BEFORE INDEPENDENT HEARING COMMISSIONERS IN WELLINGTON CITY

I TE MAHERE Ā-ROHE I TŪTOHUA MŌ TE TĀONE O TE WHANGANUI-A-TARA

IN THE MATTER	of the Resource Management Act 1991
AND	
IN THE MATTER	of the hearing of submissions on the Greater Wellington Regional Policy Statement Change 1

Muaupoko Tribal Authority Legal submission

Summary

1. The MTA is a recognised iwi authority, but was not consulted in the preparation of the GWRPS 1.

2. The MTA has requested amendments to the GWRPS 1 to reflect important tikanga connections with the region, supported by extensive history and current practices.

3. The MTA maintains that the RMA 1991 requires inclusion of the amendments sought, noting recent case law on these issues that has emphasised the complexity of tikanga, evolving understandings, and cautioning that councils ought not be involved in making definitive judgments on ancestral connections except in exceptional situations.

The standing of the Muaupoko Tribal Authority

4. Muaūpoko Tribal Authority (MTA) is the mandated organisation for the Muaūpoko Iwi. The MTA represents Muaūpoko for the purposes of the Resource Management Act 1991 (RMA) and is mandated by the Crown for Treaty of Waitangi settlement negotiations and under the Māori Fisheries Act 2004.

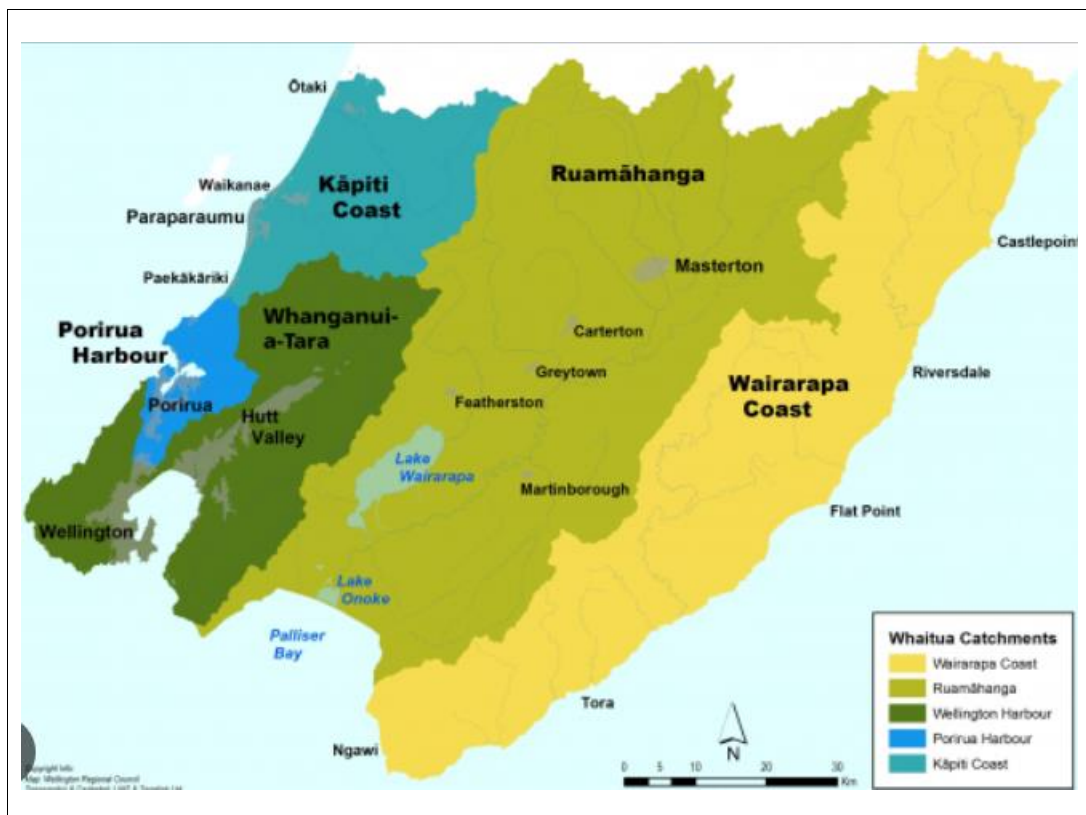
5. In 2013 the Muaūpoko Tribal Authority commenced formal Treaty settlement negotiations with the Crown (now paused) over an area of interest which includes Te Whanganui-a-Tara.

