BACKGROUND INFORMATION – JULY 2018

EXTRACTS FROM

TE RAUPATU O TAURANGA MOANA - REPORT ON THE TAURANGA CONFISCATION CLAIMS

WAITANGI TRIBUNAL REPORT 2004

(WAI 215)

[Page 28]

However, Tainui people were later to settle in neighbouring districts and were to play an important role in Tauranga history. These neighbouring Tainui people were tribes of the Marutuahu confederation in Hauraki to the north, and Ngati Haua and Ngati Raukawa west of the Kaimai Range.

[Page 23]

There was a history of enmity between Tauranga Maori and most (though not all) of Te Arawa, as well as between Ngai Te Rangi and the Marutuahu confederation (particularly Ngati Maru).

[Page 40]

We accept that the [Marutuahu] confederation had interests in the Katikati block and the northern part of the Te Puna block, but we do not believe that its interests excluded other hapu from also having customary rights within any part of those blocks. We consider that the area was a contested zone, an area where the rights of the confederation overlapped with those of Ngai Te Rangi. The extent of each side's rights was in dispute at 1840, and was still disputed in 1864 when the purchase of the Te Puna– Katikati blocks commenced.

[Page 43]

The Te Puna–Katikati blocks. Hapu holding substantial interests within the Te Puna– Katikati blocks were Te Whanau a Tauwhao, Ngai Tuwhiwhia, Ngati Tauaiti, Ngai Tamawhariua, Ngati Pango, Pirirakau, Ngati Pukenga, and hapu of the Marutuahu confederation.

[Page 47]

Prior to 1840, several iwi were established at Tauranga following various migrations to the area over the preceding centuries. The principal iwi of the area were Ngati Ranginui, Ngai Te Rangi, Ngati Pukenga, and the Waitaha section of Te Arawa. Several other tribal groupings, including those of the Marutuahu confederation, had customary interests in parts of our inquiry district.

[Page 48]

During the period frequently referred to as the 'musket wars', Tauranga Maori fought various battles against Te Arawa, Marutuahu, and Nga Puhi. These battles impacted on Tauranga Maori in substantial ways. For the purposes of this report, the principal outcome of the war was that a strong alliance developed between Tauranga Maori and Ngati Haua of Tainui.

[Pages 58-59]

(2) The Ongare incident

BACKGROUND INFORMATION – JULY 2018

Soon after arriving atMaketu in 1842, Shortland was involved in attempts to resolve a conflict which had erupted between Ngai Te Rangi and the Marutuahu confederation over land at Ongare. This headland in the harbour in the western part of the Tauranga Moana district was on the frontier between the two groups. In our last chapter, we briefly described conflicts between the two sides during the 'musket wars', which left the coastal area between Whitianga and Katikati almost deserted by the 1830s. Towards the end of the decade, there was some reoccupation, particularly of Ongare, under the leadership of the Ngai Te Rangi chief Te Whanake, and Paetui who appears to have had links with both sides.

According to the Ngati Tamatera rangatira Taraia Ngakuti Te Tumuhuia, Te Whanake's occupation was approved by Marutuahu on the condition that Te Whanake would only grow crops there. However, Te Whanake built a pa and desecrated urupa where some of Taraia's relatives were buried.37 When Taraia heard of Te Whanake's actions , he led a war party to Ongare and, on the night of 22 May 1842, attacked Te Whanake's kainga. Seven people were killed (two of whom were eaten) and about a dozen others were taken as slaves. Alfred Brown described the victims as professed Christians and part of his congregation. Te Whanake and Paetui had signed Brown's copy of the Treaty but Taraia had refused, and he roundly dismissed the Crown's right to intervene in his dispute with Ngai Te Rangi. In Taraia's opinion, the Ongare attack was a matter of utu – it was payment for violence against his ancestors by Ngai Te Rangi. Tauranga Maori were apparently keen to seek utu of their own but Brown dissuaded them from doing this. Instead, they wrote to Clarke requesting that he come to Tauranga and inquire into the incident.

Clarke met Taraia in June and was told that the incident was between him and Ngai Te Rangi and had nothing to do with the Governor. Following this, the Executive Council met and considered using force to apprehend Taraia and release the prisoners. But Hobson had only 40 troops available and this was considered insufficient for the task. Clarke determined to try mediation once more. On 8 July 1842, he and the Colonial Secretary, Willoughby Shortland,met with Taraia,who again reiterated that his fight with Tauranga Maori need not concern the Governor. He emphasised that he had not signed the Treaty of Waitangi and that the Governor had no authority over him. After their meeting with Taraia, Clarke and Shortland moved on to Tauranga to meet with the local chiefs there.

