

# Te Ngonga o te Piukara

*The Sounds of the Bugle*



PORT NICHOLSON BLOCK  
SETTLEMENT TRUST

*A newsletter for Taranaki Whānui ki Te Upoko o Te Ika*

*August 2012—Edition 42*

## Chairman's Comment:

### TRIBUNAL'S REPORT WELCOMED

Tena koutou katoa

We bring this newsletter to you to update you on some significant developments for the Trust. We will report in detail on the following matters:

1. The release of the Waitangi Tribunal report into our urgent inquiry (Wai 2235);
2. The purchase of the Petone College site and arrangement with Ryman Healthcare Limited;
3. Auditor-General decision not to further investigate funding for Te Raukura; and
4. High Court action to get tenant to pay rent.



We welcome the release of the Waitangi Tribunal's 116 page *Port Nicholson Block Urgency Report* on Thursday, August 2, 2012. Claimants have been vindicated by the Tribunal's findings. The Tribunal strongly sympathised with claimants frustrations that led to the urgent hearing.

#### **The report found unequivocally that the Crown:**

- ♦ **breached the principles of the Treaty of Waitangi;**
- ♦ **failed to act reasonably and in good faith;**
- ♦ **misled claimants when it breached the undertakings given;**

- ♦ **failed to actively protect the interests of Taranaki Whānui; and**
- ♦ **in so doing caused prejudice to Taranaki Whānui.**

On some matters the Waitangi Tribunal did not find in our favour and on other matters the report is silent.

The Tribunal has **found** that:

- ♦ the Crown gave Taranaki Whānui an undertaking that in exchange for agreeing to the release of the police station that no other property would be offered to Ngāti Toa in the Wellington CBD as commercial or cultural redress;
- ♦ the Crown broke the undertaking and in so acting, breached Treaty principles;
- ♦ Taranaki Whānui agreed to the release of the Wellington Central Police Station from their commercial redress package on certain conditions;

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## Explaining the articles on the Tribunal Report

In reading the articles that relate to the Waitangi Tribunal report on the following pages, you should be aware of following:

- ♦ The bracketed numbers at the end of some points refers to the page in the full report where further information can be found. The

report can be found on the Waitangi Tribunal website; and

- ♦ Main recommendations and findings of the Tribunal are provided in **blue** print.

We hope you find the summary information provided in this edition of the newsletter informative.

# Chairman's Comment continued from pg 1

- ♦ Simultaneously a different OTS team and the Treaty Negotiations Minister were negotiating cultural redress for Ngāti Toa within the Wellington CBD;
- ♦ The OTS team negotiating with Ngāti Toa knew that Taranaki Whānui had been assured that there would be no cultural redress for Ngāti Toa in the Wellington CBD;
- ♦ In spite of that, OTS pressed ahead with the offer to Ngāti Toa of cultural redress in the CBD. OTS did so knowing full well that Mr Ponter had negotiated the release of the Wellington Central Police Station in good faith and that they were undercutting an undertaking that had been given to Taranaki Whānui;
- ♦ Crown failed to act reasonably

and in good faith, let alone the utmost good faith, towards Taranaki Whānui; and

- ♦ Crown failed to actively protect the interests of Taranaki Whānui.

Our preliminary analysis of the Tribunal's report does require in-depth consideration of the findings and recommendations. We will liaise with legal counsel prior to any decisions on the next steps are taken. We will keep members informed.

## ***Petone College purchase***

The purchase of this former school site by the Trust and contemporaneous lease to Ryman Healthcare Limited is the first significant economic initiative to be undertaken by the Trust.

This long-term, multi-million deal will bring benefits to the Trust and members for many years.

The lease has been negotiated on terms which will see market rent paid by Rymans and when the village is completed, the Trust will also participate in the "churn" of the village. This "churn" is the profit made from the sale of units when residents move on.

## ***Tenancies***

On page nine we explain the legal action against tenants for non-payment of rent. The Trust has operated in a deficit position for three years and in part this is due to tenants not paying rental and refusing to engage in meaningful discussions.

