

MP wants gardens returned to Maoris

Dom 29/2/00

ASSOCIATE Maori Affairs Minister Tariana Turia said yesterday Wanganui's Moutoa Gardens should be handed back to Maoris.

Her call comes two weeks before talks are to be held on the future of the gardens in a bid to end a stalemate between Maoris and Wanganui District Council since a 79-day occupation of the gardens by Whanganui River Maoris in 1995.

The Maoris walked off their gardens marae, Pakaitore, when the High Court ruled that the council was the owner of the hectare-sized (2.5 acre) park on the riverside near the central city.

They had claimed it was an ancestral pa site withheld from them by the sale of Wanganui in 1848.

The dispute has continued to simmer, last boiling over a year ago when the Maoris defied council regulations and stayed

By JON MORGAN

for two nights at the gardens.

Mrs Turia, who attended the anniversary of the occupation yesterday, said she was speaking "with my iwi hat on".

She is a member of the lower river hapu, Tupoho, and was a leader of the occupation.

"It is our land, it was taken unjustly, and the right thing to do is to give it back," she said.

Her statement took Wanganui Mayor Chas Poynter by surprise.

He said the meeting to set up the talks — called by Prime Minister Helen Clark last Wednesday and attended by Mrs Turia — had decided there would be no predetermined outcome till all issues were canvassed.

"We have to come to the talks with open minds," Mr Poynter said.

Occupation leader Ken Mair

would also not say what was his preferred outcome. "I am very optimistic, but so far we are only setting in place ground rules on how to resolve the bigger issue."

Mr Poynter said the 1995 occupation had harmed the city.

"Businesses have left Wanganui because of it and one major enterprise nearly didn't move here. The American owners thought the whole of the city was in turmoil till they came here and saw the size of the piece of land that was at stake."

People wanting to move to Wanganui had also changed their minds because they did not feel safe.

Since then, the city council had made great advances in improving its relationship with the iwi, and the city's image had received a big boost overseas by being recently named one of the world's top six environmentally well-managed towns.

There is perhaps no more powerful symbol to both Maori and Pakeha of the symbol of race relations in this country than this block of land that is no more than a couple of house sections big.

On a more positive note, a group of Pakeha in Wanganui have arranged weekly gatherings called Getting On, Moving On, and each week they have arranged for speakers to come and talk about the issues of Maori and Pakeha relationships in Whanganui. People are turning out in droves.

The Wanganui District Council has continued to maintain that the High Court affirmed their claim of ownership to the land in 1995.

In fact, the High Court never conclusively stated this and made further recommendations that have been ignored.

The issue of who legally owns the land remains cloudy, according to Hugh Rennie, the Queen's Counsel who was employed by the High Court as an amicus curiae, which meant that Rennie was employed to bring to the court's attention all information relevant to the case.

Frustrated by false statements being made, Rennie wrote a paper outlining the legal issues.

He pointed out that even if the land was not used for a period of time, this did not mean that ownership ceased, just as bach owners do not forfeit ownership to the Crown just because they are not living there all year.

The case taken by the Wanganui City Council in 1995 was not about issues of who owned Moutoa Gardens, but whether or not the council had a registered title to the land under the Land Transfer Act.

If they had legal title they would be able to use the Trespass Act to have people evicted.

The Crown had failed to fully set aside the reserves that were to be allocated. Judge Heron clearly pointed to the fact that the ball was in the council's court:

"Some councillors have seen the merit in giving greater recognition to the history of Pakaitore Marae. Without attempting to become involved in council policy, it seems the council have room to move in further recognising on this land the immediate history which surrounds it. It is after all an historic reserve."

He spoke of the need "to recognise on this land the history of the immediate area and Pakaitore marae".

Also important was the reference that the counsel for the district council made.

What counsel asked was that the Judge find that the council had ownership. Once that was done, it opened the way for discussion to have the gardens recognised as a Maori reserve under Te Ture Whenua with joint control by iwi and the council.

Whilst an iwi working party has been set up, things have not progressed far since 1995.

Anyone familiar with the historical evidence being heard before the Waitangi Tribunal knows that there were many instances of false land claims, theft and treachery last century.

It should be no surprise to find any different in Wanganui.

The question being asked now is: when are significant moves going to be made to address these issues?

Part of an article:

"PAKAITORE: FIVE YEARS ON"

by Cheryl Smith

Wanganui Chronicle

24 Feb 2000.

I presume this differs somewhat from the material you have.

Bruce.

Wanganui Chronicle

Fax (06) 345.3232

Thanks for the articles received today. The Meth - Pres. stuff looks awful!

Other Jurisdictions

Wanganui District Council v Tangaroa & Others

CP 2/95, 16 May 1995, HC Wanganui. Heron J

This action was brought against 3 persons as "ostensible leaders or spokespersons", of the persons who, on 28 February 1995, had abruptly occupied Moutoa Gardens, a site of just over 2 acres in Wanganui. The Council sought a declaration as to title and orders for possession of the site. Ancillary orders for injunctions were also sought to direct people to leave the site and remove buildings and other items. The 3 representative occupiers took no part in the proceedings. The court appointed an amicus curiae to assist it, who put the defendants case "proactively" within the limits of that role and of time. The Attorney- General obtained leave to intervene.

