of identity, and marginalization of, the whanāu, hapū and iwi of Ngāti Kahungunu ki Wairarapa-Tāmaki Nui ā Rua.

And that,

- b. Ngāti Kahungunu ki Wairarapa-Tāmaki Nui ā Rua now seek to enter into negotiations with the Crown in order to achieve a settlement of their historical Treaty of Waitangi claims.

The Trust Deed is a large document and is undergoing final scrutiny (a few tweaks are necessary) by legal counsel and trustees - a number of changes have been recommended to the text.

Copies of the Trust Deed are available in electronic form and you might need to send a memory stick to Diane Rewi for down loading.

People should also note sets of maps will be included in the Trust Deed and these maps set out areas of interest, or claim regions in respect of claims through the Waitangi Tribunal process.

You will see that a number of Marae have set up maps which cover significant area and encroach in other neighbouring hapū areas. This should not be a problem if the maps indicate 'areas of interest' only.

The area that might be of contentions is the overlapping interests between hapū. Ngāi Tumapuhiarangi and Ngāti Hinewaka have a significant area of overlap and this may possibly become an area for debate at a later stage.

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<sup>2</sup> Jack Morris spoke about this process (PGSEs) as early as during the work of Te Ropu Kaimahi and when the initial and early conversations were taking place with CFRT and OTS.

## **Wai 429 - Ngāi Tumapuhiarangi claimant documents**

The Wai 429 Ngāi Tumapuhiarangi claimant documents are located on the Waitangi Tribunal website and can be accessed with a password which will be provided by the Tribunal without cost to the person wishing to access the document store.

## **Wairarapa ki Tararua Report 2010**

### **Summary of Recommendations from the Wairarapa ki Tararua Report**

The Tribunal grouped the issues raised in the 17 statements of claim into six main divisions:

1. The relationship between Crown and Māori from 1840 to 1865 with particular emphasis on the pre-1865 Crown purchases.
2. The relationship between Crown and Māori from 1865 to 1900, with particular emphasis on native land laws, the Native Land Court, Crown and private purchases, and the political responses of Māori to these matters.
3. Non-agrarian resources and the environment, with a particular emphasis on the Wairarapa moana (Lakes Wairarapa and Onoke/Ferry), rivers, the foreshore and seabed, and environmental management and degradation.
4. The loss of land and resources in the twentieth century, with a particular emphasis on the impact of that loss and the question of what was 'sufficient'.
5. The management of heritage sites of cultural significance, the environment, the coast, and the taking of land for public purposes, whether by central or local authorities.
6. Issues specific to particular groups and whānau not covered in items 1 to 5.

Following the closing of submissions in 2005 the tribunal commenced its report writing phase. The Wairarapa ki Tararua report was released on the 26th of June 2010.

## **Key Finding - Education**

### **15.4 Chapter 3C: Crown Purchasing: Benefits of Settlement in Terms of Education and Health**

#### **15.4.1 Tribunal findings on education**

*We find* that none of the education that the Crown provided met the needs of Māori children. Both native and board schools failed them. Even the schools that Wairarapa Māori themselves endowed with land were allowed to founder. The Tribunal's view was that this was a 'significant breach of promise' given the Crown's reliance on promises of (inter alia) education as a means of persuading Wairarapa Māori to let the Crown purchase their land, and open up the district to settlement.  
(Text changes by B Hill)

After Governor Grey made these promises in 1853, a crucial 30 years elapsed before there was any meaningful effort to provide schools for the Māori community in

the Wairarapa. This was an opportunity lost. Good education for Wairarapa Māori from the time when land purchases began might have facilitated an altogether different transition from traditional to colonial life. This delay, together with the typically short lifespan, meagre spread, and low standard of the district's native schools, and the unsuitability for Māori of both native and board schools, had multiple negative consequences. They exacerbated disparities in the socio-economic position of Māori and non-Māori. They neither prepared Māori to advance educationally to tertiary level nor provided the kind of agricultural skills training that might have enabled them to develop their remaining land assets. These failings breached the Crown's duties of good faith and active protection.

The evidence does not allow us to answer with certainty whether these failings amounted to a breach of article 3 rights of equal access. What we can say is that fewer children went to native schools in this district than in many other places. Lack of access to purpose-built Māori education in native schools *should* have prejudiced Māori children in the Wairarapa ki Tararua inquiry district. However, the evidence about native schools – their low aspirations for Māori children enshrined in less academic curricula, and their lower qualification standards – indicates that missing out on them may not have been a disadvantage at all.