*Sir Ngatata Love*

## Trustee Election—Candidates

As advised in the last edition of *Te Ngonga o Te Piukara* thirteen nominations have been received for the five ORDINARY vacancies on the Trust board. The candidates (in alphabetical order) are:

FRUEAN Louana Jane  
JULIAN Sandra  
LOVE Professor Sir Ngatata  
LOVE-HANSON Edwina  
LUKE Wirangi Awhio  
MARSHALL Graeme  
McCONNELL Dawn  
MELLISH Liz  
MICHALANNEY Wiki  
MOEAHU Kura  
OKEROA Mahara  
POMARE Toarangatira  
TAMATI Howie

board. The candidates for that position (in alphabetical order) are:

JULIAN Sandra  
LOVE Professor Sir Ngatata  
LOVE-HANSON Edwina  
MARSHALL Graeme  
McCONNELL Dawn  
POMARE Toarangatira  
RUAKERE Hokipera  
TAMATI Howie  
WAGNER Adrian

In the event that a candidate standing for both the ordinary and extraordinary vacancies is elected in both, that person will be required to choose which position they will take up. The next highest polling candidate will then be elected to the other position.

In addition, nine nominations have been received for the one EXTRAORDINARY vacancy on the Trust

Voting packs will be distributed on August 10, 2012 with voting opening immediately.

# Petone College and ...

The former Petone College site has been purchased from the Crown by the Trust. The property was available to the Trust under the Deferred Selection Purchase mechanism of the Deed of Settlement.

The process involved in purchasing the property has been long and challenging. Once the Trust decided they wanted to investigate the purchase of the property, each party appointed a valuer to undertake a market valuation.

While both valuers received the same instructions and had agreed a methodology on which to base their valuation—the result still saw a significant divide in market price.

Given this difference the next step was for an arbitrator to be engaged to reach a decision based on arguments put by each party. This took time and was costing each party further expense without any end in sight. Therefore, the Crown and Trust agreed to meet and determine if a price could be agreed without the need for a full arbitration process.

The result was that the parties did agree a purchase price that each was comfortable with.

Weltec have been running their construction programme on a month by month agreement with the Crown from the site. The Trust are now working with Weltec on options for the relocation of this programme .

## Ryman to build \$100m Hutt village

HAMISH RUTHERFORD  
BUSINESS REPORTER

Last updated 16:12 31/07/2012

9

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Jeff McEwan

The derelict Petone College site is to be transformed into a \$100m Ryman retirement village.

## ... Ryman Healthcare Limited

The Trust has negotiated an arrangement with Ryman Healthcare Limited for a long-term lease of the Petone College site for the development of a retirement village.

The Trust will retain ownership of the land with Ryman taking responsibility for development of the site.

Ryman Healthcare Limited, is a NZX-listed company and is one of this country's most successful companies.

Ryman have indicated that they will invest up to \$100 million in the development of the village on the 3.3ha site. The intention is

that the village will be up to three storeys high and when completed will be home to several hundred residents and will employ more than 100 staff.

During development of the site it is expected that up to 200 tradespeople would be on site at any one time.

This will be Ryman's 28th retirement village.

The village will offer the full continuum of care.

Ryman chairman, David Kerr told shareholders at their recent AGM that this is a magnificent site for a village on the flat

overlooking the Hutt River and surrounded by reserves on three sides, including Sladden Park .

Mayor of Hutt City, Ray Wallace said following the announcement that Ryman “will be welcomed with open arms” for its plan to improve a site which had become “a total eyesore” for locals.

Trust Chairman, Sir Ngatata Love said “We are delighted to have put this arrangement in place. It is a significant economic initiative for the Trust and will bring opportunities into the future for Trust members and the wider community—in training and employment in a growth sector”.

# Port Nicholson Block Urgency Report

The preliminary analysis undertaken of the entire Waitangi Tribunal report is provided for members' information here and on the following pages. The full report is available for viewing on the Waitangi Tribunal website [www.waitangi-tribunal.govt.nz](http://www.waitangi-tribunal.govt.nz). On their home page look to the right of the screen as indicated by the orange circle on the image below.