While Shortland and Clarke were in the Tauranga Moana district, they proposed that the Crown should purchase the disputed area at Katikati in order to create a buffer zone between Ngati Tamatera and Ngai Te Rangi. Although this proposal gained the support of both Taraia and some of the Christian chiefs at Tauranga, other leading Tauranga chiefs, including Hori Tupaea, at first refused to sell any land. In the meantime, the Tauranga chiefs agreed to leave the disputed area between Hauraki and Tauranga unoccupied. Edward Shortland, who took up his position as sub-protector in October 1842, continued to negotiate for the settlement of the dispute. He found much support, but not universal approval, for the idea of placing Europeans on the land at Katikati. Willoughby Shortland, by then the acting Governor, called at Tauranga again in December, apparently to continue negotiating the purchase of land. But he was unable to do so because of fighting between Te Arawa and Tauranga Maori. After this date, we have no evidence of any further attempt by the Crown to purchase the land. We agree with the opinions of Professor Alan Ward and Vincent O'Malley in their Crown– Congress Joint Working Party paper that the Crown's proposal was probably a ploy on the part of Clarke, who saw it as 'a temporary expedient to ease inflamed tensions'. Indeed, the immediate outcome was a fragile – although lasting – peace between Hauraki and Tauranga Maori.

Taraia's resistance to intervention by the Crown at Ongare therefore constituted a serious challenge to the effectiveness of the Crown's rule. Rather than seek redress through traditional means, Ngai Te Rangi and other Tauranga tribes agreed to leave the matter in the hands of the Governor, but they were left with a sense of injustice when the Crown failed to punish Taraia at all.

BACKGROUND INFORMATION – JULY 2018

[Page 177]

This chapter deals in detail with the Crown's purchase of the Te Puna–Katikati blocks. The blocks' boundaries adjoin the confiscated block at the Te Puna Stream and run along the fringe of Tauranga Harbour as far as the north-western corner of the confiscation district at Nga Kuri a Wharei. The blocks were originally estimated to contain 90,000 acres, although a more recent estimate puts the area at 93,188 acres. As we noted in chapter 2, a number of hapu claimed customary interests in this area, including those of Ngai Te Rangi, Ngati Ranginui, Marutuahu, Ngati Haua, and Ngati Pukenga (see sec 2.5.2).

[Pages 177-178]

The Whitaker–Fox purchase did not go smoothly. Although an initial agreement was reached with some of the loyal Ngai Te Rangi chiefs in August 1864 and a down payment made, the purchase was not completed for another seven years. A number of factors contributed to the delay. First, the Government had to deal with the claims of several non- Ngai Te Rangi groups, including the powerful Marutuahu federation of Hauraki, which had a long-standing claim to the western part of Te Puna–Katikati, and several Ngati Ranginui hapu, such as Pirirakau.

[Page 181]

It did not take long for the implications of the preliminary sale agreement to be recognised by other Maori with land interests in the Te Puna–Katikati area, and they quickly challenged the right of a small number of Ngai Te Rangi chiefs to sell the land. In the next few months, Grey and his Ministers and officials received a number of appeals against the sale from Te Arawa, Marutuahu, surrendered Ngai Te Rangi, and Ngati Ranginui.

[Pages 187-188]

Whitaker then turned his attention to the Te Puna–Katikati purchase, telling Clarke on 10 April : 'Te Puna is not settled. I have adhered to the purchase, and it has been arranged that a meeting of all interested shall take place at Katikati . . . not to discuss the purchase, but to settle who are to receive the money.' In the event, the meeting took place at Tauranga, not Katikati. It lasted from 29 June to 19 July 1866 and appears to have been essentially an arbitration by Mackay and Clarke with the various claimants, very much like their earlier arbitration discussed above (see sec 7.3.2). For details of this meeting, we are dependent on Mackay's retrospective account of a year later.