Alternative such as – board schools – were probably no better for Māori children, and because of the discrimination they suffered, might even have been worse. The Crown failed in its duty, which arose both from its own undertakings and from its duty of active protection under the Treaty, to devise and provide effective means of delivering education to Māori children (Text changes by B Hill).

As regards te reo Māori, we acknowledge that the Crown's responsibility for language and culture loss – especially in this district, where settlers so quickly outnumbered Māori – is a complex matter.

We acknowledge the efforts of recent leaders to set up kōhanga reo and kura kaupapa in the district, in the face of considerable local Pākehā opposition.

The Crown, via the Education Department (Ministry of Education), should have taken a more active role in promoting the value of Māori educational initiatives – kōhanga reo (pre-schools), kura kaupapa (primary schools), and wānanga (tertiary institutions) – to all sections of the Wairarapa ki Tararua community.

***We (The Tribunal) recommend:***

that the Crown constantly reviews the degree of support necessary for te reo to be preserved and promoted in this region, in partnership with the iwi of Wairarapa ki Tararua. (Formatting change by B Hill)

**Wai 262 Report and Education**

**What is the Wai 262 claim?**

Wai 262 was lodged with the Waitangi Tribunal on 9 October 1991 by six claimants on behalf of themselves and their iwi: Haana Murray (Ngāti Kuri), Hema Nui a

Tawhaki Witana (Te Rarawa), Te Witi McMath (Ngāti Wai), Tama Poata (Ngāti Porou), Kataraina Rimene (Ngāti Kahungunu), and John Hippolite (Ngāti Koata).

### **What is the claim about?**

The claim is about the place of Māori culture, identity and traditional knowledge in New Zealand's laws, and in government policies and practices. It concerns who controls Māori traditional knowledge, who controls artistic and cultural works such as haka and waiata, and who controls the environment that created Māori culture.

It also concerns the place in contemporary New Zealand life of core Māori cultural values such as the obligation of iwi and hapū to act as kaitiaki (cultural guardians) towards taonga (treasured things) such as traditional knowledge, artistic and cultural works, important places, and flora and fauna that are significant to iwi or hapū identity.

### **Education/tertiary education (Maori)**

On 2 July 2011, the Waitangi Tribunal released its report on the WAI 262 claim relating to New Zealand's law and policy affecting Māori culture and identity.

*Ko Aotearoa Tēnei* ('This is Aotearoa' or 'This is New Zealand') is the Tribunal's first whole-of-government report, addressing the work of around 20 government departments and agencies and Crown entities.

The second volume of Te Taumata Tuarua contains the final four chapters of the report. Chapter 5 focuses on the Crown's protection of te reo Māori (the Māori language) and its dialects, and considers in depth the current health of the language. A prepublication version of this chapter was released in October 2010.

Chapter 6 considers those agencies where the Crown owns, funds, or oversees mātauranga Māori (Māori knowledge and ways of knowing) and is thus effectively in the seat of kaitiaki (cultural guardian). These agencies operate in the areas of protected objects, museums, arts funding, broadcasting, archives, libraries, education, and science<sup>3</sup>.

### **Importance to Ngāi Tumapuhiarangi**

During the negotiations an area of thinking might best focus on the role and function of education and tertiary education in Wairarapa, particularly te reo, mātauranga and tikanga. Te reo was raised in evidence provided by Patsy Waipuka at the Ngāi Tumapuhiarangi hearing.

As depopulation of Marae and takiwa becomes further significant reality as people move to the larger cities, may migrate overseas, (we already have experienced this ongoing process since the end of the second war) the role of education and tertiary becomes more important in preparation and skills and knowledge development.

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<sup>3</sup> See Waitangi Tribunal website for a more exhaustive understanding of Chapters 5 and 6.this section.

How this is achieved is an area of debate and an area of debate through 'Whole of Government Accords'. As WAI 262 has identified (see other commentators (Smith H and Smith L) the government holds the purse and its is difficult enough to obtain a cut of the funding pie to deliver to educational products (te reo, mātauranga, tikanga) to tamariki and rangatahi.

The downside is of course Government Departments may be reluctant to deal with individual hapū so the collective may be way of developing a 'Whole of Government arrangement' through the settlement process.

Inline with focus of kōhanga and kura kaupapa this issue might be something for Ngāi Tumapuhiarangi to give some thought to.

- What is it the hapū wants from education?
- How can compulsory schools, universities, polytechnics, wānanga and Private Training Establishments (PTEs) contribute to Maori education pathways and opportunities and in this case for Ngāi Tumapuhiarangi?
- How might this support existing facilities (kōhanga, kura kaupapa)

The Whole of Government Accord is seen as a viable way of addressing a range of supply and demand arrangements for Maori and iwi.