The Tribunal have also offered comment on some other matters which arose during the course of the inquiry and it is important that we outline these.

One to mention here however is reference the Tribunal have made to the *Tamaki Makaurau Settlement Process Report* released in 2007. The

Tribunal have expressed their disappointment that they felt obliged to raise the issues of the silo approach and the need for the Crown to avoid creating new grievances through its settlements five years after the Tamaki Makaurau Tribunal raised these very issues.

The silo approach is where one team of Crown officials negotiates with one iwi and another team of Crown officials works with another iwi, and supposedly neither of the Crown teams know what the other is negotiating.

While the Tamaki Makaurau report was released in June 2007 and negotiations with Taranaki Whānui were well underway there has been ample opportunity in the years since then for the Crown to have taken the Tribunal's recommendations on board (pg 96).

Some matters referred to are legal technicalities which were put forward by the Crown prior to the urgent hearing and relate to "jurisdiction" and "entire agreement" clauses. It is pleasing that in considering these matters the Tribunal have found that they did in fact have jurisdiction and that they needed to consider the entire agreement to understand the broader context of the negotiation around the release of the Wellington Central Police Station.

## Letter of Transmittal

Each Waitangi Tribunal report commences with a letter of transmittal which is addressed to the Minister of Māori Affairs and Minister of Treaty of Waitangi Negotiations. The key points are:

- ♦ Tribunal did find that the Crown gave Taranaki Whānui an undertaking that in exchange for agreeing to the release of the police station that no other property would be offered to Ngāti Toa in the Wellington CBD as commercial or cultural redress;
- ♦ Tribunal found the Crown broke the undertaking and in so doing, breached Treaty principles;

- ♦ Tribunal have not upheld the claim that Taranaki Whānui agreed to the release of the Wellington Central Police Station from their settlement package on the Crown's express undertaking that no property, other than the police station, would be offered to Ngāti Toa anywhere in the entire Port Nicholson block;
- ♦ Tribunal has jurisdiction as it is expressly preserved by section 10(5) of the settlement Act; and
- ♦ Observations are made by the Tribunal as to "silo systems" and "vagueness of language used ... by officials ...".



# Tribunal Recommendations To Crown

The Tribunal have urged the Crown to:

- ♦ Review the offer of RFRS to Ngāti Toa over Crown and NZTA administered properties in Wellington city (pg 86);
- ♦ If necessary amend the offer of RFRs to ensure no commercial properties are made available via that mechanism to Ngāti Toa in the Wellington CBD. (As defined for district planning purposes by Wellington City Council (pg 86) - see map on page 6 of this newsletter;
- ♦ If as a result of implementing the above recommendations the offer to Ngāti Toa is diminished, the Crown should identify and offer alternative substitute commercial redress (pg 86).

## Chapter 1: Background

The scope of inquiry was limited by Judge Stephen Clark to what commitments or undertakings, if any, were made by the Crown to Taranaki Whānui surrounding the release of the Wellington Central police station (pg 2).

OTS had established two teams to conduct separate negotiations with Taranaki Whānui and Ngāti Toa (pg 4).

In the 2007 Waitangi Tribunal Tamaki Makaurau Settlement Process Report the Tribunal criticised such arrangements in the context of negotiations when dealing with overlapping claims “... as arousing suspicion and ...” (pg 4).

After objections from Ngāti Toa to some aspects of the Taranaki Whānui AIP, Taranaki Whānui

agreed to remove items including the placement of pouwhenua on culturally significant sites owned by the Crown and the naming of Cook Strait to Raukawa Moana (pg 7).

Judge Clark limited the scope of the inquiry to just six questions initially (pg 12):

1. At the time the police station was released what commitments or undertakings, if any, did the Crown provide to Taranaki Whānui;
2. If the Tribunal finds as a fact that certain commitments or undertakings were given, has the Crown broken those commitments or undertakings;
3. If it has, how has it done so and in what manner;
4. Do any of those broken commitments or undertakings breach Treaty principles;

5. If they do, how do they do so and in what manner; and
6. If they do, what recommendations if any should be made in relation to this application.