Held: Early maps, missionary accounts and photos show Paikatore pa as a river bank site adjacent to and a little south west of the "marketplace" - the Moutoa Gardens of today. The pa was an area used for trade rather than being a permanent settlement and was close by but not within the confines of the triangle that represents Moutoa Gardens. The Gardens site was undoubtedly included in the purchase of land at Wanganui by Donald McLean in 1848, following an earlier NZ Company acquisition which had been investigated by Commissioner William Spain. The deed of sale placed no emphasis on the Gardens site, although making other reserves.

The Gardens became Crown land following the purchase. In 1880 the site was vested in the Borough of Wanganui. There was over this period a "singular absence of any suggestion that the land was occupied as a pah with accompanying marae" and photographic evidence suggested "quite the contrary" (pre- European times, about which there was no evidence, excepted).

There was however considerable trading by Maori and European on or about the area of Moutoa Gardens. A landing place was also required in conjunction with attendance at Native Land Court sittings. There was Parliamentary debate about the need for a landing site in this vicinity. Eventually an "impracticable" area was set aside on the river bank above the Gardens site. Documentation of these events also did not refer to a traditional pa with accompanying marae. In 1980 the Gardens were gazetted as a historic reserve.

The court noted that the repeal of s158 Maori Affairs Act 1953, which prevented challenges to Crown grants, allowed a wide inquiry into the history of this site. It was a matter of regret however that, being "private land", the site is excluded from the Waitangi Tribunal's recommendatory function, despite the large Crown involvement in its history.

Three possible attacks on the Council's apparent title were considered:

that s79 Land Transfer Act 1952 (adverse occupation) applied; there was no evidence of actual occupation, but rather of sporadic and shared use of the site for depositing goods etc:

that s81 Land Transfer Act 1952 (error or fraud in the title) applied; although the site was designated a marketplace but never used for one, neither the council or Crown were ever called on to put it to this use, and such an argument goes to correction of title, rather than a challenge to it. Nor could a trust in favour of Maori use be established on the evidence:

that common law aboriginal title had not been extinguished; even allowing for Commissioner Spain's promise to Maori that all their pa sites would be reserved, there was no evidence on the balance of probabilities that Moutoa Gardens were more than an extension of a temporary village on the riverbank, as one of the defendants had in fact admitted. Other pa were at the time clearly delineated on maps, and the area for Paikatore was marked as clearly outside the Moutoa Gardens. The Gardens came to be a site for multiracial gatherings of importance to all people of Wanganui. A Wanganui historian recalled no challenge to council ownership being recorded until 1995.

A mayoral letter to the police in March 1995 could not be construed as a licence, any temporary licence if it existed being well and truly revoked by this time. The Gardens had not been mentioned in two claims before the Waitangi Tribunal, one concerning the river and one Whanganui land, but there was no reason hearings of the land claim could not consider the Gardens, although having to stop short of making any recommendation concerning them. The court, while being aware of "overall treaty obligations the Courts have asked others to observe", rejected a submission that a final declaration as to title not be made, because of the need for finality of this urgent matter. However the finding that the council was the owner of the land was limited to the

purpose of the proceedings, ie the finding as to title was not a determination of an application for relief under ss75 & 81 Land Transfer Act 1952.

As to remedy, the court noted past council efforts to meet regularly with a Maori consultative group, and afford Maori concerns a unique position among community concerns, and the lack of any reference to ownership issues in those consultations prior to February 1995.

Where the law is breached the court must grant remedies to litigants without fear or favour, and cannot weigh up the public acceptability of any order it might make, even if many desire a negotiated outcome. Accordingly, the council was declared the owner of Moutoa Gardens and granted an order for possession, making the present occupiers trespassers. The occupiers were enjoined to leave the land taking personal property and dismantling any structures.

[ed: since this case, the occupiers have of course left the gardens and dismantled structures, after negotiations with the police. A claim (Wai 505, received 12 April 1994) has been filed with the Waitangi Tribunal relating to the purchase of the Wanganui and Waitotara blocks, which covers the Moutoa Gardens. The tribunal is seeking further particulars and research will be required before the claim is heard (direction, 15 May 1995)]

Banks & Anor v Waikato Regional Council & Carter Holt Harvey Forests Ltd

A31/95, 20 April 1995 Sheppard J

An appeal against a decision granting a resource consent to harvest pine trees and construct temporary roads in 268 hectares of land on the Whangamata Peninsula. The forest was a former State forest, now under a Crown forestry licence containing conditions regarding waahi tapu and covenants to protect them.

Held: allegations that preparatory roading work, undertaken before the present application for a consent, had destroyed important sites, were overstated. Consultation with local Maori had been undertaken about those works and Historic Places Trust permission secured to alter sites. The present appeal should not be a retrospective challenge to that permission. For the present consent adequate consultation with tangata whenua had been undertaken. If there were conflicting claims to tangata whenua status in the area, the local council had no authority to decide these. The tribunal rejected the notion that reliable identification of tangata whenua could be obtained from the claims register of the Waitangi Tribunal (the appellants having lodged a claim to the forest). Similar statements in *Tawa v Bay of Plenty Regional Council A18/95* were followed.

The forestry company as applicants had talked to all who claimed an interest. There was no duty to consult about the preparatory works in relation to the present application for consent to harvest the trees. The tribunal adopted conclusions in the *Tawa* case that the council as consent authority could not consult with tangata whenua. Council staff had adequately reported to the council tangata whenua concerns.

