

The Whakatohea Maori Trust Board

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24.6.91



CLAIM MANAGERS REPORT

CLAIM FORMAT

RESEARCH TEAM

AND

WHAKATOHEA TRUST BOARD MEMBERS

First let me express appreciation to the Research Team on the way in which the research to date has been co-ordinated and catalogued.

We are all working here in Opotiki a relatively small community and it is important that we do not lose sight of what is happening else where,

But all in all regarding our internal function so long as it is clearly understood what everyones tasks are and the position of the Whakatohea Maori Trust Board as claimant on behalf of Whakatohea Iwi.

As Claims Manager I shall clarify some very important issues.

Firstly it is of vital importance that we not let others in any way interpret the Whakatohea grievance, and the presentation of our case in so far as it relates to an explanation of Crown conduct and how it affected the Whakatohea people.

The Research material that has been sourced is classified.

The legal term for the information is INTELLECTUAL PROPERTY.

All costs related to the gathering of the material by our Research people, has been carried by the Whakatohea Maori Trust Board therefore it belongs to the Trust Board.

If there are any costs that some people may have paid then they must submit those costs to myself for payment.

Our Case History must be told by Whakatohea and assisted by other selected people appointed by Whakatohea Maori Trust Board through the Claims Manager.

In consultation with the Board Legal Counsel, and other expert Witnesses a Historian Researcher, and recognised experts on Pai Marire and Ringatu Religions, been engaged to give evidence as to why these religions developed. As well as assist in the production of our report to the Tribunal.

There has been a tendency in the way that some lawyers have conducted cases similar to our own, that is as if it were a litigation in court.

Our Barrister Tom Woods has a clear understanding of his role and will not allow that to happen before the Waitangi Tribunal.

The Tribunal hearing is not a court hearing but rather a forum of enquiry where after hearing the Whakatohea evidence the Tribunal will make recommendations as it sees fit taking into account Whakatohea's evidence and submissions.

The requirement for expert evidence will be confined to discussing general issues to provide an overall explanation of crown action and Whakatohea's reactions culminating in the confiscation of Whakatohea's Lands.

Another matter of prime importance which we must constantly bare in mind in formulating our case is whether the policies and actions of crown were contrary to THE PRINCIPLES OF THE TREATY OF WAITANGI, and therefore were prejudicial to Whakatohea.

We do not have to test the legality of the Crown's actions or prove that the Crown's actions within the framework of law was justified or not. That is what the Sim's Commission was authorised to do.

The wrongs of the Crown are only to be judged with the criteria set-out by Section 6 of the Treaty of Waitangi Act in reference to the Treaty signed at Opotiki.

It is of the utmost importance that the circumstances which persuaded Whakatohea to sign the Treaty is relevant to what happened at Opotiki in June 1840 and our Research at local level will reveal the facts of the decision by our Rangatira to sign the Whakatohea Treaty of Opotiki.

It is important to ensure a proper and orderly conduct of case preparation, and that communications be well defined. I suggest that all correspondence should be sent to and pass through the Claims Manager because although bringing the case before the Tribunal is a team effort.

The strategy to present our claim requires us to methodically unfold the case "story" and ensure that the Whakatohea perspective of the argument is preserved.

We must present our case to the Tribunal so that they have a clear grasp of who the Whakatohea are which necessitates a wholistic appreciation of all the issues.

CASE RESEARCH AND PRESENTATION

To present our case in an orderly fashion according to a time scale in which all the related events occurred it is necessary that the grievance be divided into a series of distinct phases.

The grievances are addressed in our claim submission to the Tribunal. While the claim provides a broad outline the presentation of the actual case necessitates a logical and more specific approach.

PHASE ONE

The first phase is to introduce the Whakatohea so that members of the Tribunal will fully appreciate the submissions that follow and the supportive evidence that our Research provides.

It will be then, that the hapu of Whakatohea will be able to make their own contribution by them taking the opportunity to state their grievances unconstrained by the formalities of the case. Therefore in the manner and language they are comfortable with.