A little later Judge Clark added three further questions (pg 13):

1. What prejudice do the claimants allege that they have suffered as a result of a breach of Treaty principles by the Crown;
2. What prejudice if any are Ngāti Toa suffering as a result of this application; and
3. What prejudice if any would Ngāti Toa suffer if the Tribunal made recommendations that items of commercial or cultural redress currently on offer to Ngāti Toa within the Port Nicholson block should be withdrawn.

## Chapter 2: Release of Police Station

A lot of this chapter is commentary around the detailed facts as to how the police station came to be removed from the Taranaki Whānui settlement package. Chapter 3 examines what commitments or undertakings, if any, the Crown made to Taranaki Whānui to secure this deal (pg 21).

The letter from the Associate Minister (Shane Jones) is a key document from the Tribunal inquiry (pg 24). In that letter the Crown proposed to offer ‘one commercial redress property in the Wellington CBD to Ngāti Toa Rangatira’.

# Chapter 3: Commitments And Undertakings Given For The Release Of Wellington Central Police Station

In this chapter of the report, the Tribunal considered at length ‘condition 4’ (para 3.2.1) of the release of the police station.

Claimants consistently held to assertions of exclusive mana whenua and these assertions reflected a sincerely held belief.

However, *Te Whanganui a Tara me Ona Takiwa* (the 2003 Waitangi Tribunal report) found that other groups, particularly Ngāti Toa also had interests in the Port Nicholson block (pg 37).

Clause 10 in the Taranaki Whānui Agreement in Principle (signed in December 2007) argument by legal counsel as to the assertion of exclusive mana whenua statement by Taranaki Whānui and the Crown statement, being the same thing is a matter this Tribunal has not agreed with (pg 39).

For significant periods during the negotiations with Taranaki Whānui, the Crown did not raise the issue of exclusive mana whenua, but the Tribunal do not agree that silence implies consent (pg 40).

Taranaki Whānui dissatisfaction with incomplete list of proposed redress being offered to Ngāti Toa was made clear in letter

(dated August 11, 2008) which in the Tribunal’s opinion “... expressed considerable dissatisfaction.” A report to Ministers from officials was that Taranaki Whānui ‘did not react well’ to the information provided. “This is not a lack of protest and, furthermore, Taranaki Whānui’s dissatisfaction was amply justified”. However matters protested about were fairly specific (pg 40).

The Tribunal considers the words in the Associate Minister’s letter ‘... a Wellington CBD property ...’ and ‘... one commercial redress property in the Wellington CBD ...’ refer to the offer of one property and one property only to Ngāti Toa in the Wellington CBD (pg 45).

The Crown officials assured Taranaki Whānui that Ngāti Toa would be offered only one commercial property in the Wellington CBD if Taranaki Whānui agreed to release the Wellington central police station (pg 46).

During discussions between the Crown and Taranaki Whānui on May 15, 2008 assurances went further than commercial redress – ‘... there is no cultural redress for Ngāti Toa in the Wellington CBD area’ (pg 46).

## *Findings*

**Tribunal do not believe that condition 4 can be reasonably interpreted as requiring an end to any Ngāti Toa redress in the block (pg 41).**

**Tribunal does not agree that assertion of mana whenua gave Taranaki Whānui reason to think the Crown would immediately understand its interpretation of condition 4 (pg 41).**

**Tribunal find that Taranaki Whānui were given an undertaking that, in exchange for releasing the police station no property other than the police station would be offered to Ngāti Toa in the Wellington CBD as commercial or cultural redress (pg 49).**

**Tribunal does not agree that the police station was released on the express undertaking that no property, other than the police station, would be offered to Ngāti Toa anywhere in the entire Port Nicholson block (pg 49).**

**Tribunal found that Taranaki Whānui were given an undertaking that no property other than the police station would be offered to Ngāti Toa in the Wellington CBD as commercial or cultural redress (pg 49).**

## Chapter 4: Legal Matters

### *Jurisdiction*

This chapter relates to the Crown alleging that the Tribunal does not have jurisdiction in this matter based on ‘entire agreement’ clause 7.4 in the Deed of Settlement (pg 51).

