BEFORE THE WAITANGI TRIBUNAL

Wai 686 #X19
Wai 345 #A22
Wai 346 #A22
Wai 754 #B23
Wai 809 #A11

Wai 809
Wai 686

In the matter of **THE TREATY OF WAITANGI ACT 1975**

And

In the matter of Claims in the Hauraki region and consolidated under Wai 686

And

In the matter of A claim by **TOKO RENATA TE TANIWHA** on behalf of himself and Ngati Whanaunga me ona hapu under Wai 809

BRIEF OF EVIDENCE OF NATHAN KENNEDY OF NGATI WHANAUNGA AND NGATI KARAUA HAPU IN SUPPORT OF WAI 809

Dated this 27th day of August 2002

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BRIEF OF EVIDENCE OF NATHAN KENNEDY OF NGATI WHANAUNGA AND NGATI KARAUA HAPU IN SUPPORT OF WAI 809

1. Introduction

1.1 Tena koutou, my name is Nathan Kennedy.

1.2 My mother is Jan Fraser Mckenzie. My father is Kevin Kennedy. I was bora and raised at Waitawheta, near the Hauraki town of Waihi.

1.3 I whakapapa to, and identify as Ngati Karaua - a hapu of Ngati Whanaunga through my maternal line. The tupuna I claim through is Mere Kaimanu, my grandmother's great grandmother. Her mother was Maraea Tiki, and her father Wirimu Patene - both identified as Ngati Karaua.

1.4 I was born on the 4th of July, 1966. My partner is Miriama Wharehoka- Kupe, she of Taranaki. We have four children.

1.5 I hold an Honours degree from the Geography Department of Te Whare Wananga o Waikato.

1.6 I am employed as the GIS Administrator for the Thames Coromandel District Council. In taking on that position I understand that in addition to the technical qualities and expertise that I bring to the position. I believe I was hired because I am of Ngati Whanaunga descent.

2. Background to this evidence

2.1 I am a member of the Ngati Whanaunga Claims Committee which has assisted to prepare this claim.

2.2 In addition, in 2000 at an AGM of the Ngati Whanaunga Incorporated Society I was appointed, along with my whanaunga Carol Munro, to be the resource management spokespersons on behalf of the Ngati Whanaunga.

2.3 Over my time as a resource management spokesperson for Ngati Whanaunga I have come across a number of matters, a number of issues that in my view show how our tino rangatiratanga is being disrespected and disregarded today. This disregard impacts on our ability to fulfil our kaitiaki obligations. These are matters that I believe are rooted in the fact that we as a tribe are basically landless. And it is that fact of our landlessness that has in large part allowed these issues to arise and to continually affect us.

2.4 I set out some of those issues.

2.5 The observations below relate largely to the land area within the Thames Coromandel District Council (TCDC) land area. Much of the traditional Ngati Whanaunga estate falls within this area, and we are also just building our capacity to enable us to cover our wider rohe.

3. Examples of modern issues that have affected Ngati Whanaunga

3.1 Concealment of our lands by removing traditional names

3.1.1 Currently only a small percentage of land parcels can be identified according to the original land names given by our tupuna. There is a deliberate effort to progressively remove these names, the rationale being largely administrative convenience.

3.1.2 It is our assertion that this process serves to conceal our ancestral lands and effectively dislocate us from our traditions.

3.1.3 With the workings of the early Native Land Court our lands were defined by survey boundaries and allocated distinct names in accordance with the histories given at the time.

3.1.4 As these were subdivided they received variations to the parent names, Whangamata became Whangamata 1-6, and these in turn became Whangamata 1a, 1a2 etc. This convention retained the original name but presents difficulties due to the constant elongation of the names.

3.1.5 The importance of geographic place names both for Maori - and for our collective identity as a nation - is recognised in the directive on the Geographic Board to give priority to traditional Maori names when determining New Zealand place names.