After having earlier agreed to the granting of a resource consent, it was clear the appellants had had a change of mind and the appeal was designed to provide a vehicle for further negotiations to achieve more stringent conditions. In these circumstances the appeal was vexatious. Claims before the Waitangi Tribunal could not be taken into account either in proceedings before the tribunal or by the consent authority. *Haddon* [1994] NZRMA 49 and *Greensill v Waikato Regional Council* followed. The resource consent, containing 6 conditions specifically to protect Maori interests, was not inconsistent either with regional policy statements or district plans. Proposed amendments to increase the stringency of these conditions were all rejected, several because they looked to activities not governed or affected by the resource consent (eg a requirement for an archaeological survey over the whole of the 13,000 hectare forest). The tribunal cancelled as ultra vires a consent condition requiring ongoing compliance by Carter Holt with an agreement between them and local Maori, since the power of consent authorities to impose conditions may not be used to enforce private agreements, but only for public purposes. The term of the consent was extended by the tribunal to take account of delay caused by the appeal.

General

Report of the Representation Commission 1995

27 April 1995

The commission largely confirmed the earlier boundaries for the 5 Maori seats except for allowing an objection of A Waaka and 193 others that the boundary between Te Puku O Te Whenua and Te Tai Tonga be adjusted to preserve the integrity of Ngati Kahungunu. Wairarapa is now fully within Te Puku O Te Whenua. Most of Horowhenua goes to Te Tai Tonga which now substantially encompasses Muaupoko and Ngati

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[Image]

Moutoa Gardens/Pakaitore
Press Release New Zealand Government 23/02/00 17:20:00

Prime Minister Helen Clark said today that Whanganui Iwi and the Wanganui District Council and Crown representatives met today to discuss a way forward with respect to Moutoa Gardens/Pakaitore.

The discussions were convened in Wellington by Te Puni Kskiri and included a delegation from the Wanganui District Council and Whanganui Iwi. Helen Clark, Associate Minister of Maori Affairs Tariana Turia and Wanganui MP Jill Pettis were in attendance.

It was resolved today to agree to a process of tripartite discussions and to meet again in early March to find a long term solution.

[Image]

"The Crown has been the missing party in this long running dispute," said Helen Clark.

[Image]

"My government is determined to move forward quickly to fulfil its Treaty obligations.

"I believe Wanganui District Council and Whanganui Iwi are showing tremendous courage in agreeing to work with us to resolve these issues," Helen Clark said.

ENDS

Classifications

Wires: Politics

Politics: General Politics , Government Press

Releases , Local Government , Prime Minister

Social Issues: Maori

Public Access New Zealand

INCORPORATED

P O Box 5805 Moray Place Dunedin New Zealand



NEWS RELEASE

Thursday, 23 March 1995

1 of 4 pages

Claims of Maori 'Sovereignty' over Moutoa Gardens Breach Treaty

Claims by Maori protester Ken Mair and others, that they are "simply asserting their sovereign rights in their own lands as they are entitled to do based on Article II of the Treaty of Waitangi" (reported NZPA 23/3/95), defy the actual terms of the Treaty.

Article II says a lot more than what Mr Mair is asserting. If read as a whole a very different picture emerges of the legitimacy of Mr Mair's claims.

Article II states that the Queen guarantees to Maori the full exclusive and undisturbed possession of their lands and estates forests fisheries and other properties **so long as it is their wish and desire to retain these in their possession, but also states that Maori would (exclusively) sell land to the Crown** (English version). The translated Maori version confirms this arrangement—the Queen would protect Maori in the unqualified exercise of their chieftainship over their lands, villages and all their treasures. **But on the other hand the Chiefs would sell land to the Queen** (our emphasis).

The Treaty is a two-way contract. There are duties and obligations on both parties, not one-way as Mr Mair implies. Once land is lawfully sold to the Crown there is an obligation on the vendors to honour that sale. In the absence of a proven breach of the Treaty by the Crown, demands for return of ownership are in direct violation of the contract.

Public Access New Zealand is very concerned that public lands, like the Moutoa Gardens, are being targeted for 'return' to Maori ownership when there is no proven basis for the claims. The Wanganui District Council has legal opinion confirming that the land was lawfully purchased from Maori. The onus is on claimants to use existing legal mechanisms to contest the point if they wish. The Waitangi Tribunal was set up for this purpose. To act contrary to the law and to not use institutional avenues available to them is in itself in breach of Article III of the Treaty which creates the same rights and duties of citizenship for all New Zealanders.

"It is staggering that claims of ownership by Maori, in terms of 'sovereignty' and 'tino rangatiratanga' (exercise of chieftainship or tribal control over resources) under the Treaty, are not being critically examined by the news media. Instead such statements are being slavishly reported without any examination of the basis for the statements. Where is the investigative journalism? Where are the searching questions of antagonists that would lead to informed debate and better public understanding of the issues?"

END

Bruce Mason
Researcher, Public Access New Zealand



Appendices—
The Treaty in English
Translation of Maori Text

P.O. Box 637

Telephone (06) 345 8520

Fax (06) 345 2472



Wanganui
New Zealand

Mayor's Office

1/1/5-H

6 May 1995

Mr Bruce Mason
Researcher
Public Access New Zealand Inc
P O Box 5805
Moray Place
DUNEDIN

Dear Mr Mason,

Thank you for taking the time and trouble to send a copy of your news release "Claims of Maori sovereignty over Moutoa Gardens Breach Treaty" dated 23 March 1995.

In view of the hundreds of letters received, Mr Poynter has not had time to reply sooner, or personally. However, he does appreciate you having taken the trouble to express your views.

Mr Poynter thanks you for the courtesy of your fax.

Yours sincerely

A handwritten signature in blue ink that reads 'Irene Pearson'.