The hapu in doing so will test an appreciation of the hurt occasioned by the Crown's actions and will be able to do so from our supportive research to illustrate the environment of the Whakatohea at that particular period.

This is a period in Whakatohea's History about which we will need as much local information as we can gather from our own people korero a waha, waiata, patere, etc. Information from local libraries, letters and records from missionaries and settlers of the period.

This information will help us to further research and establish:

- 1 The traditional make-up and distribution of the hapu of Whakatohea. We will need to know the influential personalities of the period and the inter-relationships of the hapu with each other. We must provide Hapu Whakapapa to establish the inter-linking of the hapu together forming Whakatohea Iwi and the ROHE POTAE need to be substantiated. As well as general demographic information and observations.

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2

The geography and resources of the region.
An appreciation of the landscape;
The areas of native forests and the food resources therein.
The fertile alluvial flat cropping land .
The rivers, streams, and swamps containing the food resources of eels, fish, inanga and bird life.
The tidal estuaries with their food resources
The inshore rocks. The mussel, kina, paua, koura and other traditional sea foods.
The inshore fishing grounds and the outer fishing grounds of Whakatohea.
The cultivations and pa sites Whakatohea occupied prior to confiscation.
This information illustrates the Whakatohea economic base.

Tom Woods suggested that a map of the region with all the above information marked in would be the best way to do this.

3

We need to establish the Alliances and Interactions of Whakatohea with other iwi/hapu from the turn of the century. This will reveal both positive and negative factors for example the impact of Ngapuhi and Ngati Maru invasions on Whakatohea throughout the 1830's. Thereby bringing into perspective the position of the Whakatohea at the time the Treaty was made with the Crown. And reveal some of the reasons why the Treaty was signed.

4

We need to find as much information as possible about early pakeha influences on Whakatohea prior to the signing of the Treaty and up to the confiscation. There is the interaction with early traders (David Davids) and the settlers (Shortland) as well as the missionaries (Wilson and Burrows) and Catholic Missionary Priests including any other characters of influence at the time.

5

The Tribunal must be informed of the Pre-1840 land dealings regarding the Sale to Burrows of land known as Papakanui and dealings. Other dealings (Leases and Sales) between hapu during the pre-Treaty period. Such dealings took place especially with missionaries whose transactions were later brought to notice and validated by the Compensation Court in March-April 1867.

After thoroughly familiarising the Tribunal of the "traditional" Whakatohea prior to confiscation the Whakatohea's current position with its hapu must be illustrated.

A demographic, social and economic presentation is an essential requirement.

Such a study will set out the extent of Whakatohea progress under the Treaty. This evidence needs the support of maps and the original Maori names thereby showing in detail the position of Whakatohea pre-1840 and the present time.

SECOND PHASE

The second phase will deal with the period from the signing of the Treaty in June 1840 on through to the war and confiscation.

The signing of the Treaty in the context of what happened in Opotiki June 1840.

We require the Research material to give us as near as we can assess a factual background to what happened then. As well as the written word we need a record of the discussions and representations of the interests groups, MISSIONARIES, WHAKATOHEA RANGATIRA, ETC.

This information will illustrate how the treaty was presented by the Crown and the responses made to it by Whakatohea.

Resulting finally in the signing of the Whakatohea Treaty of Opotiki.

This phase will also deal with Whakatohea's early interaction with the Crown within the framework of the Treaty and the effect of Crown policies on Whakatohea.

This will include consideration of Sir G Grey's policy to introduce to Whakatohea limited powers of Self-Government under the Native Courts Act 1858 and the Native Districts Regulations Act 1858.

Whakatohea enjoyed a period of relative peace and prosperity at that time and the missionary influence must not be understated because a strained relationship grew between the missionary priests and the Pai Marire apostles who arrived at Opotiki.