3.1.6 Land Information NZ is the Crown agency responsible for managing information relating to land. They maintain the register of all land parcel information, but there are several coexisting systems of land parcel identification.

3.1.7 The LINZ primary ID for each land parcel is a number of up to 10 characters called a Parcel ED. Up until last year it had 13 characters and was called a SUFI. The Deposited Plan classification gives a legal title where each new parcel receives a Lot DP id, for example Lot 9 DPS 2897. Each parcel also has a Certificate of Title - CT 107860. Each parcel has a valuation reference number for purposes of land valuation. And (to my knowledge) every local council has an additional parcel ID for their own rating purposes.

3.1.8 Each of these exists for every land parcel in the country - on the Coromandel Peninsula there are over 30 000 of them. These do not all exist happily in isolation, for each land parcel agencies such as Local Authorities have to reconcile virtually all these so that all are known for each parcel. This administrative nightmare is referred to as "matching". Councils spend large amounts of time and money in an effort to get their match as close to 100% as they can, and this is never achieved.

3.1.9 In comparison to this administrative struggle the reinstatement and retention of the original block name is a simple task. The land information databases already include a field for Maori Name, to accommodate those that currently retain one. We believe that the Crown should take responsibility for retrieving and reinstating our names for the land. These link into our stories and

histories, and allow us to identify our places, in a way that a Lot DPS will never do.

3.2 Elsinore Ridge Development - Whangamata

3.2.1 Ngati Whanaunga opposed a consent application near Whangamata on land within what was Whangamata 2 - a block awarded to Ngati Karaua. A previous consent had been granted here for a low density housing development, but the applicant wanted to change this to high density, to which Ngati Whanaunga was opposed.

3.2.2 The developer had lodged the application in May 2001, prior to this notification negotiations had already taken place between Ngati Pu, the developer, and TCDC.

3.2.3 In November 2000 NZ Historic Places Trust had given a blanket permission to the developers to modify or destroy any Maori site on the land. Ngati Whanaunga as Tangata whenua had no opportunity to voice our concerns.

3.2.4 Ngati Pu had been commissioned to write a Maori Values assessment on our land. This MVA records an agreement made in July 2000 whereby a memorial would be placed giving recognition to Ngati Pu ancestor Te Pamahue. Additionally the road through the subdivision would be named Te Pamehue Drive.

3.2.5 Ngati Whanaunga challenged this proposal in our submission at the consent hearing held at TCDC. We presented the original land deeds establishing that Ngati Pu were awarded land 'considerably to the south in Whangamata 3 and 4.

3.2.6 I also stated that TCDC Policy and Planning Department had copies of Ngati Pu's own Waitangi Tribunal report, in which it is clearly identified that the land in question is Ngati Whanaunga land.

3.2.7 We stated that the Council had not consulted with Ngati Whanaunga at all regarding their intention to allow this memorial and road name.

3.2.8 The consent was granted in November 2001. Our objections to the Ngati Pu memorial and road name were completely ignored.

3.2.9 I wrote to TCDC 12 December stating our continued opposition to any memorial or road recognising a Ngati Pu ancestor on our ancestral land, and requesting an explanation.

3.2.10 I received a brief response on 21 January 2002 saying that another manager would respond to our concerns. One month later he sent an email saying he had lost the original letter, so I resent it.

3.2.11 I followed this up on 21 March, and 10 June pursuing some response from the manager concerned - now 8 months after writing I have received no response. The urgency and significance of this issue to Ngati Whanaunga has been repeatedly stated.

3.3 Whitianga Waterways - Ngati Whanaunga excluded from participation

3.3.1 Carol Munro and I were appointed environmental officers for Ngati Whanaunga after the original consents for Waterways had been granted, and Marutuahu headed by Ngati Tamatera were taking the case to the Environment court

3.3.2 Ngati Whanaunga had been present since the earliest meetings with the developer, but had asked Ngati Tamatera to look after our interests, as we had little administrative capacity at the time with which to participate.