Irene E Pearson (Mrs)
Personal Assistant to
HIS WORSHIP THE MAYOR

P.O. Box 637

Telephone (06) 345 8520

Fax (06) 345 2472



Wanganui
New Zealand

Mayor's Office

1/1/5-H

30 March 1995

Public Access New Zealand Inc
Mr Bruce Mason
Trustee and Researcher
PO Box 5805
DUNEDIN

Dear Mr Mason

Thank you for your letter of support in regard to Moutoa Gardens.

In view of the hundreds of letters received, I regret I am not able to reply to you in detail, but I do want to assure you that I appreciate you taking the time and trouble to express your support.

Once again thank you for the courtesy of your letter.

Yours sincerely,

C E Poynter QSO JP
MAYOR OF WANGANUI

P.O. Box 637
Telephone (06) 345 8529
Fax (06) 345 2472



Wanganui
New Zealand

Mayor's Office

1/1/5-H

30 March 1995

Mr Bruce Mason
Public Access New Zealand
P O Box 5805
DUNEDIN

Dear Bruce

Thank you for taking the time and trouble to write in regard to the situation at Moutoa Gardens.

In view of the hundreds of letter received, I regret I do not have time to reply to each in detail. However, I do appreciate you having taken the trouble to express your views.

Yours sincerely,

C E Poynter QSO JP
MAYOR OF WANGANUI

P.O. Box 637

Telephone (06) 345 8520

Fax (06) 345 2472



Wanganui
New Zealand

Mayor's Office

1/1/5-H

30 March 1995

Public Access New Zealand
P O Box 5805
Moray Place
DUNEDIN

Dear Members

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In view of the hundreds of letters received, I regret I am not able to reply to you in detail, but I do want to assure you that I appreciate you taking the time and trouble to express your support.

Once again thank you for the courtesy of your letter.

Yours sincerely,

C E Poynter QSO JP
MAYOR OF WANGANUI

Public Access New Zealand

INCORPORATED

P O Box 5805 Moray Place Dunedin New Zealand

████████████████████
████████████████████
1 of 7 pages.

21 March 1995

Kim Hill

Radio N 2

Fax (04) 474 1454

Moutoa Gardens

I enclose a copy of a submission to The Mayor of Wanganui from our organisation.

This provides another, and very overlooked, dimension to the debate over the occupation and 'claims' and 'grievances' concerning this public reserve.

The protestors are making claims as to their 'rights' under the Treaty of Waitangi that appear to breach the terms of the Treaty. As I suggest in my letter to Mr. Poynter, the protestors, in their refusal to recognise the legitimacy of (any) land sales to the Crown, are ^{themselves} breaching a fundamental term of the Treaty.

If you wish to pursue this aspect, please feel free to use the enclosed.

Bruce Mason, Researcher

Public Access New Zealand is a charitable trust formed in 1992. PANZ's objects are the preservation and improvement of public access to public lands, waters, and the countryside, through the retention in public ownership and control of resources of value for recreation. PANZ draws support from a diverse range of land, freshwater, marine, and conservation interests representing approximately 250,000 people from throughout NZ.



4 October 1995

Mr Bruce Mason
10 Bayne Terrace
Macandrew Bay
DUNEDIN

Dear Bruce

Thank you for forwarding a copy of your "Guest Comment". Locally the Moutoa Gardens issue remains largely unresolved. While the issue is now rarely mentioned in the local press, it bubbles away under the surface, somewhat similar to Mount Ruapehu's current activity. Never a dull moment in the Whanganui region!

Helen Clark recently released a press statement concerning the Government's failure to address the settlement process. I have considerable empathy with the frustration Maori feel. The Whanganui Iwi lodged a claim on the Whanganui River in 1944 and it still has not been settled.

When the Moutoa Gardens occupation began, I commented that it would be a tragedy for all New Zealand if the Government allowed racial issues to become an election platform. I remain very concerned that National will allow that to happen.

Thank you again for your column. I enclosed a copy of Helen's statement.

Yours sincerely

Jill Pettis
MP for WANGANUI

Public Access New Zealand

INCORPORATED

P O Box 5805 Moray Place Dunedin New Zealand Phone & Fax 64 3 476 1544

Mr Chas Poynter
Mayor
Wanganui District Council
P O Box 637
WANGANUI

Sent 16 / 3 / 95

Copy

Fax (06) 345 3355

Moutoa Gardens

6 pages total

Dear Mr Poynter

Our organisation has been viewing with increasing alarm the unlawful occupation of public reserve at Moutoa Gardens. There are national implications for the future sanctity of public reservations including the erosion of the duty of trust under which administering bodies, including your council, hold and administer land on the public behalf.

If the current occupiers get away with their occupation, and worse still achieve ownership of the land through political and unlawful actions, this will open the door for *any* private interest in the country to do the same.

The occupiers rely on alleged grievances against the Crown. The strong and underlying assumption is that their 'grievance' is valid or proven and that the basis of their actions are past breaches of the Treaty of Waitangi, or of the principles of the Treaty.

As you have publicly stated there is a existing avenue for 'grievances' by Maori against the Crown to be determined. The Waitangi Tribunal has a two-fold role of determining the validity of particular claims and then making recommendations to the Crown based on its findings of fact.

We understand that the occupiers have not lodged a claim before the Tribunal. Instead they have taken unlawful action. We also understand that your Council has researched the land sale by Maori to the Crown/Council and have concluded that the land was lawfully acquired for public purposes.