There is discussion of clause 7.4 and the Tribunal have the jurisdiction to do so. Expressly preserved by section 10(5) of the settlement Act (pg 51).

Tribunal discussed the ouster provisions of the settlement Act. Tribunal deliberately focused the issues on the release of the police station and in doing so sought to limit the inquiry so as not to fall foul of the ouster provisions (pg 53).

### *The Entire Agreement*

The Tribunal agree that the letter from the Associate Minister was disingenuous in the way that it represented the proposed deal (pg 57).

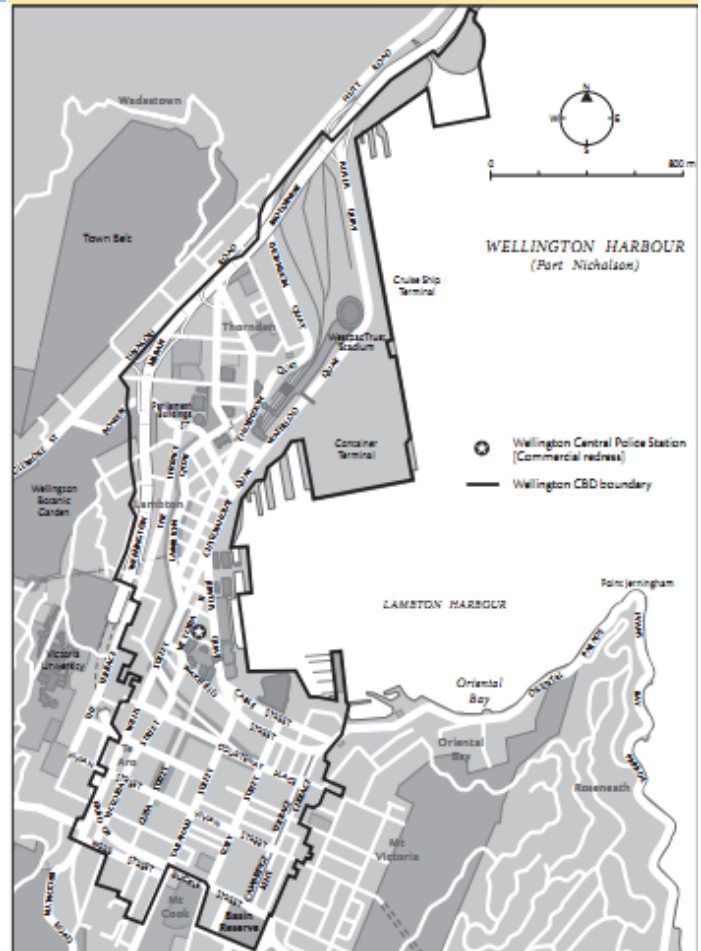
The reference to the ‘Porirua area and the wider Port Nicholson Block’ in the letter from the Associate Minister could at that point in time be described as misleading (pg 57).

The failure to mention the 1.5 mile line, along with the lack of mapping information ‘misled Taranaki Whānui into believing that the Crown was accepting an exclusive mana whenua position right down almost to the day of settlement concluding” (pg 58).

The Tribunal disagrees that Taranaki Whānui were misled into believing the Crown had abandoned the notion of a 1.5 or 2 mile line around Wellington Harbour (pg 58).

Tribunal saw no clear evidence to indicate that the Crown deliberately withheld key information until the last minute (pg 63).

## Map Of Wellington CBD



## Trust AGM

The Trust's Annual General Meeting is to be held as follows:

**Saturday, September 8, 2012**

**Pipitea Marae**

Thorndon Quay

Wellington

commencing at **10am sharp**

registration desks open from 9am



# Chapter 5:

## Action Reflects Poorly On The Crown

At all times Taranaki Whānui and the Crown were Treaty partners (pg 71). Clause 7.4.3 of the Deed of Settlement reinforces that fact, and that neither party can contract out of the Treaty and the obligations that flow from it (pg 71).

Taranaki Whānui were given an undertaking that no cultural redress would be offered to Ngāti Toa in the Wellington CBD (pg 72).