3.3.3 This reliance on our Marutuahu relations, in line with our historical association, has been repeatedly used against us by the Crown and the developer to dismiss us as having no right to consultation or participation in the Whitianga Waterways project.

3.3.4 Ngati Whanaunga provided documentary evidence to TCDC that we have ancestral association with the

Whakau block on which Waterways is being developed. This was in the form of the original Deeds, and a report written for the Waitangi Tribunal by Dougal Ellis on behalf of Ngati Hei.

3.3.5 We sought notification by TCDC of any groundworks, in accordance with their Proposed District Plan. However in this instance we were told that the provisions of a Structure Plan were to over ride standard rules, and that Environment Waikato were managing the effects associated with earthworks of Whitianga Waterways.

3.3.6 We approached Environment Waikato seeking the same notification of commencement of earthworks, but were told to speak directly with Whitianga Waterways Ltd.

3.3.7 Whitianga Waterways in turn insisted that we would have to appeal to Ngati Hei to notify us of commencement of earthworks. Whitianga Waterways were not interested in our evidence of ancestral association, nor our protests that we are the kaitiaki of Whakau and would not be forced to appeal to Ngati Hei for notification and consultation.

3.3.8 Whitianga Waterways Ltd simply repeated that Ngati Whanaunga had not been a submitter, and they were therefore not obliged to notify us. As previously stated, Ngati Whanaunga had been involved since the earliest meetings held by Whitianga Waterways Ltd, and had also been represented by Ngati Tamatera.

3.3.9 In the Environment Court Ngati Whanaunga were formally represented, along with Tamatera and Maru.

3.3.10 This Environment Court hearing will long live in the memories of Marutuahu as an insult to our kaumatua.

3.3.11 The presiding judge - Judge Sheppard - refused to allow presentations in Te Reo, despite previous provision being negotiated for this. He struck out the substantial majority of the submissions of every speaker on the

basis that these did not meet his own criteria of "customary". He also refused to allow our witnesses to approach the maps present to point out the locations to which they were referring. He imposed $10 000 in court costs on Ngati Tamatera. This represents a proportion of costs sought by TCDC such that the case would have had to be vexatious, and entirely without justification.

3.3.12 Additionally, when Ngati Tamatera sought to have this decision considered in the High Court they were threatened with costs sought by the developers of S100 000.00. At this stage Ngati Tamatera decided to discontinue legal action.

3.3.13 That protection under law is afforded to those who can afford it is repeatedly demonstrated to us. Marutuahu in association with Tamatera sought that Minister of Conservation refer the Restricted Coastal Activities consents back to the Hearing Committee to have regard to the Hauraki Gulf Marine Park Act 2000 ("HGMPA").

3.3.14 Amongst the papers retrieved from the Minister is legal advice obtained by the Minister on this matter. When considering whether to grant the final consents required for Whitianga Waterways she was told :

3.3.15 *"Given the nature of the proposed development, the parties involved, that all other resource consents and planning requirements in place [sic] and that development stakes are high, there is some legal risk that the recommended decision to refer the matter of the HGMPA back to the hearing Committee may attract further legal proceedings against you on behalf of the applicant company."*

3.3.16 It is noted that the same legal adviser recommended the referral back to the Hearing Committee, but for what ever reason this did not happen, and we had the select committee instead.

3.3.17 The parliamentary Select Committee found that an amendment should be made to the Act, which would

mean the Whitianga Waterways project would not be subject to the HGMP Act

3.4 Waitotara Wahi Tapu registration application - Whitianga

3.4.1 Similar treatment (the threat of legal action from a developer being a factor in a Crown agencies decision to act against the interests of tangata whenua) has emerged in relation to this application to register and protect a Marutuahu wahi tapu area near Whitianga.

