BEFORE THE WAITANGI TRIBUNAL **WAI 262**
TE ROOPU WHAKAMANA I **WAI 621**
TE TIRITI O WAITANGI **WAI 861**

IN THE MATTER of the Treaty of Waitangi Act 1975

AND

IN THE MATTER of a claims to indigenous flora and fauna me o ratou taonga katoa

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Opening Submissions of Counsel for Wairoa-Waikaremoana Maori Trust Board

Dated 6th September 2006

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MAY IT PLEASE THE TRIBUNAL

1. These brief opening submissions in a fashion introduce my clients concerns, tentative instructions, arose after enquiries as to progress of Maori Flora Fauna and Cultural intellectual property claims were supplied by Tribunal staff with the recent documentation arising from WAI 262 record of inquiry, that is the procedural documentation[1] . Counsel represents claimants based in the Wairoa-Waikaremoana region who have a filed and registered WAI claim (WAI 621) which inter alia, raises issues on flora & fauna[2], and which to a certain extent were heard in the Urewera Waitangi Tribunal inquiry which completed hearings June 2005.

2. Their instructions were given based on the Tribunal's new direction in this generic inquiry ie historical issues pre 1975 to be parked up save as to context, or as to accepted special exception, and that in this inquiry the focus will upon.

2.1 For the record of hearing Counsel with the agreement and support of all clientele in the May 5 Judicial Workshop and the June 15 2006 judicial conference has obtained instructions from Mr P Morgan, Chairman, Federation of Maori Authorities, a national Maori organisation whose concerns stem primarily from the mandate from its members to enhance and protect Maori land incorporations who currently in pursuit of economic development and progress, have entered into research and development projects with diverse Crown research entities regard scientifically based biotech innovations and exploitation of indigenous flora and fauna that are part and parcel of their respective landholdings. FoMA as the record reflects, are to be present in this inquiry by way of "interested third party status". Counsel had then received instructions from WAI 861 Northland claimants, to at least seek a status so that as Northland Claims Inquiry progresses it can be ascertained that their alleged grievances and concerns as to Crown policies in regards flora fauna, and intellectual property can be monitored and; correctly targeted in terms of their proposed Treaty claims. Mr R. Nathan (Wai 861 Claim Co-ordinator) had indeed thought the matter so serious that he has travelled to Wairoa met, and negotiated with my WAI 621 clientele. Counsel had then also received instruction from Sir G Latimer , subject to executive ratification that the New Zealand Maori Council may seek to join with the Tai Tokerau District Maori Council Hapu Claims Committee ["TTDMC"] in requesting full claimant status[3]. At the end of June 2006 the executive of NZMC met and by split vote determined not to proceed with joinder. Counsel notes also for the record that at that June 16 judicial conference my various clientele accepted into their then front row Te Waka Kai Ora with is concerns as to ANZTTA proposed regulatory regime; and sought joinder on their behalf. Te Waka Kai Ora are of course now present as a claimant group and are separately represented.

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[1] Wai 262, docs 2.267- 2.277
[2] Wai 621, Second Amended Statement of Claim dated 15 August 2003, paras 251 – 251.6;
[3] Refer WAI 262, doc 2.312;

3. Following the 16 June 2006 conference my WAI 621 clients were granted claimant status and pursuant to the Tribunals Direction[4] have filed a Statement of Claim which focuses on WAI 262 Statement of Issues and was particularised on the additional causes of action these claimants brought to this Treaty marae of debate ; ie dioxin poisoning and Crown Research Institute operations.

3.1 Counsel notes further for the record that though various of my initial clientele have not achieved claimant status the agreed "front row" undertaking was that all would be fully informed of all public domain information and documentation as, and when it became available. Furthermore Counsel has scanned all documentation on this Record of Documentation from doc A1 – 0 30 read in detail and made copies of selected documentation available to all clients[5]; and we are all working flat out to profer some meaningful but not repetitive, input into this new inquiry.

4. So here one is today some 10 days into refresher and update evidence from the original six claimant parties; with not much further ado Counsel makes the following tentative submissions directed towards the Statement of Issues [6];-

firstly, and in this case imitation is meant as a compliment Counsel re-submits, formally adopts as part of these written submissions and draws this honourable Bench's attention to the document on the record listed as doc 2.285 wherein Counsel for Ngati Porou gave in written submissions dated 3 May 2006 considered and intelligent submissions as regard a number of the Issues for hearing as they then existed in the then extant draft Statement of Issues;

[Counsel herein to refer to a couple of examples, and specifically record that therein the tribal iwi name of Ngati Porou is mentioned, that remains first and foremost the Ngati Porou submission, however there are clear parallels indeed references to all other Maori; with some judicious reading it is submitted not difficult for a reader to understand my clients position on those issues];

secondly; the opening "Updating Submissions on behalf of Ngati Kahungunu" dated 4 September 2006; are similarly formally endorsed, plagerised, and argued as a position my clients support; [as indeed are the Kahungunu Inc. "iwi" position presented in doc I 28, I 28(a)-(c)]

and with those remarks we look forward to the Crown making in its opening submissions some form of qualitative response.

