

**THE RECENT HISTORICAL EXPERIENCE BETWEEN
THE CROWN (GOVT) AND MAORIDOM (WHAKATOHEA)**

THE OBVIOUS LESSONS

GOVERNMENT POLICIES HAVE NO COHERENCY

**A DRAFT PROPOSAL FOR WHAKATOHEA RESPONSE OUR
CLAIM NEGOTIATIONS**

18 July 1992

The 1984 Hui Taumata specified a decade of Maori Development within a frame work of Maori self sufficiency and Maori control. Reduced reliance on the state, the conversion of negative spending into positive funding, and confidence in tribal delivery systems was emphasised in order to enhance Maori social and economic advancement.

While the major thrust was on economic initiatives, a paper on maori health, and several reports on Maori unemployment left no doubt that social policies were to be integral to Maori development and that Maori people themselves were ready to be the agents for change.

In retrospect it is likely that the Hui Taumata findings were used to support free market policies and to strengthen the case for a minimal state. Devolution, restructuring of the Department of

Maori Affairs and a user pays philosophy became Government priorities.

To some extent, Maori aspirations for greater independence from the state and a greater measure of economic and

political autonomy appeared, at least on the surface, to support those objectives, despite warnings for iwi that hasty decisions and inadequate funding could undermine any advantages that devolution might bring to Maori authorities.

A dilemma for maori was beginning to emerge. Tino Rangatiratanga and its promise of greater Maori autonomy could be interpreted as offering implicit support for privatisation or at least for reduced state provision of services.

Having made a case for greater Maori control, iwi and other Maori authorities were faced with the prospect of using meagre resources derived in part from the state and in part from their own coffers, to provide a range of economic, social and cultural programmes.

The state in turn seemed poised not only to encourage the private position of some social services but also to curb the level of State spending on health, education, housing and employment.

Social indicators left no doubt that the socioeconomic position of Maori was,

to say the least, disadvantaged and that iwi might unfairly be expected to rectify a situation that had developed over the decades as a result of misguided government policies.

The history of Governments in New Zealand since the signing of the Treaty of Waitangi leaves Maoridom with the view that there is too much evidence that suggests that Government actions have been deliberate.

In the years immediately following the Maori Economic Summit, few if any of the Hui Taumata aspirations were fully realised. Two developments combined to frustrate progress and to compound the mixed and at times contradictory objectives already evident in Wellington and in the regions.

Firstly, having been made aware of the extent and nature of partnership deriving from the Treaty of Waitangi, as expressed in the Court of Appeal during the NZMCSOE case (1987), the Crown appeared to step back from its earlier interest in Maori autonomy, including economic self reliance.

Instead, contractual relationships based on the delegation of certain state functions, but within confined and narrow frameworks, were favoured over a partnership based on a sense of constitutional equality.

In its own interpretation of the Treaty principles, the Crown referred to the

Rangatiratanga principle as the Principle of Self Management under which Iwi have the right to organise as iwi, and, under the law, control the resources they own.

There was little in that wording to favour autonomy or self determination on the part of iwi but the recognition of iwi as key players in economic development was at least consistent with the intention to devolve to them some resources, and delegated authority.

Thus while seeming to address the concept of partnership the role for iwi appeared to be a limited one that allowed no significant part in the formulation of economic policy but encouraged a relatively minor management and delivery role.

A second obstacle to positive iwi development came about as a result of Government enthusiasm for off loading state obligations to iwi authorities, as part of the devolution process.

Maatua Whangai, Maccess and Mana programmes quickly became the focus for many iwi, often at the expense of their own plans and aspirations and frequently to their considerable inconvenience.

Maori development it appeared, was being determined by state agendas, and Maori priorities were having to be

accommodated within programmes and parameters set by central policy makers.

Far from determining their own futures, many iwi were caught in the ironic situation of being providers for government programmes but without any real opportunity to shape the programmes or to give attention to their own plans.

Further, while Mana Enterprises in particular was often highly successful, it suffered not only from centrally imposed regulations but also from a failure to secure a longer term commitment from Government. Maori development, and iwi development in particular, ran the risk of being an agent for culturally sensitive government programmes, delivered at relatively low cost by Maori. This is exactly what has happened.

The first half of the decade of Maori development then, had been characterised by conflicting and confusing objectives, inconsistent signals from Government, intense rivalry that divided and diminished Maori, and above all a failure to substantially improve the Maori economy.

Partnership masqueraded as tino rangatiratanga; competition was confused with efficiency; and devolution merely created the illusion of self determination.

While the call for a decade of Maori

development had come from Maori leaders at the Hui Taumata, the actual criteria bore more of the stamp of Government, while the right to administer had been assumed by the bureaucracy. Missing was Maori control and Maori ownership.

Within all this climate of an imaginary positive future the Trust Board has made a genuine attempt to take part in the belief that Government attitudes were changing.