The Crown recognised the mandate of the MTA in 2013.[1] It signed an agreement relating to common expectations and matters for agreement in December 2013.[2]

6. The MTA is also an Iwi Aquaculture Organisation under the Māori Commercial Aquaculture Claims Settlement Act 2004.

7. Muaūpoko is also an applicant for orders to recognise customary rights in the foreshore and seabed of Te Whanganui-a-Tara under the Marine and Coastal Area (Takutai Moana) Act 2011.[3]

This is not just an issue relating to TWAT. The boundary of the regional council extends to Otaki, well north of Kapiti Island:



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[1] https://www.govt.nz/assets/Documents/OTS/Muaūpoko/Muaūpoko-Crown-Recognition-of-Mandate-25-Sep-2013.pdf
[2] https://www.govt.nz/assets/Documents/OTS/Muaūpoko/Muaūpoko-Crown-Expectations-and-Matters-for-Agreement-14-Dec-2013.pdf
[3] CIV-2017-485-261 to be heard in 2024-25.

Historic and current information – key points

8. From the historical materials attached, the key points are:

9. Muaupoko occupied Te Whanganui a Tara in some form (mostly referred to as Ngai Tara) roughly between 1300-1400 to 1820 AD (ie around 400-500 years). They explored, named (Te Whanganui a Tara, Kaiwharawhara, Te Aro, Te Awakairangi etc), before occupation was heavily disrupted in a few short decades by iwi heke coming to the area with European firearms.

10. The question of who controlled the harbour remained so unsettled in 1839-40 that Te Ati Awa were armed at all times at their residences within the harbour and killings occurred in Heretaunga. A peace agreement/s with Rangitāne was made only in late 1840.

11. Historians consider customary rights might have remained at/past 1840 – but this was never tested in early purchases or Court proceedings, since it was with Te Ati Awa only.

12. The Waitangi Tribunal found that Te Ati Awa sold to the NZ Company in order to promote their rights, but had few customary interests to actually sell at that time, and customary title to the harbour was never extinguished by the NZ Company purchase.

13. The Waitangi Tribunal also found that Ngati Toa never had any customary interests in the harbour. The Ngati Toa settlement nevertheless includes a "Statement of Coastal Values" for the harbour.

14. Waitangi Tribunal found that Muaupoko no longer retained customary interests sufficient to found Treaty breaches, but said that cultural connections remained nonetheless:[4]

> *"No Treaty breach findings have been made in relation to Rangitāne and Muaūpoko, because we consider that they lost their rights to land within the Port Nicholson block prior to the arrival of the Crown. Nevertheless, we consider that the long history of occupation of Te Whanganui-a-Tara and the surrounding area by these and related peoples should be recognised in a meaningful and public way by the Crown, local bodies, and other iwi."*

15. The Tribunal also said:[5]

> *"We recognise that tangata whenua also has a broader meaning, and that tangata whenua connections remain for all who can claim them through whakapapa and historical association, but tangata whenua rights are based on current ahi ka. Tangata whenua rights imply 'ownership'; tangata whenua connections do not imply ownership. Tangata whenua rights, and any sense of 'ownership' that went with them, were lost if ahi ka was lost by conquest or abandonment. However, tangata whenua historical connections can remain forever."*

16. In research in 1998 Professor Alan Ward noted, talking about mana as a source of rights:[6]

> *"There remains, however, the question of the mana relating to the fact of hundreds of years of occupation, after that occupation had ended – even after many generations had passed, (and notwithstanding the boundary established by the peace-making of 1840). That former occupation by Ngāti Kahungunu is marked by the place names on the land and the stories associated with them, as many speakers of Muaūpoko, Rangitāne and others have pointed out in recent years, in respect of Te Whanganui-a-Tara. It may well be that this confers interests of a non-property kind. As Mr Nicholson says, raupatu does not necessarily involve the entire extinguishment of all that went before".*

17. In 1992, when the Crown was disposing of surplus railways lands in the Wellington region from the southern coast to Pukerua Bay in the west and Maymorn in the Upper Hutt Valley in the east, Muaūpoko were identified as a group having interests in those areas alongside Ngāti Toa, Ngāti Rangatahi, Rangitāne, Ngāti Ira and Te Atiawa.[7]

18. Muaupoko continue to the current day to be called upon when historic artefacts are found. This includes:

    a. Being involved in tikanga surrounding the preservation of a centuries old waka fragment found on the banks of the Hutt River 2006.