The Crown cannot be said to have been acting reasonably, honourably and in good faith when having given an undertaking to Taranaki Whānui that there would be no cultural redress for Ngāti Toa in the Wellington CBD, they simultaneously negotiated the exact opposite (pgs 75-76).

The breaking of this undertaking also speaks to the failure by the Crown to actively protect the interests of Taranaki Whānui (pg 76).

The actions of the Crown in offering cultural redress to Ngāti Toa in the Wellington CBD while at the same time promising Taranaki Whānui that would not happen reflects poorly on the Crown (pg 77).

The offer of RFRs as a form of commercial redress to Ngāti Toa breaches the undertaking given to

Taranaki Whānui (pg 79). The Crown reneged on the undertaking (pg 81).

There is no doubt in the Tribunal's mind that the undertaking given was intended as an assurance of future conduct (pg 83).

The driver for further commercial redress in the Wellington CBD was the failure of Crown officials to ring-fence property in Nelson for Ngāti Toa. The Crown looked to provide replacement redress in the Wellington CBD, an area in which Taranaki Whānui have ahi ka. The Crown should seek to provide replacement redress but it is incumbent on the Crown not to do so in a way that provoked a negative reaction from Taranaki Whānui (pg 83).

The Crown failed to actively protect the interests of Taranaki Whānui (pg 84).

The offering of RFRs to Ngāti Toa in the Wellington CBD is prejudicial to Taranaki Whānui (pg 84).

### *Findings*

#### **The Tribunal found that:**

- ♦ **Taranaki Whānui agreed to the release of the Wellington Central Police Station from their commercial redress package;**

- ♦ **Simultaneously a different OTS team and the Treaty Negotiations Minister were negotiating cultural redress for Ngāti Toa within the Wellington CBD;**

- ♦ **The OTS team negotiating with Ngāti Toa knew that Taranaki Whānui had been assured that there would be no cultural redress for Ngāti Toa in the Wellington CBD;**

- ♦ **In spite of that, OTS pressed ahead with the offer to Ngāti Toa of cultural redress in the CBD. OTS did so knowing full well that Mr Ponter had negotiated the release of the Wellington Central Police Station in good faith and that they were undercutting an undertaking that had been given to Taranaki Whānui (pg 75);**

- ♦ **Crown failed to act reasonably and in good faith, let alone the utmost good faith, towards Taranaki Whānui (pg 86); and**

- ♦ **Crown failed to actively protect the interests of Taranaki Whānui (pg 86).**



# Chapter 6: No Excuse for OTS

## *Silo Approach*

The silo system resulted in misinformation being provided to Taranaki Whānui at key points in the negotiations (pg 92).

From evidence of officials it appears that the PNBCT was misled because of the silos then in operation (pg 92).

Mr James conceded that the operation of silos does not excuse OTS from being held to promises made on its behalf (pg 94).

## *Imprecision of Language*

Tribunal commented on "... the vagueness of language used at times by OTS officials" (pg 95) giving examples.

The imprecision had obvious consequences (pg 96).

The Tribunal is disappointed that it has felt obliged to raise the issues of the silo approach and the need for the Crown to avoid creating new grievances through its settlements give years after the Tamaki Makaurau Tribunal raised these very issues. (pg 96).

While the Tamaki Makaurau report was released in June 2007 and negotiations with Taranaki Whānui were well underway there has been ample opportunity in the years since then for the Crown to have taken the Tribunal's recommendations on board (pg 96).

## High Court Action

Lowry Bay Section One Limited is a Trust owned, limited liability company which holds and is responsible for the former Wainuiomata college and intermediate sites.

A disappointing and very difficult decision was taken by directors of Lowry Bay Section One Limited to pursue legal action against tenants on the property for non-payment of rent. This action was only taken after more than 58 meetings between representatives of the Trust (and its company) and the Kohanga reo over some two years.

This decision was supported by the Trust.

The Pukeatua Kohanga Reo Charitable Trust which occupies the refurbished building has not paid any rent since the building was completed and officially opened in September 2010. Funds for the building to be refurbished were granted to the kohanga reo by the

Ministry of Education (approx. \$1.6 million).