There was throughout this period a growing suspicion of the motives behind the missionary work that resulted in Whakatohea questioning its support for the Crown. (Research will substantiate)

THIRD PHASE

The third phase of our case will introduce Pai Marire and war.

Pai Marire is viewed very much negatively. An objective assessment of that religion is required as to what in fact it signified. Perhaps it should be understood in the context of Te Kooti and the Ringatu faith.

The Expert witness that I mentioned earlier will give evidence on Pai Marire in order that it be reflected in its true context so that the actions of Kereopa can be properly related.

Whakatohea's response to Kereopa must be addressed in full.

Research will ascertain that Pai Marire influence on Whakatohea had a millennial appearance and effect resulting in the breakdown of the traditional Chiefly Mana (authority).

We must argue that Pai Marire what was a product of Crown mismanagement and the an inevitable consequence of a culture in crises.

Similarly the later emergence of the Ringatu Faith and Ratana Faith were born out of cultural crisis and settler coupled with Crown agencies mismanagement.

A related issue is whether the Crown ought to have taken more interest in the influence of the activities of Kereopa and others and to have taken active steps to protect Whakatohea from the influence of those people.

It is interesting to note the Crown took steps to protect Arawa and certain Chiefs of Ngati-Porou when informed of their plight towards the Hau Hau.

Similarly, Whakatohea's response to the Taranaki/Waikato and Tauranga wars needs to be addressed. It appears that Whakatohea was very much aware of what was happening beyond its borders, however initially remained neutral.

A flow of emissaries and letters from Waikato and Ngati-Porou to Whakatohea resulted in Whakatohea participating in the Tai Rawhiti contingent to assist Waikato.

During this period the motives of the missionaries requires detailed scrutiny.

The details of the Tairawhiti clash with Arawa need investigation.

It was during that clash that Whakatohea lost their Chief Te Aporotanga. Ngati Awa could be a source of information.

An issue resulting from this, is that on 2 September 1865 the Crown by Proclamation of Peace dated 1865 indemnified Whakatohea's active support for the Maori King and their fight against Arawa.

All were indemnified except the persons who later were individually responsible for the killing of Volkner.

The Proclamation of Peace indicates a change of direction by which the Crown sought to suppress rebellion and opted to enforce the criminal law by policing disorder.

To that end, the Outlying Districts Police Act 1865 was passed to capture suspected criminals and if necessary pursuant to that Act, confiscate their properties.

The record shows that the Government intended to deal with the killers of Volkner accordingly and there was no right in my mind for the Crown to undertake whole scale confiscation other than to confiscate individual interests upon investigation of title.

The above statement is probably the most important point in our whole case, because the Native Rights Act 1865 secured to Maori the protection of their rights in a manner secured by the Treaty.

The Proclamation of Peace was also used as a means of serving notice on Whakatohea to deliver up to the Crown the killers of Volkner.

However, six days after the Proclamation was gazetted troops attacked Whakatohea.

Two days after the Proclamation, Martial Law was proclaimed over the Opotiki District.

The effect of Martial Law (which by the way had no validity) entitled the Colonial troops to summarily deal with Whakatohea without being accountable to law or the Crown.

The troops who attacked Whakatohea and undertook the plundering and destruction of property did so under Crown indemnity by Act of Parliament. (Research to substantiate)

A specific aspect of the claim will directly cover the human suffering arising from:

- 1 The manner in which the Crown decided to use force of arms to attack Whakatohea.
- 2 The actions of the Crown in the act of aggression and plundering of Whakatohea resources.

- 3 The trials (Martial and Civil) and convictions of those arrested will need to be addressed in terms of the Treaty and Native Rights Act.

Finally, after Whakatohea were for all sense and purposes destroyed as an entity; survivors were required to undertake an oath of allegiance to the Crown.

The later settling of Opape Blocks in the 1870's was similar to the Indians Reservations in America and the who settled on Opape Blocks were regarded as rebels and were required to undertake the oath of allegiance to the Crown.