I had become aware of the cynical truth some time ago and that Government Policy analysts were conducting interesting experiments to camouflage the true nature of overall National Policies; Rogernomics, Ruth Richardson The Business Roundtable. Bankrupt Businesses; the collapse of Financial Institutions, BNZ, DEVELOPMENT FINANCE CORPORATION.

For Maori business enterprise to succeed in the environment that exists is a rare occurrence. The often repeated phrase "We have been set up to fail" holds bitter truth.

Maoridom as a whole has borne the brunt and is paying a horrendous price.

All the negative statistics are rising at an alarming rate and it is very clear that Government see the solutions in a stronger National economy some time in the future.

The history of economic patterns consistently reveal a rise and fall repeating cycle with Maoridom being further disadvantaged at each economy downturn and current Government financial policy planning will ensure even more disadvantaged people.

Maori Iwi throughout Aotearoa have had differing historical encounters and therefore different experiences with Tauwiwi which have had a profound influence in shaping the character and behaviour of Iwi and thus setting them apart in the sense of their nature and cultural behaviour as well as their economic base.

The suggested settlement process is designed to fully restore the Mana and Tino Rangatiratanga of Whakatohea in the first instance, secondly, with a strong economic base.

The Crown can regain its Mana and Tino Rangatiratanga by accepting the basis for our negotiations and responding as a willing Treaty partner to achieve the objectives.

We have an absolute right to be divorced from current mainstream criteria while the remedial processes are actioned. We will not tolerate interference from any outside influence.

THE BUSINESS IS BETWEEN THE CROWN AND THE WHAKATOHEA

DRAFT

In conjunction to preparing a report on our case, attention now needs to be given to how Whakatohea desires to front the Crown over claim negotiations as well as formulating a general understanding as to what Whakatohea expects from the Crown in order to remove the prejudice affecting the Iwi attributable to Crown actions in breach of the Treaty of Waitangi.

I do not believe the Crown needs to be persuaded that it has breached its Treaty obligations with Whakatohea. The Minister of Justice has admitted responsibility. The Tribunal proceedings are designed in effect to formally entrench the crown breach and to identify the magnitude of the prejudice to be remedied in social and economic terms.

It is proposed that a social and economic survey of Whakatohea would quantify in present day values the economic opportunity loss the tribe has suffered from the Crown breach of the Treaty.

The economic loss is directly responsible for the negative statistics that are well known to the Crown and ourselves.

There are a number of ways in which we can address the situation. Traditionally, claimant Iwi negotiate "package deals" which in effect comprise lump sum pay outs in conjunction with the transfer of Crown assets and resources.

I have doubts whether politically the traditional approach is sustainable and furthermore is able to be translated by the individual members of the tribe as giving effect to justice.

A COVENANT BETWEEN THE CROWN AND WHAKATOHEA

In my opinion, any settlement with the Crown must initially have as its primary focus the mana of the people. In other words we must look to restore the mauri of the Whakatohea and to rejuvenate the very life source on which the tribe, as an entity, is dependent ultimately for our survival.

The loss of mauri is most evident in statistics in terms of health, education, justice etc at the individual level and the loss of Iwi Tino Rangatiratanga at the government level in terms of article (2) of the Treaty of Opotiki.

I believe that the Crown and Whakatohea must work together to implement specific policy designed to restore the social and physical well being of the tribe and its people. For example, Government policy on education, health, housing etc should be addressed to specifically accommodate the identifiable needs of Whakatohea.

To do that, it would be necessary to formulate clear objectives in each portfolio area.

The restoration of mana and mauri is something that may well take a generation or more to accomplish and any present initiative is primarily to lay a solid foundation for the next generation to carry on with.

We have suffered prejudice for 127 years. We ask the Crown's co-operation for about ten years to fully remove the prejudice.

Although I perceive the form of a settlement with the Crown as primarily one of revitalising the spiritual, social and cultural well being of the people, we should not in any way relieve the Crown from an obligation to address material forms of compensation for actual loss suffered.

The loss will need to be quantified in terms of money, land or other resources or a combination of them all and must be sufficient to eventually provide Whakatohea with sustainable income to meet future needs, thereby becoming self sufficient and finally insulated from future Government policy manipulation.

It is vitally important not to absolve the Crown from its obligations whilst the tribe is substantially prejudiced. The Crown must be held responsible until at a time in the future when Whakatohea are satisfied that Tino Rangatiratanga has been fully restored.

To achieve this, any settlement must, in

my view, be negotiated requiring a long term potential commitment by the Crown to address the needs of the tribe and its people. Such an approach should not be seen to "bankrupt" the Government, but enabling it to spread its commitment progressively within our clearly defined objectives of what needs to be achieved.

Before any of this can happen, I suggest that Whakatohea assert its standing before the Crown. I believe that in this instance the parties should approach each other in the same capacity they signed the Treaty.

THE SIGNING OF THE TREATY AT
OPOTIKI WAS BETWEEN ONE
SOVEREIGN ENTITY AND ANOTHER.