According to Mackay, members of the Te Arawa, Ngati Haua, Ngati Tamatera, Ngati Maru, Ngati Pukenga, Ngati Paoa, and Ngai Te Rangi tribes attended the meeting. Pirirakau were also present for part of the meeting, and for some of them it was the first time they had emerged from the bush since the Tauranga war, though they soon left when they felt they had been insulted by Ngai Te Rangi. Mackay summed up the results of the meeting, including the payments that he and Clarke had agreed to. We follow the order of Mackay's summary below but abbreviate it somewhat:

- Te Arawa claims to the Te Puna–Katikati blocks were not admitted, nor were their claims on lands to the west of these blocks, though claims to the south-west of a line from Waimapu to Puwhenua were noted. Mackay said that Te Arawa 'strongly contested the claims of the Ngaiterangi to lands at Puwhenua'.
- Ngati Haua claims were admitted for 400 acres at Omokoroa, 50 acres at Purakaunui, and eight acres at Hurahua. The iwi's rights in the Te Puna–Katikati blocks were due to the gifting of land to Te Waharoa for his help during the 'musket wars'. No claims through ancestry or conquest were admitted, and no monetary compensation for Te Puna–Katikati was offered.

- Ngati Maru made a claim as joint occupiers with Ngai Te Rangi of land at Tuapiro and Te Tahawai. They agreed to take £530 for this, but because their claims overlapped to a considerable degree with those of Ngati Tamatera, they later agreed to combine this sum with the payment to the latter tribe.
- Ngati Tamatera (Te Moananui's faction now combined with Taraia's) agreed to take £600 for their half share in the Katikati block, as had previously been arbitrated by Mackay and Clarke in December 1865. Mackay also noted that Te Moananui had accepted payment of £380 from Whitaker for 'some other claims of that tribe'.
- For their interests, Ngati Pukenga accepted an offer of £500 and a promise of two town lots and one rural lot of 100 acres.
- Ngati Paoa agreed to accept £100 for their claims to land near Mount Hikurangi.
- Ngati Whanaunga of Thames were offered £25 for their 'small claim' (though details of this claim were not specified).
- According to Mackay, Ngai Te Rangi, 'although combined against all the people above mentioned, have innumerable family feuds among themselves and it was found impossible to come to any definite terms with them, because of their own disagreements'. He added that they 'preferred a lump sum and required nearly all the best of the land to be made into reserves for themselves'. The amount of the lump sum was not specified.

[Pages 189-190]

7.5.2 Hauraki payments

After the Tauranga meeting,Mackay returned to Auckland, whereupon Whitaker instructed him to proceed to Thames and pay Hauraki Maori for their claims to Te Puna–Katikati, according to the arrangements agreed at Tauranga.35 This, he did, paying the Hauraki claimants a total of £2160 over the next two months as follows :

- A payment of £100 was made to the Ngati Hura hapu of Ngati Paoa on 10 August for their claims over Katikati and Te Aroha. A deed of conveyance was signed by five members of Ngati Hura, surrendering their rights to both Katikati and Te Puna.
- A payment of £500 was made to the Ngati Pukenga of Manaia on 14 August for claims between Katikati and Waimapu and inland to the mountains. Of this, £150 was paid for their interests in the Te Puna–Katikati blocks and £350 for interests in the confiscated block. In the deed signed by 18 members of Tawera, two 50-acre sections and two town allotments at Te Papa were 'reconveyed' to Ngati Pukenga chiefs Paroto Tawhiorangi, Ruka Huritaupoki, and Te Riritahi. The fate of these sections is discussed in chapters 10 and 11. The deed conveyed Ngati Pukenga's claims to 'the Katikati, Puna, Wairoa and Waimapu blocks' to the Crown.
- A payment of £1145 was made to Ngati Tamatera and Ngati Maru on 3 September for claims over Katikati, Aroha-atua, and land 'between the Katikati piece and Te Puna'.Five 'burial ground reserves', totalling 75 acres, were also recorded as being set aside for them in the deed of conveyance, which was signed by Te Moananui,Taraia, and 24 others.
- A payment of £25 was made to two claimants from Ngati Whanaunga. This was later increased to £35, and the two claimants signed the same deed as Ngati Tamatera and Ngati Maru had. The nature of the claim was not recorded by Mackay in his report, and the date of the payment is also unknown.