Many Whakatohea did and we have their names on record in the original list of owners to the Opape Blocks.

Other Whakatohea did not do so and fled into the Urewera and other neighbouring iwi for shelter. (Research will substantiate)

The "loyalty" of Whakatohea was therefore reaffirmed and in acceptance of their fate arising from the war joined forces with Major St. John and proceeded to track and attack Hau Hau in the Urewera.

One can easily understand Whakatohea's desire for revenge on the Hau Hau who were one of the factors in the confiscation of Whakatohea's Land.

FOURTH PHASE

The fourth phase of the case will deal with the confiscation and post-confiscation policies under the New Zealand Settlements Acts as they effected Whakatohea.

The issues concern:

- (a) the act and manner of confiscation.
- (b) The policy of the Crown and its dealings with the confiscated lands.

This will require consideration of:

- (a) The workings of the compensation Court at Opotiki, Whakatane and Maketu in 1867 and 1868.
- (b) Arrangements entered between claimants and the Crown in lieu of claims.
- (c) Constitution of reserve lands and re-settlements.
- (d) Award of land to the military, settlers and other iwi.

(e) Crown retention of land.

This aspect of the case will go as far as the award of the first Crown grant.

In some instances it will be necessary to follow the Grants to establish how lands were otherwise sold or become alienated from ownership. (Research to substantiate)

That is the Basis of Our Case for the Raupatu.

Undergrowth Claims, these are resultant grievances following the confiscation.

(a) Crown purchase of land out-side the confiscation boundary.

This will require consideration of the Crowns policies under the Native Land Purchase Acts and effect of survey liens.

This occurred in the Oamaru Blocks South of Opotiki.

(b) Sims Commission.

we need to consider the extent by which the terms of reference of this Commission has prejudiced Whakatohea. The Commission was duly authorised to determine whether the Crowns actions were justified or not within the frame-work of its confiscation policies.

Whakatohea has accepted a "binding" settlement with the Crown as a consequence of the findings of the Commission.

Details of that will need to be addressed quite apart from the context by which the commission was required to address the Whakatohea grievance.

OUR BARRISTER WILL DEAL WITH THE LEGAL COMPLEXITIES

Thorough Research of all Whakatohea Petitions as required.

The actions of all agencies of the Crown that alienated Whakatohea Land.

- Arising out of Raupatu
In ability to develop a Fishing Industry (through loss of economic base)
- Land taken in lieu of Survey Fees
- Public Works Act
- Educational, health, military, etc purposes
- Flood control works
- Native Reserves
- Paper Roads, Council Works
- Land taken under the Rating Act
and other matters

These claims should be described concisely with sufficient detail to enable the land involved to be identified.

We must demonstrate the tribunal but there are considerable number of matters which must be dealt with at a later stage as they all flow from the Raupatu.

Hui and Seminar with our people may bring to light claims of this nature that we are not aware of.

REPARATION

We must continually keep this in mind while Researching.

The question of compensation must be addressed and some form of Peace Procedures. (TATAU POUNAMU) Our traditional method of Peace Treaty.

Reparations must be planned with the Iwi involved in the final decisions.

We must formulate plans for the use of the lands, real estate, and monetary reward that we may receive as reparations.

- 1 Economic Development Plan
- 2 Educational Plan
- 3 Health Plan

And any other necessary Scheme Plans beneficial to Whakatohea.

Again the involvement of Iwi and any necessary expertise to assist the Iwi.

The writing of the report must be done using the combined talents of our Research people, myself and other experts.

We can not place the responsibility of this task on anyone particular person.

Similarly the presentation of the claim submissions to the Tribunal must be done combining with our Pakeke and cultural group in a traditional Maori way.

This is how in discussions with our legal counsel I propose as a basis for our Research and case submissions to the Waitangi Tribunal.

Bearing in mind the commissioning of Graham Butterworth and other experts to assist with the production of our report and the presenting of our case to the Waitangi Tribunal.

Claude Edwards
Claim Manager

