

WAITANGI DAY ADDRESS

KOPUTUTEA

6th February 2004

Henare Ngata

Greetings to you all on the occasion of the 164th anniversary of the signing of the Treaty of Waitangi.

Stan Pardoe on behalf of the Rongowhakaata Charitable Trust asked me to be one of the speakers today, and to say something of the recent history of this area, hopefully in the context of the foreshore and seabed debate, and within the broad ambit of the Treaty of Waitangi.

No easy task, but I hope what emerges will throw some light on those issues.

I need hardly say that it was in this Bay that Maori and Pakeha first made contact for it was here that Captain Cook landed in October 1769.

Maori would have had little inkling of the enormous consequences of that visit.

We move on to a period when some of those consequences emerged, bearing directly on the area where we are gathered.

On the 24th September 1888 Archdeacon W.L. Williams presented a paper on Captain Cook's visit to Poverty Bay to the Auckland Institute. Included in the presentation was a sketch map of Poverty Bay. The map showed that in 1841 the mouth of the Waipaoa River having traversed the Paokahu/Awapuni area emerged into the sea at a point opposite the Awapuni Lagoon, that is about 2 ¼ miles (or nearly 4 kilometres) north of its present outlet. For centuries the people who lived at Paokahu had enjoyed the rich seafood bounty which Awapuni provided, but now in the post-Cook era, and after a long drawn out process the Crown took possession of the 730 acres (296 hectares) of Awapuni Lagoon bed, claiming that as it was subject to tidal flow it was, under the Common Law of England, the property of the Crown.

Paokahu, the block of land between Awapuni and the sea was, in pre-European times, a relatively populous area, and was the location of a mile-long pa which provided a refuge for the whole of Turanga in the event of attack. Awapuni and Paokahu are highly desirable areas, with its long sea frontage and close proximity to the city of Gisborne.

In 1944 the Gisborne 30,000 Club lobbied for a road to be created along that sea frontage. A proclamation under the Public Works Act was accordingly made, the land taken but no compensation paid, it being said that as the new road would open up the remaining land for seaside allotments, the increase in its value would be more than adequate compensation. The total area taken was 65 acres (27 hectares).

In 1960 or thereabouts Reta Keiha called at my office with a Mr Turbott, an architect/planning consultant. Turbott had been asked by Mayor Harry Barker to draft a Fun-Park/Aquatic Playground scheme at Paokahu/Awapuni. The City Council it seemed had designs to acquire possession of the whole area.

The Paokahu block was at the time leased to a local meat company. A change in the legislation in the 1960s eased restrictions regarding the sale of undivided interests in Maori Land and triggered a move by the lessee company to freehold the block. An appeal from the Paokahu owners for the Mangatu Incorporation to intercede led to a contest for the Paokahu shares. This only ended in the late 1970s or early 1980s when the company sold its Paokahu shares to the Mangatu Incorporation.

The Gisborne City Council in the meantime, continued its overtures to the Paokahu Trustees to sell the block to the city. At one stage Mayor Harry Barker, no doubt out of a sense of frustration, threatened to invoke the Public works Act to acquire the 500 acres of Paokahu for a rubbish dump. The parties eventually agreed to a small area being leased for a city dump, the arrangement to be reviewed from time to time.

The pre and post-world war era was a time of many important changes – in this country and world wide. Here the accession to power of a socialist government in the mid 1930s, and its re-election in the 1970s and 1980s

(and currently of course) heralded a significant shift in the balance of political power, more specifically away from the farming and land owning class.

Within the focus of today's proceedings the most significant events were the Waitangi Tribunal Legislation of 1975 when Matiu Rata tested the political mood of the country on the issue of the Treaty of Waitangi, and more significantly the 1985 amendment piloted by Koro Wetere which extended the jurisdiction of the Tribunal retrospectively to the 6th February 1840.

In 1975 the Centennial Marine Drive, that is, the Paokahu frontage road was adjusted, the original roadway take being deemed to have been excessive. The surplus – a long strip on the seaward side of the roadway – was revested in the owners, and given the name “Kopututea”. The Hon Matiu Rata was Minister of Lands at the time.

In 1990 the Awapuni Block was returned to the owners, Parliament having been petitioned several years earlier. The Minister of Lands was the Hon Peter (later Sir Peter) Tapsell.

In 2003 the city of Gisborne ceased to use the Paokahu Block for the disposal of its waste.