BACKGROUND INFORMATION – JULY 2018

[Pages 197-198]

To what degree the loyalist Ngai Te Rangi chiefs who were taken to Auckland to sign the initial receipt were subject to pressure from the Government is an open question. The fact that they were taken to Auckland meant that they were freed from the constraints of public opinion back home. Ministers and officials openly admitted that the Government was intent on forcing the purchase, and in this context it was easier for them to apply pressure, if not to engage in outright coercion. But whatever the pressures on the chiefs who went to Auckland, we have seen no evidence to suggest that these loyalist Ngai Te Rangi were anything other than willing sellers.They were able to use the transaction to considerably enhance both their claims to the Te Puna–Katikati district and the payments flowing from its sale. Most of them were awarded reserves in the Te Puna–Katikati blocks which they immediately sold (see sec 11.2). However, these loyalist sellers who signed the original receipt were not representative even of Ngai Te Rangi, let alone other claimants to the district.

[Page 199]

We find that the Crown's purchase of the Te Puna–Katikati blocks, anchored as it was in the consent of a small minority of loyalist Ngai Te Rangi chiefs and subsequently imposed, with compensation, on other Ngai Te Rangi hapu and Ngati Ranginui, Ngati Pukenga, and Marutuahu, was in defiance of the Treaty promise that Maori land should be alienated to the Crown only with the free and willing consent of its owners.

[Pages 199-200]

There is also the further question of how fairly the compensation was divided between the various claimants. Although there was vigorous debate between the Ngai Te Rangi and Marutuahu claimants during our hearings, we heard no convincing argument to the effect that the Clarke–Mackay arbitration was wrong or unfair. In the circumstances, we accept that Clarke And Mackay's decisions and the amounts of monetary compensation that they awarded were fair in relative but not absolute terms. In our view, Marutuahu had claims only in the narrow Katikati block and in relatively limited portions of the Te Puna block, such as at Ongare. Accordingly, we think that the £2160 that the Hauraki tribes received for their interests was fair in proportion to the £7700 that Ngai Te Rangi received for their much more extensive interests. But, when we consider the reserves awarded alongside the monetary payments, it becomes evident that Ngai Te Rangi, who received virtually all of the 8000 acres of reserves in Te Puna–Katikati, were more generously treated than Hauraki. The only promised awards of reserves to the Hauraki iwi were 75 acres of wahi tapu, which the claimants allege were never actually set aside by the Government. This disparity between the relatively large reserves awarded to the Ngai Te Rangi chiefs and the virtually non-existent reserves awarded to Marutuahu and the Ngati Ranginui hapu is clear evidence of a failure to treat Maori equally according to their customary rights in Te Puna–Katikati.

[Page 201]

- The purchase process was coercive in nature for almost all who held customary rights to the blocks – including surrendered Ngai Te Rangi as well as Ngati Pukenga, Ngati Ranginui, and Marutuahu. The only persons who were free and willing sellers were those few Ngai Te Rangi chiefs mentioned above. The others either accepted the compensation offered by the Crown or got nothing. The ability to negotiate a price akin to that which would-be private purchasers were willing to pay was one of the casualties of the purchase process. The majority of Pirirakau and the Wairoa hapu, who refused to give their assent to the sale, received no compensation for the loss of a vast tract of their rohe.

BACKGROUND INFORMATION – JULY 2018

[Pages 298-299]

10.8.1 Hauraki wahi tapu reserves

The purchase deed signed by Ngati Maru and Ngati Tamatera for their interests in the Te Puna–Katikati blocks provided for several wahi tapu reserves, and these were the subject of argument between their counsel and the Crown (see sec 10.4). Neither party was able to find any evidence that the reserves were set aside. The Crown argued that, in view of the lack of evidence, we should not make a finding of any failure to establish the reserves. But if the promised wahi tapu reserves had been set aside, surveyed, and gazetted, evidence of that would surely have been found either among titles held today by Land Information New Zealand or in the *New Zealand Gazette*, and the reserves would legally exist. Clearly, they do not.

We therefore find that the Crown was in breach of its Treaty obligation to act honourably and in good faith toward its Treaty partner when it failed to provide the reserves promised to Ngati Maru and Ngati Tamatera in the deed of 3 September 1866.

[Page 409]

More specific recommendations relating to the use of Crown-owned or Crown-memorialised land in settling the Tauranga Moana claims might be made in the stage 2 inquiry, should this prove to be necessary. For instance, though two claimant groups sought the 'return' of the Crown-licensed Athenree Forest during our inquiry, it is not appropriate for us to make a recommendation on the matter at this point in time. What evidence we have heard suggests that Tauranga and Hauraki Maori shared customary interests in the area to roughly the same extent (see ch2) and that the Treaty breaches arising from the Crown acquisition of the area affected the two groups in a similar measure (see ch7).