Radio New Zealand reported today that a spokesperson for the occupiers stated that their bottom-line is return of the land and the exercise of tino rangatiratanga.

In the absence of a proven case against the Crown, which would need to confirm that the land sale breached the terms or principles of the Treaty, we are of the opinion that the occupiers' actions and demands for ownership are in breach of the Treaty. There are duties and obligations on both parties to the Treaty and not one-way as the occupiers consistently imply.

While there is clearly entitlement for Maori over lands **which they chose to retain rather than sell**, there is the tandem provision for the sale of lands to the Crown. Without **both** provisions there would never have been a Treaty.

Once legitimately sold to the Crown there is no residual rangatiratanga “guaranteed by the Treaty” —quite the reverse —the Crown/Council became the owner on behalf of all New Zealanders. It was then to be governed for common benefit, with Maori having, under Article III (translated Maori version), “the same [not greater] rights and duties of citizenship” as other citizens. There is also the matter of the Crown have a right of Sovereignty/governance under Article I which is thought to over-ride Article II. Highlighted below are the provisions of Article II that rebut the claims of the occupiers—

English version—Article II

Her Majesty the Queen of England 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; but the Chiefs of the United Tribes and the individual Chiefs yield to Her Majesty the exclusive right of Preemption over such lands as the proprietors thereof may be disposed to alienate** at such prices as may be agreed upon between the respective Proprietors and persons appointed by Her Majesty to treat with them in that behalf.

Maori version—Article II

Ko te Kuini o Ingaranui ka wakarite ka wakaee ki nga Rangatira ki nga hapu-ki tangata katoa o Nu Tirani te tino rangatiratanga o o ratou wenua o ratou kainga me o ratou taonga katoa. Otiia ko nga Rangatira o te Wakaminenga me nga Rangatira katoa atu ka tuku ki te Kuini te hokonga o era wahi wenua e pai ai te tangata nona te Wenua-ki te ritenga o te utu e wakaritea ai e ratou ko te kai hoko e meatia nei e te Kuini hei kai hoko mona.

Translation of Maori version—Article II

The Queen of England agrees to protect the chiefs, the subtribes and all the people of New Zealand in the unqualified exercise of their chieftainship over their lands, villages and all their treasures. **But on the other hand the Chiefs of the Confederation and all the Chiefs will sell land to the Queen** at a price agreed to by the person owning it and by the person buying it (the latter being) appointed by the Queen as her purchase agent.

Conclusion

We believe that fuller consideration of Treaty content and of the protesters' actions show a disregard for due process, the lawful rights of other New Zealanders, and of their own rights and obligations under the Treaty and law.

I hope this letter and appendices proves to be helpful in assisting Council's resolution of this issue.

Yours sincerely

Bruce Mason
Trustee and Researcher

Now therefore We the Chiefs of the Confederation of the United Tribes of New Zealand being assembled in Congress at Victoria in Waitangi and We the Separate and Independent Chiefs of New Zealand claiming authority over the Tribes and Territories which are specified after our respective names, having being made fully to understand the Provisions of the foregoing Treaty, accept and enter into the same in the full spirit and meaning thereof; in witness of which we have attached our signatures or marks at the places and dates respectively specified.

Done at Waitangi this Sixth day of February in the year of Our Lord One thousand eight hundred and forty.

[Here follow signatures, dates, etc.]

The Text in Maori

Source: The Treaty of Waitangi Amendment Act 1985: being amended First Schedule to 1975 Act.

KO WIKITORIA, te Kuini o Ingarani, i tana mahara atawai ki nga Rangatira me nga Hapu o Nu Tirani i tana hiahia hoki kia tohungia ki a ratou o ratou rangatiratanga, me to ratou wenua, a kia mau tonu hoki te Rongo ki a ratou me te Atanoho hoki kua wakaaro ia he mea tika kia tukua mai tetahi Rangatira hei kai wakarite ki nga Tangata maori o Nu Tirani-kai wakaetia e nga Rangatira maori te Kawanatanga o te Kuini ki nga wahikatoa o te Wenua nei me nga Motu-na te mea hoki he tokomaha ke nga tangata o tona Iwi Kua noho ki tenei wenua, a e haere mai nei.

Na ko te Kuini e hiahia ana kia wakaritea te Kawanatanga kia kua ai nga kino e puta mai ki te tangata Maori ki te Pakeha e noho ture kore ana.

Na, kua pai te Kuini kia tukua a hau a Wiremu Hopihona he Kapitana i te Roiara Nawi hei Kawana mo nga wahi katoa o Nu Tirani e tukua aiane, amua atu ki te Kuini e mea atu ana ia ki nga Rangatira o te wakaminenga o nga hapu o Nu Tirani me era Rangatira atu enei ture ka korerotia nei.

Ko te Tuatahi

Ko nga Rangatira o te Wakaminenga me nga Rangatira katoa hoki ki hai i uru ki taua wakaminenga ka tuku rawa atu ki te Kuini o Ingarani ake tonu atu-te Kawanatanga katoa o o ratou wenua.

Ko te Tuarua

Ko te Kuini o Ingarani ka wakarite ka wakaae ki nga Rangatira ki nga hapu ki tangata katoa o Nu Tirani te tino **rangatiratanga** o o ratou wenua o ratou kainga me o ratou taonga katoa. Otiia ko nga Rangatira o te Wakaminenga me nga Rangatira katoa atu ka tuku ki te Kuini te hokonga o era wahi wenua e pai ai te tangata nona te Wenua-ki te ritenga o te utu e wakaritea ai e ratou ko te kai hoko e meatia nei e te Kuini hei kai hoko mona.