In October 2009 the kohanga reo signed a deed to create a lease. That lease was to be based on a period of no more than three years plus two further rights of renewal of three years each. Terms and conditions of the lease were to be in the same form as the Auckland District Law Society deed of lease. The rental was to be at market levels and a valuation for the Trust by Colliers International deemed market rent to be \$156,105 per annum plus operating expenditure.

The company lodged a 'summary judgment' application in the High Court. Judge D Gendall heard the case on June 18, 2012 and reserved his judgment. The judgment was issued on July 10 and two sets of orders were made:

1. Summary judgment in favour of the Trust company with specific performance directions, being that within 30 working days of



the judgment the parties are to have exchanged lease information and agreed a market rent. If the parties cannot agree the matter will be referred back to the Court for appropriate resolution; and

2. Rental is to be paid from a commencement date of 17 January 2011.

In addition Judge Gendall has awarded costs to Lowry Bay Section One Limited.

Finally, the Judge has listed the matter for call on 8 October 2012 to determine whether the Deed of Lease terms and quantum of has been finalised.

# Media Statement: Wellington Claim Vindicated

*Thursday, August 2, 2012*

Members of the Port Nicholson Block Settlement Trust (PNBST), who sought an urgent hearing of the Waitangi Tribunal over the behaviour of the Crown in regard to their treaty settlement, have welcomed the release of *The Port Nicholson Block Urgency Report*.

A group of Trust members sought the hearing claiming that the Crown had breached agreements made as part of the process of settling the historic claims of Taranaki Whānui ki Te Upoko o Te Ika.

While the report does not find in the claimants' favour on all matters, it has unequivocally found that the Crown:

- breached the principles of the Treaty of Waitangi
- failed to act reasonably, honourably and in good faith
- misled claimants when it breached the undertakings given
- failed to actively protect the interests of Taranaki Whānui; and
- in so doing caused prejudice to Taranaki Whānui

The Tribunal has recommended that the Crown now renegotiate all commercial offerings which were being offered to another iwi in the Wellington CBD.

PNBST Chairman Professor Sir Ngatata Love said they acknowledge that the Tribunal didn't find in their favour in all matters.

"However, we do feel vindicated by the report's findings and that we were justified in taking the claim. We have noted that the Tribunal 'strongly sympathised' with our frustrations and what led us to seeking their intervention," he said.

The Tribunal found that in May 2008 when Taranaki Whānui were negotiating their settlement package they entered into an agreement with the Crown to release the Wellington Central Police Station so that it could become part of the Ngāti Toa settlement package.

The police station had a value of between \$30-41 million. The Tribunal acknowledged that this was a very generous concession by Taranaki Whānui. Within four months of the Crown having settled with Taranaki Whānui it began breaching its undertaking to them by offering further properties to Ngāti Toa in the Wellington CBD.

"We were always adamant that concession was made on an undertaking from the Crown that it would be the only property offered to Ngāti Toa in the Taranaki Whānui area of exclusive interest," Professor Love said.

The Tribunal also found that despite requests by claimants for the Crown to revisit its negotiations with Ngāti Toa and honour the undertaking given to them the Crown refused, and pushed ahead with the Ngāti Toa negotiations. Taranaki Whānui had no other option than to seek an urgent hearing to force the Crown to honour the undertaking it had given to Taranaki Whānui.

Professor Love said the whole process of trying to deal with the Crown on these matters has been extremely disappointing and frustrating.

"Even when we got to the Waitangi Tribunal, the Crown was trying to frustrate the process by contesting every point. We were even forced to prove that the Tribunal had jurisdiction to hear the claim. The

Crown's position was that the Tribunal had no jurisdiction because Taranaki Whānui had a full and final settlement supported by a settlement statute and a Deed of Settlement," Professor Love said.

The Tribunal pointed to a clause in the Deed of Settlement which stated that the Deed of Settlement does not supersede the Treaty of Waitangi. The Tribunal then felt compelled to remind the Crown that neither party can contract out of the Treaty and the obligations that flow from it.

