MAHEATAI NOHO WHENUA

INFORMATION HANDOUT

Pre-Treaty Transactions: Oruru - Taipa

The following is a summary of the Waitangi Tribunal's commentary and findings in relation to Pre-Treaty transactions generally and the Oruru transaction in particular from *The Muriwhenua Land Report* (1997).

Pre-Treaty Transactions: A Summary

In the period from 1834 to 1840, 55 deeds evidencing what Europeans understood to be private transactions for the transfer or exchange of use rights to land, were completed.[1] The Waitangi Tribunal has questioned whether Maori saw such pre-treaty transactions as land sales in the European sense and found that "[m]uch more compelling evidence would be needed to assume that the profound and antithetical principles of traditional land tenure had been displaced."[2]

The Ngati Kahu view is that the transactions were tuku whenua or conveyances of use rights to land where there were ongoing obligations or 'strings attached'. Whereas Ngati Kahu looked upon pre-treaty transactions as social compacts, Europeans saw them as property conveyances.[3]

As to Pre-Treaty transactions generally, the Tribunal found that:

- Maori law applied before annexation. Thus, as a matter of law, the transactions could not have been sales, for Maori law did not permit of that.[4]
- The rangatira did not have the right, title, and interest to effect a sale in Western law. They had only a power of allocation.[5] Panakareao did not seek to do more than allocate land, and for the benefit of the local community, with whom the European would be bonded.
- The missionaries' concept of a trust, as implied with Oruru, Raramata, Mangatete, and other blocks, or other joint-use arrangements, came closer to Ngati Kahu expectations that the Europeans would have a

[1] *Muriwhenua Land Report*, p 54.
[2] Ibid, p 106
[3] Ibid, p 108.
[4] Ibid.
[5] Ibid.

role within the Ngati Kahu community and both would assist each other.[6]

- The pre-treaty transaction deeds were poorly and imprecisely drawn. Their form is less questionable than their status, however: "A written deed is normally the best evidence of that which was agreed on the ground, but this rule of law has little application when one party is of an oral culture, where written documents are of no consequence, and when they contain terms outside that party's experience. In that situation, the deed evidences no more than that which the party who drafted it sought to achieve."[7]
- There was no evidence that Ngati Kahu saw the transactions as sales, and no adequate inquiry was made of whether Ngati Kahu in fact saw them that way. In no case was the Maori understanding of the transactions inquired into.[8] It was not considered either, whether, in accordance with their customs, Ngati Kahu had bargained not for the goods but for future benefits, or whether the pre-treaty transactions envisaged an ongoing personal relationship with particular individuals and use rights conditional upon regular contribution to the community and acceptance of its authority and norms.[9]
- Maori would not have seen the transactions as sales, in the European sense, either at the date of execution or in 1843 when the first Land Claims Commission considered the transactions.[10]

Oruru - Taipa

The Tribunal made the following comments and findings in relation to the lands in the Oruru Valley which include Maheatai/Taipa:

- In 1839 Panakareao set aside the use of the "massive and rich" Oruru Valley including Taipa in Dr Samuel Ford's name. Ford was a CMS surgeon. Panakareao had already provided him with a large area at Kaitaia and there is evidence, extrinsic to the deed, that Ford maintained that the land was held on trust for local Maori.[11]
- The Oruru arrangement was the second largest transaction in Te Hiku o te Ika and exceeded some 20,000 acres. The deed purported to secure the land for 2 communities of Ngati Kahu-Te Rarawa and Ngapuhi. The deed has the hallmarks of an attempt to settle a

[6] Ibid.
[7] Ibid, p 56.
[8] Ibid, p 173.
[9] Ibid, p 168.
[10] Ibid, p 168.
[11] Ibid, p 93.

debilitating tribal and leadership dispute between Pororua and Panakareao.

- The evidence is strongly indicative of a trust.[12]
- The prospect of a trust arises from these words in the deed (as translated from the text in Maori):

> *"The people of Kohumaru with their children may sit upon this place from this generation to another: but not the people of other parts: those of the place only. Also the people of Oruru may sit upon their places on the said land within the boundary…"*[13]

- In October 1840 Ford and Panakareao renegotiated the transaction reducing Ford's claim to approximately 5000 acres.[14]
- In the subsequent investigation of the claim Ford filed for the full 20,000 acres, relying only upon the 1839 deed. Later he explained that only 5000 acres were sought for himself absolutely.[15]
- The Crown heard Ford's claim to the land in 1843 in private in the Bay of Islands and no Maori were involved. Ford was awarded scrip for 1725 acres and "The Government presumed to own Ford's land...but it presumed to hold without any further inquiry not just the 5000 acres that Ford claimed but the 20,000 acres of the original transaction. There was no suggestion of implementing the trust."[16]
- The Tribunal observed: "Without hearing any Maori, it [the Crown] simply assumed that Maori interests had been extinguished over the whole of the lands which the Government considered had been affected by the pre-Treaty transactions."[17]
- Without the Crown having ever been put to the proof of its acquisition the resident magistrate placed certain Pakeha families there starting in 1852.[18]
- The Tribunal outlined its main concern with respect to the Oruru transaction was that: "The original plan to protect Oruru Valley for Maori, and for Dr Ford, was obfuscated by the Government's failure to provide for such trusts to be recognized. The plan became instead to secure the area for Europeans."[19]
- It appears that the Crown was aware the documentation for Oruru and its claim to title was inadequate and uncertain and required later rectification. McLean, Chief Land Purchase Commissioner,

[12] Ibid.
[13] Ibid, pp 93 and 98.
[14] Ibid, p 98.
[15] Ibid, p 99.
[16] Ibid, p 150.
[17] Ibid.
[18] Ibid, pp 221-222.
[19] Ibid, p 224.

instructed the District Land Purchase Commissioner, Kemp, to use greater care in making deeds so as to be "binding upon the Natives."[20]

- In 1857 a deed was provided for an area called Otengi (which included the land on which the Taipa Sailing Club is located) signed by 15 Maori which purports to convey the land to the Crown. No area was given, no plan was attached.[21] There is no detail in the report about what those Maori intended to convey by signing the deed or whether they had the authority to convey anything to the Crown. That said the Ngati Kahu view is as stated earlier that there is no evidence that Ngati Kahu people considered that this Deed constituted a sale and at best what was being provided was use rights for which reciprocal benefits were expected but not realised.
- A reserve of 79 acres near Taipa called Waimutu was set aside for Tipene of Ngati Kahu but resident magistrate White negotiated the Crown's acquisition of use rights to this reserve in 1864.[22]
- By 1890 no Maori land was left in the Oruru Valley apart from lands surrounding the small village of Peria in the upper reaches.[23]

[20] Ibid, p 225.
[21] Ibid.
[22] Ibid.
[23] Ibid, p 226.