Ko te Tuatoru

Hei wakaritenga mai hoki tenei mo te wakaetanga ki te Kawanatanga o te Kuini-Ka tiakina e te Kuini o Ingarani nga tangata maori katoa o Nu Tirani ka tukua ki a ratou nga tikanga katoa rite tahi ki ana mea ki nga tangata o Ingarani.

(Signed) WILLIAM HOBSON,
Consul and Lieutenant-Governor.

Appendices—

The Treaty in English

Source: Treaty of Waitangi Act 1975; First Schedule.

HER MAJESTY VICTORIA Queen of the United Kingdom of Great Britain and Ireland regarding with Her Royal Favour the Native Chiefs and Tribes of New Zealand and anxious to protect their just Rights and Property and to secure to them the enjoyment of Peace and Good Order has deemed it necessary in consequence of the great number of Her Majesty's Subjects who have already settled in New Zealand and the rapid extension of Emigration both from Europe and Australia which is still in progress to constitute and appoint a functionary properly authorised to treat with the Aborigines of New Zealand for the recognition of Her Majesty's Sovereign authority over the whole or any part of those islands—Her Majesty therefore being desirous to establish a settled form of Civil Government with a view to avert the evil consequences which must result from the absence of the necessary Laws and Institutions alike to the native population and to Her subjects has been graciously pleased to empower and authorise me William Hobson a Captain in Her Majesty's Royal Navy Consul and Lieutenant Governor of such parts of New Zealand as may be or hereafter shall be ceded to her Majesty to invite the confederated and independent Chiefs of New Zealand to concur in the following Articles and Conditions.

ARTICLE THE FIRST

The Chiefs of the Confederation of the United Tribes of New Zealand and the separate and independent Chiefs who have not become members of the Confederation cede to Her Majesty the Queen of England absolutely and without reservation all the rights and powers of Sovereignty which the said Confederation or Individual Chiefs respectively exercise or possess, or may be supposed to exercise or to possess over their respective Territories as the sole Sovereigns thereof.

ARTICLE THE SECOND

Her Majesty the Queen of England 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; but the Chiefs of the United Tribes and the individual Chiefs yield to Her Majesty the exclusive right of Preemption over such lands as the proprietors thereof may be disposed to alienate at such prices as may be agreed upon between the respective Proprietors and persons appointed by Her Majesty to treat with them in that behalf.

ARTICLE THE THIRD

In consideration thereof Her Majesty the Queen of England extends to the Natives of New Zealand Her royal protection and imparts to them all the Rights and Privileges of British Subjects.

W. HOBSON Lieutenant Governor.

Na ko matou ko nga Rangatira o te Wakaminenga o nga hapu o Nu Tirani ka huihui nei ki Waitangi ko matou hoki ko nga Rangatira o Nu Tirani ka kite nei i te ritenga o enei kupu, ka tangohia ka wakaaetia katoatia e matou, koia ka tohungia ai o matou ingoa o matou tohu. Ka meatia tenei ki Waitangi i te ono o nga ra o Pepueri i te tau kotahi mano, e waru rau e wa te kau o to tatou Ariki.

Ko nga Rangatira o te wakaminenga.

Translation of Maori Text

(by I H Kawharu in, 'Waitangi: Maori and Pakeha Perspectives of the Treaty of Waitangi' (1989) —a reconstruction of a literal translation)

Victoria, the Queen of England, in her concern to protect the chiefs and subtribes of New Zealand and in her desire to preserve their chieftainship and their lands to them and to maintain peace and good order considers it just to appoint an administrator one who will negotiate with the people of New Zealand to the end that their chiefs will agree to the Queen's Government being established over all parts of this land and (adjoining) islands and also because there are many of her subjects already living on this land and others yet to come.

So the Queen desires to establish a government so that no evil will come to Maori and European living in a state of lawlessness.

So the Queen has appointed me, William Hobson a captain in the Royal Navy to be Governor for all parts of New Zealand (both those) shortly to be received by the Queen and (those) to be received hereafter and presents to the chiefs of the Confederation chiefs of the subtribes and other chiefs these laws set out here.

The first

The Chiefs of the Confederation and all the chiefs who have not joined that Confederation give absolutely to the Queen of England for ever the complete government over their land.

The second

The Queen of England agrees to protect the chiefs, the subtribes and all the people of New Zealand in the unqualified exercise of their chieftainship over their lands, villages and all their treasures. But on the other hand the Chiefs of the Confederation and all the Chiefs will sell land to the Queen at a price agreed to by the person owning it and by the person buying it (the latter being) appointed by the Queen as her purchase agent.

The third

For this agreed arrangement therefore concerning the Government of the Queen, the Queen of England will protect all the ordinary people of New Zealand and will give them the same rights and duties of citizenship as the people of England.

(Signed) W. Hobson
Consul and Lieutenant-Governor

So we, the Chiefs of the Confederation and of the subtribes of New Zealand meeting here at Waitangi having seen the shape of these words which we accept and agree to record our names and our marks thus.

Was done at Waitangi on the sixth of February in the year of our Lord 1840.

Public Access New Zealand

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Mr Chas Poynter
Mayor
Wanganui District Council
P O Box 637
WANGANUI

FAXED

Fax (06) 345 3355

Moutoa Gardens

6 pages total

Dear Mr Poynter

Our organisation has been viewing with increasing alarm the unlawful occupation of public reserve at Moutoa Gardens. There are national implications for the future sanctity of public reservations including the erosion of the duty of trust under which administering bodies, including your council, hold and administer land on the public behalf.