There must be acknowledgment of the fact that Whakatohea dealt with the Crown in the capacity as a First Nation Government and any on going interaction affecting Treaty rights must recognise the constitutional standing of the parties.

Since we are dealing with the Treaty over a matter of major significance it would be wholly appropriate that the Crown and Whakatohea reach an accord on matters of principle and understanding that will guide future relations.

Establishing an agreement to an accord should be the matter of first priority before the commencement of

negotiations.

I would envisage that the first task would be for Whakatohea to enter into with Her Majesty the Queen a Memorandum of Understanding concerning co operation on a tribal re development strategy.

Objectives

The objective of the Memorandum is to secure the commitment of the parties to work together:

- 1 To develop specific Memoranda of Understanding and/or sub agreements on a tribal development programme.
- 2 To identify the source and magnitude of funding support needed to pursue future initiatives. cultural development of the tribe including the development of human resources and community institutions.
- 3 To create a mechanism to facilitate on-going co-operation, consultation and joint planning among the parties.

Principles

It is important that long-term development will require the careful integration of community, social and

human resource development in support of the strengthening of the tribal economic base. Close co-operation and a commitment to the following principles would need to be considered:

- 1 The initiatives of the parties must aim to support self-sufficiency by minimising dependancy and maximising the development of tribal economics, and institutions as well as individuals
- 2 For the parties to direct their own progress toward self-sufficiency and responsibility at a pace and in a manner determined by their needs and interests.
- 3 The self-sufficiency of Whakatohea flows from viable economic development that is supported by the social and cultural development of the tribe including the development of human resources and community institutions.
- 4 To acknowledge that Whakatohea will be fully consulted on the development of initiatives related to the Memorandum.
- 5 To acknowledge that initiatives must be undertaken in consultation and co operation with local government in any matters affecting it.

- 6 To recognise that nothing by entering into a Memorandum shall change the relationship between the Crown and Whakatohea in terms of the Treaty of Waitangi.

Priorities

Based on the above principles, it will be necessary to illustrate key elements of co operation to the tribal re development of Whakatohea. The broad priority areas will in fact guide the parties in the formulation of sub agreements to be developed between the parties.

General Areas Of Joint Planning And Initiatives

Through the process of joint planning the parties will agree to examine Government programmes and policies in place to determine their applicability to the expressed needs of Whakatohea.

Obviously an examination would lead to adjustments as required to enhance efficiency and effectiveness and to ensure that programmes are properly targeted.

Economic Development

The parties to jointly examine economic development issues such as resource development, agriculture, entrepreneurial development, business assistance.

Employment And Training

The parties to jointly examine such employment and training needs such as occupational training, management development, job creation.

Social Development

The parties to jointly examine such social development issues as adult/child welfare, education, social infrastructure, life skills and social assistance and its alternatives.

Community Institutions

To jointly examine community institutions and infrastructure (Local Government/Tribal Institutional Structures) and issues such as community plans, housing etc.

Where necessary the parties must examine the unique needs and circumstances of the Whakatohea and recommend necessary action.

Implementation

It will be necessary to decide whether the parties wish to undertake a co operative approach or to retain total autonomy or a combination of both.

My view is that there should be a co-operative approach to tackle identifiable problems and needs at least until the

tribe has a sustainable management/economic structure.

The implementation of a programme of tribal development will be pursuant to a number of sub agreements aimed at selected needs and opportunities.

There would need to be created a Crown/Whakatohea committee charged with the responsibility of preparing for Ministers and Whakatohea consideration, the development of sub agreements.

Costs

Planning funds will be required to activate a tribal redevelopment programme.

Having agreed to the commitment to undertake a tribal development programme then the next phase would entail the entering into negotiations. The matters and time tabling of negotiations would be set out by Memorandum. To a large extent negotiations would be bilateral between ourselves and the Crown but at some stage it would be necessary to enter into tripartite negotiations with Local Government.

You will note that in the implementation I have mentioned a co-operative approach with the Crown. That is only my personal view. It may be preferable that we retain total

autonomy or a combination of both that is for the Board to decide.

We do not know what the Crown's attitude will be to this proposal and in preparing this Draft Plan, I firmly believe that we must put these options before the Minister of Justice.

This also is the reason that we must establish the lost economic opportunity so that we face the Crown negotiations on a basis of our Kaupapa rather than let the Crown people decide on the method of assessing values in dollar terms and finally coming up with their proposals of settlement.

The traditional method is to negotiate for property and monies which in my view is rather narrow as it then allows the Crown to opt out of any further responsibility in terms of the restoration of Mana and Tino Rangatiratanga which is also what the Crown destroyed.

I have included local Government (District Council, District Crown Health Enterprise Services, Regional Council, Department of Conservation, Local education institutions and MAF) as they are all sub agencies of the Crown and hold power and control over all the resources.

This is just a preliminary overview for the Board to consider. It is important for the Board to accept the responsibility of making its recommendations to the Iwi in draft form that can be altered to suit the Iwi perceptions but the general thrust of this report should be maintained.

C A Edwards
CLAIM MANAGER