How do the events I have described relate to the Treaty of Waitangi? What, in fact, is the Treaty of Waitangi? What did the British Government have in mind when it formulated the Treaty? What are its principles? In the years following World War II few people in this district ever talked about the Treaty. It was, so it seemed, a “dead duck”. In the 1960s, a group of Maori students and graduates from Auckland University, dissatisfied with government policies as these affected Maori, accused Government of breaching the Treaty, and staged protests and demonstrations accordingly. In doing so they attracted the interest of the new medium, television, and drew the attention of both the public and the Crown to the Treaty. As convenor of the New Zealand Maori Council's Land Committee I had to respond to the Government's challenge to set out those statues which, as the students claimed, had breached the Treaty. I concluded our paper with the observation that:

“... Those who approach the Treaty in a positive frame of mind and regard it as an obligation of honour will find that the Treaty is well capable of implementation”.

I made a similar comment in evidence in the 1987 NZ Maori Council/State Owned Enterprises case which was quoted in the Appeal Court judgment not, I suppose, because it provided any new insight, but rather because it was an affirmation of the Court's view that the Treaty of Waitangi must be viewed as a solemn compact between the Crown and Maori, and that the basis for the compact requires each party to act reasonably and in good faith towards the other. The system of British Justice, the Law and the Courts of Law have for the greater part of the history of this country been a strong protector of the Treaty and of the rights it has imparted to Maori.

I am not a lawyer, but I have read the judgment of the Court of Appeal in the Foreshore and Seabed issue with a great deal of interest. With careful reading I comprehend its thrust, although the full import of the cases it refers to elude me somewhat. Nevertheless, in my layman's view, it is a classic. It challenges many long-held Court decisions and assumptions. These included a misconception of the nature of sovereignty rights which were regarded as over-riding Native or Maori property rights. The judgment has also raised the status of Native or Maori customary rights as against the Common Law of England. It accords Maori a level of respect and status evident only previously in the Maori Council/S.O.E. case, and reflects the spirit of the dictum enunciated in the S.O.E. case that Maori and the Crown (and that includes 'Pakeha') should act reasonably and in good faith towards each other.

The Appeal Court, is, however, careful to say that it was not ruling on the issue of whether Maori have property rights to land below high-water mark, but only as to whether the Maori Land Court has the jurisdiction to deal with that issue. The judgment has, of course, done just that.

The Government is determined to press forward with its plan to make the foreshore "Public Domain", and to grant some customary rights to Maori Land Owners.

The Kopututea owners own the whole of their beach frontage except for a narrow strip towards the city end owned by the Gisborne City Council. I am unsure of the area of the coastal strip but I think it is about 10 hectares, spread along a sea frontage of 6 kilometres right on Gisborne's doorstep. Will Paokahu/Awapuni/Kopututea be again the scene of contention between Maori Land Owners and central authority? Will there be a de facto expropriation without compensation? Will good faith and reasonableness prevail over whatever discussions may be had? Or will the Second Article of the Treaty which:

“... confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession...”

be again breached as it was when Awapuni Moana was taken by the Crown under the Reserves and Other Lands Disposal Act 1953, and the Paokahu frontage was taken for road in 1944 by Proclamation under the Public Works Act?

I asked earlier – or I was asked – what is the Treaty of Waitangi?

Thirty odd years ago I would have had to read out the Treaty both in English and in Maori, to mull over what its principles are, and so on. However, because so much has been said about, for or against the Treaty I shall not do that. Instead I will say that the Treaty was devised to facilitate the peaceful colonisation of New Zealand, and the settlement here of British immigrants. New Zealand was to be ruled over and governed by the English Monarch. Maori in return were promised the protection of British Law, the same rights as British citizens, and our property rights guaranteed.

Who has got the best out of the deal?

The Treaty is a fine agreement but one which requires good faith on both sides. The problems which have arisen from time to time between Maori and Pakeha have not been caused by the Treaty but by a disregard for it and

for its principles. In that respect the Crown has been the principal offender. More often than not Maori have been treated as if we were a conquered race. In some respects, of course, we are: not by force of arms, but through the democratic process – by the will of the majority, a system which so often denies justice to the minority.

But one thing is certain: we must find a better way forward. I believe there is a large pool of goodwill and good faith in the community who accept that genuine grievances from the past must be resolved.

The 6th of February is a Day of Thanksgiving for all people who live in this country: Maori, Pakeha, Pacific Islanders, Asians and others.

Kia ora.