If the current occupiers get away with their occupation, and worse still achieve ownership of the land through political and unlawful actions, this will open the door for *any* private interest in the country to do the same.

The occupiers rely on alleged grievances against the Crown. The strong and underlying assumption is that their 'grievance' is valid or proven and that the basis of their actions are past breaches of the Treaty of Waitangi, or of the principles of the Treaty.

As you have publicly stated there is a existing avenue for 'grievances' by Maori against the Crown to be determined. The Waitangi Tribunal has a two-fold role of determining the validity of particular claims and then making recommendations to the Crown based on its findings of fact.

We understand that the occupiers have not lodged a claim before the Tribunal. Instead they have taken unlawful action. We also understand that your Council has researched the land sale by Maori to the Crown/Council and have concluded that the land was lawfully acquired for public purposes.

Radio New Zealand reported today that a spokesperson for the occupiers stated that their bottom-line is return of the land and the exercise of tino rangatiratanga.

In the absence of a proven case against the Crown, which would need to confirm that the land sale breached the terms or principles of the Treaty, we are of the opinion that the occupiers' actions and demands for ownership are in breach of the Treaty. There are duties and obligations on both parties to the Treaty and not one-way as the occupiers consistently imply.

While there is clearly entitlement for Maori over lands **which they chose to retain rather than sell**, there is the tandem provision for the sale of lands to the Crown. Without **both** provisions there would never have been a Treaty.

2

Once legitimately sold to the Crown there is no residual rangatiratanga "guaranteed by the Treaty" —quite the reverse—the Crown/Council became the owner on behalf of all New Zealanders. It was then to be governed for common benefit, with Maori having, under Article III (translated Maori version), "the same [not greater] rights and duties of citizenship" as other citizens. There is also the matter of the Crown have a right of Sovereignty/governance under Article I which is thought to over-ride Article II. Highlighted below are the provisions of Article II that rebut the claims of the occupiers—

English version—Article II

Her Majesty the Queen of England 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; but the Chiefs of the United Tribes and the individual Chiefs yield to Her Majesty the exclusive right of Preemption over such lands as the proprietors thereof may be disposed to alienate at such prices as may be agreed upon between the respective Proprietors and persons appointed by Her Majesty to treat with them in that behalf.

Maori version—Article II

Ko te Kuini o Ingaranui ka wakarite ka wakaee ki nga Rangatira ki nga hapu ki tangata katoa o Nu Tirani te tino rangatiratanga o o ratou wenua o ratou kainga me o ratou taonga katoa. Otiia ko nga Rangatira o te Wakaminenga me nga Rangatira katoa atu ka tuku ki te Kuini te hokonga o era wahi wenua e pai ai te tangata nona te Wenua-ki te ritenga o te utu e wakaritea ai e ratou ko te kai hoko e meatia nei e te Kuini hei kai hoko mona.

Translation of Maori version—Article II

The Queen of England agrees to protect the chiefs, the subtribes and all the people of New Zealand in the unqualified exercise of their chieftainship over their lands, villages and all their treasures. **But on the other hand the Chiefs of the Confederation and all the Chiefs will sell land to the Queen** at a price agreed to by the person owning it and by the person buying it (the latter being) appointed by the Queen as her purchase agent.

Conclusion

We believe that fuller consideration of Treaty content and of the protesters' actions show a disregard for due process, the lawful rights of other New Zealanders, and of their own rights and obligations under the Treaty and law.

I hope this letter and appendices proves to be helpful in assisting Council's resolution of this issue.

Yours sincerely



Bruce Mason
Trustee and Researcher

Appendices—

The Treaty in English

Source: Treaty of Waitangi Act 1975; First Schedule.

HER MAJESTY VICTORIA Queen of the United Kingdom of Great Britain and Ireland regarding with Her Royal Favour the Native Chiefs and Tribes of New Zealand and anxious to protect their just Rights and Property and to secure to them the enjoyment of Peace and Good Order has deemed it necessary in consequence of the great number of Her Majesty's Subjects who have already settled in New Zealand and the rapid extension of Emigration both from Europe and Australia which is still in progress to constitute and appoint a functionary properly authorised to treat with the Aborigines of New Zealand for the recognition of Her Majesty's Sovereign authority over the whole or any part of those islands—Her Majesty therefore being desirous to establish a settled form of Civil Government with a view to avert the evil consequences which must result from the absence of the necessary Laws and Institutions alike to the native population and to Her subjects has been graciously pleased to empower and authorise me William Hobson a Captain in Her Majesty's Royal Navy Consul and Lieutenant Governor of such parts of New Zealand as may be or hereafter shall be ceded to her Majesty to invite the confederated and independent Chiefs of New Zealand to concur in the following Articles and Conditions.

ARTICLE THE FIRST

The Chiefs of the Confederation of the United Tribes of New Zealand and the separate and independent Chiefs who have not become members of the Confederation cede to Her Majesty the Queen of England absolutely and without reservation all the rights and powers of Sovereignty which the said Confederation or Individual Chiefs respectively exercise or possess, or may be supposed to exercise or to possess over their respective Territories as the sole Sovereigns thereof.

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ARTICLE THE THIRD

In consideration thereof Her Majesty the Queen of England extends to the Natives of New Zealand Her royal protection and imparts to them all the Rights and Privileges of British Subjects.