5. Counsel would draw respectfully this Tribunal's attention to:-

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[4] WAI 262, docs 2.313

[5] i.e docs A4, A5, A6, A9, A 11, A17, A18, A24, A33, B2, B6, D1, E1, E2, E3, F1 (a)-(f), F2, F3, F4, F5, F6, F13, F18, G6, G10, G11, G12, H4, H5, H7, H8, H13, H16, I28(a)-(c), J3, J8, J 14, J 15, J16, K1, K4, K5, K6, K7, K9, K11, K13, K14, L1, L2, L3, L11, L28, L32, N2, N4, N5, N6, O1, O2, O3, O6 ; and of course all of "P" series documentation.

[6] Wai 262, doc 2.314

(a) the Treaty principles endorsed in the Muriwhenua Fishing Report (WAI 22, pp 179-180) ie that of protection; options, and mutual benefit, coupled with the right if development enunciated in that report. Counsel submits that that Article 2 ahaakoa te reo, raises clearly as Treaty – based queries of "free and willing consent" by Maori to any alienation o o ratou Taonga katoa; such queries may evolve into it is respectfully submitted a Treaty based query of the ICUN and/or CBD paradigm of 'prior informed consent". The proposition enunciated in WAI 22 was clearly that Maori are to be considered first user, and Nation-State party interference was only to be tolerated to save a species.

(b) the tension between old and new "creativity", evident in the cross-examination between Ms Huata and Presiding Officer yesterday means that this Tribunal must avoid it is strongly submitted the "iwi only" debate that saw the likes of present Chief Judge; Crown Counsel, Ms Rudland, and Ms Sykes engaged in a Courtroom[7] battle that saw some would say 64 eminent Maori witnesses lay their respective souls bare; some would say 312,000 versus 200,000 citizens Maori in the name of, or pursuit of a property right commodification and ownership of the business and activity of fishing;

(c) WIPO, GATT/TRIPS, ought also not become "Te Kooti Tango Whakaaro" a la 1862- 1993. Counsel notes the Iconic Folk Song US legislation referred to in the evidence of Ms Huata yesterday; notes to this Tribunal that my clients and Counsel are engaged in researching the European Union Patent Office structure and EU community legislation; and so far can indicate that therein are contained appear to be discreet nation-state exceptions to the general rule ; provisions for dispute resolution ; which if grafted on to Te Ture Whenua Maori Act would provide it appears a way forward for Maori and Pakehaa to evolve a Treaty based partnership that may withstand greedy excessive capitalist economic exploitation.

(d) Finally, as regards the specific take raised within the WAI 621 SOC and in the evidence of Mr Niania ask that the Tribunal find the concerns well-founded and recommend to Government that its Fisheries officials commence immediately a nation-wide tuna testing programme with a view to assessing and monitoring the dioxin content therein; secondly and most important the Tribunal recommend that any Maori presenting medical diagnosed symptoms which are akin to those displayed by Mr J Harawira (SWAP) and for which no workplace ACC redress is possible be immediately fast-tracked to a Health Department programme which offers free Medicare; free drug and rehabilitation regimes.

6. A final saying is respectfully proffered in part by the high quality testimony of Ms N Huata yesterday "Wisdom arises, in this Counsel's submission where there qualities of human

[7] See Te Waka Hi Ika o Te Arawa Inc v Te Ohu Kai Moana [2000] NZLR .

endeavour known as concentration and morality are practiced; the hard-fought for and grafted Treaty principles, referred to above arose from persons such as the late Manuhuia, Monita, Martin, and others practicing such endeavours." Contrary to some beliefs Treaty principles are not a fraud on the Treaty, are not a soft option and indeed having been so clearly written Counsel asks the current members of this Bench to continue their work and continue to ask of all witnesses and Counsel, Crown, or Claimant; questions which demand answers; to issue a written judgment on all issues that will initiate considered debate throughout all the "separate" arms of constitutional government, and profer hope.

Dated at Te Waipatu this 6th day of September 2006

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P T Harman Counsel for WAI 621