The Tribunal found that the undertaking given was for both the present and the future.

## *Further Action*

Claimants are disappointed that the Tribunal did not also include the "two mile line" around Wellington Harbour as part of the undertaking, when finding in their favour. Claimants are reviewing their position and seeking further legal advice on this point.

Professor Love said they also noted that throughout the report the Tribunal refer to the Tamaki Makaurau Settlement Process Report released in 2007. "We think the Tribunal sums up the situation well when it expressed its disappointment in having to raise the need for the Crown to avoid creating new grievances through its settlement," he said.

The Tribunal concluded with the following statement from the Tamaki Makaurau report:

*"The burden on both Maori and Pakeha of the great wrongs that were done in the past will not be lifted if the process of settling creates new wrongs".*

"We agree," Professor Love said.

# Auditor-General Will Not Inquire

In April 2012, Tata Parata asked the Auditor-General to investigate a number of issues relating to Te Raukura (the wharewaka) on Wellington's waterfront.

This request followed other negative media statements made in January 2012 by Kura Moeahu (chair of Waiwhetu Marae) and John Warren (co-chair of Te Tatau o Te Po Marae).

At the time of Mr Parata's request, Sir Ngatata Love welcomed any investigation by the Auditor-General and stated that all those involved in the wharewaka development would cooperate fully with the Auditor-General, if required. Sir Ngatata had previously expressed his disappointment at the statements by Mr Moeahu and Mr Warren.

On July 30, the Office of the Auditor-General released a media statement which stated that the *"Auditor-General will not inquire into the funding of Te Raukura (the wharewaka on Wellington's waterfront)."*

The statement went on to say that *"We are satisfied that the Crown funds have been spent on the purpose for which they were appropriated—namely the construction of a wharewaka on Wellington's waterfront—and have concluded that no further investigation into these issues is warranted."*

The main issues considered by the Auditor-General can be summarised as:

- ◆ Did the \$7 million Crown payment to help build a wharewaka come from Vote: Maori Affairs?

⇒ Auditor-General confirmed that Budget 2008 included an appropriation in Vote: Maori Affairs of \$7 million.

- ◆ Did TPK have sufficient evidence that the Trust had mandate from Taranaki

Whanui before it released \$7 million of Crown funds to the Trust?

⇒ Auditor-General established that the funding for a wharewaka was not part of the settlement of Port Nicholson Block claim. Further it was not necessary to establish a formal mandate.

- ◆ Was it appropriate for TPK to allow Crown funds, paid out in an agreement aligned to the Port Nicholson Block settlements, "to be used in such a way (i.e. for purposes that do not benefit Maori)?"

⇒ Auditor-General found that the Government was funding the initiative because it saw broader economic advantages. The decision was made by the Government (not simply TPK) and is a decision the Government was entitled to make.

Te Raukura continues to be a place where all sectors in the community come together in an atmosphere of manaakitanga.

During 2012, Te Raukura has offered many cultural activities including waka outings, Maori Music Week, Te Patai (Maori language quiz night), display of kakahu, Maori Fashion Week and many others including a key part of Te Ra o Waitangi with the hosting of the Diplomatic Corp (reported in an earlier newsletter).





# Oruaiti Reserve

Very good progress is being made on upgrade of Oruaiti Reserve in Seatoun, despite cold and wet weather.

This reserve land is owned by the Trust and co-managed by the Trust and Wellington City Council.

Readers may recall previously being told that a grant of \$450,000 was received from the Charles Plimmer Bequest for the beautification of the reserve. This included the placement of two tauranga waka sites on the reserve. Further interpretation includes the waka and pouwhenua on the original pa site.

It is hoped the paving of this 'waka' will be completed by August 10 then soil placement work and planting around the site will be completed. Interpretative signage for the reserve is being produced and will be placed at strategic locations around the reserve.



## Venues of Choice



[www.pipiteamarae.co.nz](http://www.pipiteamarae.co.nz)  
Bookings: 027 4512186



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Railway Station Social Hall, 55 Waterloo Quay, Wellington

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