W. HOBSON Lieutenant Governor.

Now therefore We the Chiefs of the Confederation of the United Tribes of New Zealand being assembled in Congress at Victoria in Waitangi and We the Separate and Independent Chiefs of New Zealand claiming authority over the Tribes and Territories which are specified after our respective names, having being made fully to understand the Provisions of the foregoing Treaty, accept and enter into the same in the full spirit and meaning thereof; in witness of which we have attached our signatures or marks at the places and dates respectively specified.

Done at Waitangi this Sixth day of February in the year of Our Lord One thousand eight hundred and forty.

[Here follow signatures, dates, etc.]

The Text in Maori

Source: The Treaty of Waitangi Amendment Act 1985: being amended First Schedule to 1975 Act.

KO WIKITORIA, te Kuini o Ingarani, i tana mahara atawai ki nga Rangatira me nga Hapu o Nu Tirani i tana hiahia hoki kia tohungia ki a ratou o ratou rangatiratanga, me to ratou wenua, a kia mau tonu hoki te Rongo ki a ratou me te Atanoho hoki kua wakaaro ia he mea tika kia tukua mai tetahi Rangatira hei kai wakarite ki nga Tangata maori o Nu Tirani-kai wakaatia e nga Rangatira maori te Kawanatanga o te Kuini ki nga wahikatoa o te Wenua nei me nga Motu-na te mea hoki he tokomaha ke nga tangata o tona lwi Kua noho ki tenei wenua, a e haere mai nei.

Na ko te Kuini e hiahia ana kia wakaritea te Kawanatanga kia kaua ai nga kino e puta mai ki te tangata Maori ki te Pakeha e noho ture kore ana.

Na, kua pai te Kuini kia tukua a hau a Wiremu Hopihona he Kapitana i te Roiara Nawi hei Kawana mo nga wahi katoa o Nu Tirani e tukua aiane, amua atu ki te Kuini e mea atu ana ia ki nga Rangatira o te wakaminenga o nga hapu o Nu Tirani me era Rangatira atu enei ture ka korerotia nei.

Ko te Tuatahi

Ko nga Rangatira o te Wakaminenga me nga Rangatira katoa hoki ki hai i uru ki taua wakaminenga ka tuku rawa atu ki te Kuini o Ingarani ake tonu atu-te Kawanatanga katoa o o ratou wenua.

Ko te Tuarua

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Ko te Tuatoru

Hei wakaritenga mai hoki tenei mo te wakaatanga ki te Kawanatanga o te Kuini-Ka tiakina e te Kuini o Ingarani nga tangata maori katoa o Nu Tirani ka tukua ki a ratou nga tikanga katoa rite tahi ki ana mea ki nga tangata o Ingarani.

(Signed) WILLIAM HOBSON,
Consul and Lieutenant-Governor.

Na ko matou ko nga Rangatira o te Wakaminenga o nga hapu o Nu Tirani ka huihui nei ki Waitangi ko matou hoki ko nga Rangatira o Nu Tirani ka kite nei i te ritenga o enei kupu, ka tangohia ka wakaaetia katoatia e matou, koia ka tohungia ai o matou ingoa o matou tohu. Ka meatia tenei ki Waitangi i te ono o nga ra o Pepueri i te tau kotahi mano, e waru rau e wa te kau o to tatou Ariki.

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Consul and Lieutenant-Governor

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Was done at Waitangi on the sixth of February in the year of our Lord 1840.

Iwi Wairua returned to Maoris

Dom 29/2/00

ASSOCIATE Maori Affairs Minister Tariana Turia said yesterday Wanganui's Moutoa Gardens would be handed back to Maoris.

Her call comes two weeks before talks are to be held on the future of the gardens in a bid to end a stalemate between Maoris and Wanganui District Council since a 79-day occupation of the gardens by Whanganui River Maoris in 1995.

The Maoris walked off their gardens marae, Pakaitore, when the High Court ruled that the council was the owner of the hectare-sized (2.5 acre) park on the riverside near the central city.

They had claimed it was an ancestral pa site withheld from them by the sale of Wanganui in 1848.

The dispute has continued to simmer, last boiling over a year ago when the Maoris defied council regulations and stayed

By JON MORGAN

for two nights at the gardens.

Mrs Turia, who attended the anniversary of the occupation yesterday, said she was speaking "with my iwi hat on".

She is a member of the lower river hapu, Tupoho, and was a leader of the occupation.

"It is our land, it was taken unjustly, and the right thing to do is to give it back," she said.

Her statement took Wanganui Mayor Chas Poynter by surprise.

He said the meeting to set up the talks — called by Prime Minister Helen Clark last Wednesday and attended by Mrs Turia — had decided there would be no predetermined outcome till all issues were canvassed.

"We have to come to the talks with open minds," Mr Poynter said.

Occupation leader Ken Mair

would also not say what was his preferred outcome. "I am very optimistic, but so far we are only setting in place ground rules on how to resolve the bigger issue."

Mr Poynter said the 1995 occupation had harmed the city.

"Businesses have left Wanganui because of it and one major enterprise nearly didn't move here. The American owners thought the whole of the city was in turmoil till they came here and saw the size of the piece of land that was at stake."

People wanting to move to Wanganui had also changed their minds because they did not feel safe.

Since then, the city council had made great advances in improving its relationship with the iwi, and the city's image had received a big boost overseas by being recently named one of the world's top six environmentally well-managed towns.