3.4.2 An official information request from NZ HPT for documentation relating to our wahi tapu area registration at Waitotara returned the following internal communications between staff members. 10 August 2001 - Te Kenehi Teira to Sonya Anderson. Sonya describes the possible implications should HPT provide interim registration for the area:

3.4.3 *"Should the above happen, this may result in NZHPT being: subject to litigation for compensation by the developers.*
Undergo purchase of the Whitianga Waterways development area "

3.4.4 This seems inconsistent with a statement by Te Kenehi made 19 March 2002 where he says that *"registration of the wahi tapu area would not override archaeological authorities or resource consents previously granted. "*

3.4.5 Similarly, 18 January 2002 - Sonya Anderson to Te Kenehi Teira

3.4.6 *"Concerning Nathan's threat of a legal prosecution - I'm not sure about the validity of his reasoning but its possible there is a case — everything relies on the Operating Procedures for Interim Registration. Note: The Historic Places Act provisions nor the Operating Procedures set time frames for notification. It's a case of "we 're damned if we do and we 're damned if we don't" with this proposal. But it certainly would be a challenge."*

3.4.7 In this case the interim protection sought was finally declined after continuous requests for an answer or a timeframe for an answer.

3.4.8 Conflicting information relating to interim registration. We initially sought interim registration of this area on the basis that the canal excavation was likely to be complete prior to the registration process being complete. At no time from the time of application submission, to the date we learned of the refusal, no issues to do with interim registration were brought to my attention. However, in response to our expressions of concern at interim registration being withheld we were told on 19 March 2002;

3.4.9 *"Current Trusts policy on interim registration is based on a resolution made by the Trust Board at their meeting in June 1994 where it was confirmed that it "....not be usual practice for proposals for registration to go through the interim registration/protection process." This position was reaffirmed in April 1997. The Maori Heritage Council at its February 2002 meeting has confirmed that it will not invoke interim registration measures as a matter of policy. As an advisory body to the Trust Board, the Maori Heritage Council is bound by the resolutions of the Trust Board,* "[sic]

3.4.10 This conflicts with communications from Sonya Anderson, 22 January 2002: *"The Trust take proposals for interim registration very seriously and your proposal requesting interim registration for Waitotara Stream and Urupa was a particularly difficult one. Your proposal has been addressed by the Maori Heritage Council and Interim registration was not supported, "*

3.4.11 The initial approach was made to HPT in June 2001. A final decision has never been made although this was promised for 30 May 2002.

3.5 TCDC refusal to include Tuateawa pa sites in Structure Plans.

3.5.1 In my capacity as GIS Administrator for TCDC I create the maps for all Structure Plans under the Resource Management Act 1991. TCDC adopts structure plans as a technique to ensure that special or particular environmental features and issues are addressed when subdivision and development is proposed for a particular area or locality.

3.5.2 In early 2001 I was asked to prepare maps representing a structure plan for land in Tuateawa .

3.5.3 In the course of the map preparation I observed that three publicly recorded pa sites were to be omitted. One proposed house lots was indicated immediately on top of one of the pa. I expressed concern about the non-inclusion to the relevant staff members, but was told that the pa sites were not to be drawn.

3.5.4 While I was then able to convince those concerned to include the pa sites, some three weeks later I was told to redraw the maps without them. Subsequent appeals to management did not convince them to recognize the sites on the maps.

3.5.5 Subsequent structure plan areas have also included pa sites, and these have been omitted from maps in accordance with TCDC policy.

3.6 Inconsistent Notification of Consent Applications

3.6.1 Ngati Whanaunga have encountered some difficulty in receiving notification of RMA consent applications by the Crown agencies who administer that Act. It is recognized that this is partially due to our having not had the administrative capacity to participate in the consent process over the last five years, but this fails to hold true when agencies have been informed of our interests for an area.

3.6.2 A recent example of this occurred in relation to a consent application by Cooks Beach Developments Ltd, at Mercury Bay. The hearing was held in Whitianga in May 2002. This was a joint hearing by TCDC and EW.

3.6.3 We had been notified of the application by TCDC. Our submission to the hearing included an expression of our concern at not being notified by EW of the consents lodged with them. This was described in terms of a breach of section 93 of the Resource Management Act 1991. When granting the consent this expression of concern was noted by EW in the decision.

3.6.4 Subsequent to this we have recently received correspondence from EW in relation to the consent application by Tairua Marina Ltd to develop a marina in the Tairua harbour.

3.6.5 This letter notes that we have lodged a submission to TCDC in relation to this application, and notifies us of the date proposed for the joint hearing by TCDC and EW. It continues to say:

3.6.6 " *Environment Waikato have undertaken a consultation process with parties who have lodged submissions to Environment Waikato consents. Ngati Whanaunga Environment Unit lodged a submission to Thames Coromandel District Council consents only and accordingly. Environment Waikato technical staff are not in a position to discuss these issues with you. "*

3.6.7 It is our position that this represents a complete absence of good-faith by the regional council. It is our understanding that the onus remains with the consent authority to ensure that mana whenua groups are consulted with.

3.7 Channel Dredging for Whitianga Waterways entrance

3.7.1 The method used to cut the channel from Whitianga harbour and through the foreshore was referred to us as a "cutter sucker". Myself and Dave Hammond of Ngati

Whanaunga visited the site at the time this process was to start, we spoke with Mike Harper - site manager for Whitianga Waterways - to get an understanding of the process.

3.7.2 The machine used a mechanical grinding blade fixed at the end of a swing arm, which cut through the submerged seabed at high tide. We suggested to Mike that because this operation took place underwater, and the material extracted was ground into small panicles and pumped through a long hose, it would be impossible to detect the presence of koiwi. He conceded that this was the case.

3.7.3 Ngati Whanaunga are of the opinion that this inability to detect koiwi rendered the process immediately in breach of the consents, which stipulated that if koiwi were discovered during earthworks all work was to stop and the provisions of the Historic Places Act would apply.

3.7.4 We wrote to EW and TCDC and the agencies who had granted the consents, as well as HPT to seek their assistance. Our stated preference was for a conventional digging method to be adopted, which would give the potential for any koiwi present to be identified.

3.7.5 All three organizations replied that due process had been followed, and consents had been granted. None even mentioned the issue that the process being used rendered detection impossible! Each stated that conditions were in place so that if artifacts were discovered works would cease etc. This stance rendered the consent conditions entirely worthless, and fundamentally inadequate in terms of protection of Maori cultural and spiritual values.

4. My conclusions

4.1 I would like to confirm to the Tribunal that in putting these issues forward they are my examples happening -today and yesterday which I think show clearly our suffering as a people.

4.2 We continue to strive to fulfill our kaitiaki responsibilities as tangata whenua within our rohe. However, as illustrated by the examples included here, we frequently face failure by consent authorities to fulfil their obligations to give effect to the Treaty of Waitangi.

4.3 Ngati Whanaunga has not been in a good position prior to the formation of our incorporated society to adequately represent our affairs. This is because a lot of our tribal members do not (and cannot) live on our tupuna whenua so that we are a presence and also to be familiar with such matters. As a result there has been little motivation for our people to support and administer a tribal structure that carries such representation.

4.4 As I have already mentioned it is my belief that these matters are really only happening because we do not have a sufficient land base on which to properly exercise our tino rangatiratanga. Our rangatira do not now command the tribal estate as once they did. Accordingly it is easy for those who now have the authority to decide the outcome of these issues, TCDC LINZ and the like, to disregard us because we have no real presence on the land.

4.5 If we could have continued on as we once were in the 19th century it is my belief that these issues that I have laid before you would simply not have occurred.

4.6 We as Ngati Whanaunga have discussed that on the completion of this enquiry that we would prepare ourselves to look at filing further claims covering those issues that I have discussed before you and which meet the criteria of Section 6 of the Treaty of Waitangi Act 1975.

DATED this 27th day of August - 2002

Nathan Kennedy