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[4] Waitangi Tribunal (2003) p xxvi.

[5] Waitangi Tribunal (2003) p34.

[6] Ditto, p151.

[7] *https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_68354911/Reports%20on%20Railway%20Lands.pdf*

b. The recent decision of an expert panel that Muaūpoko should be included in discovery protocols for the Kaiwharawhara ferry terminal development.

19. To be clear, Muaupoko does not accept entirely the Waitangi Tribunal findings from 20 years ago. As discussed below, recent cases before the Courts and the Tribunal accept an evolving understanding of tikanga and how it applies in both RMA setting and Crown settlements.

20. The extent of Muaūpoko's interests also reflects its close relationship with Ngati Apa and Rangitane, also of the Kurahaupo waka, whose combined control over this part of the island was relatively consistent over centuries before the disruptions of European settlement.

21. Te Atiawa Ki Whakarongotai see to disallow the whole submission saying this claim to mana whenua is false. (19 Dec 2022).

22. However, Te Atiawa itself has argued strongly that Ngati Toa have no customary interests in TWAT, consistent with the Waitangi Tribunal finding to the same effect. The response of the Judge Williams of the High Court is instructional and applies here in our view:

> [95] Although Taranaki Whānui's view of matters is not reflected in the Deed or the Act, their stance in this case is understandable. Officials accepted from an early stage in negotiations, and, it appears on a sound basis, that there was a narrow zone within the Port Nicholson block where Taranaki Whānui rights were dominant even if not exclusive. In addition, the Waitangi Tribunal in 2003 found that Ngāti Toa had no rights in the harbour. Given such clear and independent support, it is hardly surprising that Taranaki Whānui would do all it could to protect its position. The problem with statutory acknowledgements and deeds of recognition in the modern era is that they do not reflect the sophisticated hierarchy of interests provided for by Mäori custom. They have the effect of flattening out interests as if all are equal, just as the Native Land Court did 150 years ago. In short, modern RMA-based acknowledgements dumb down tikanga Mäori. And that is particularly problematic in the Port Nicholson context because all relevant customary interests were fresh and evolving at the point of extinguishment.
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> [96] Taranaki Whānui fears, understandably, that its dominant interests will be devalued by a modern system of recognitions that lacks the sophistication of the ancient one. In the Mäori world, customary rights that have long since been extinguished in law, continue to be of transcendent importance to modern iwi.

The amendments sought

Consultation over the plan change

23. As a first point, the MTA continues to maintain that it u=ought to have been consulted in the preparation of this plan change as required by clause 3(1)(d) of Schedule 1 of the RMA:

> **3 Consultation**
>
> (1) During the preparation of a proposed policy statement or plan, the local authority concerned shall consult—
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> (a) the Minister for the Environment; and
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> (b) those other Ministers of the Crown who may be affected by the policy statement or plan; and
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> (c) local authorities who may be so affected; and
>
> (d) the tangata whenua of the area who may be so affected, through iwi authorities; and
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> (e) any customary marine title group in the area.
>
> (2) A local authority may consult anyone else during the preparation of a proposed policy statement or plan.

24. We accept that that issue on its own is a matter outside of scope and would need to be pursued in other proceedings. This hearing provides an opportunity for the Council to rectify the matter in part. The opportunity for close engagement over the initial drafting has been lost.

Other amendments sought

25. As a general comment, while the particular wording sought is not spelled out in the relief sought, the nature and extent of the relief sought is clear enough and is within scope. That is, generally, to include reference to Muaupoko where tangata whenua are referenced.

26. There is a reference to six iwi in the document, which means that six could become seven, and their names could be footnoted.

27. We support, at the very least, the remove of the reference to six iwi as that is currently exclusionary.

28. We otherwise agree with the legal submission of Mr Beverley and Mr Allen that an exclusionary approach is undesirable unless essential for planning purposes.

29. Section 6(e) RMA 1991 refers to "the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga."

30. This relationship does not need to be a mana whenua relationship to be a matter of national importance.

31. The interests recognised under para (e) are not determined by legal ownership or property rights. In this regard, the Waitangi Tribunal comments about the need to provide for continuing ancestral connections with Te Whanganui-a-Tara is significant (even if Muaupoko insists that the Tribunal under-estimated the strength of those connections at 1840 and beyond). The comments of Justice (Now Sir) Joseph Williams are also apposite.

Kaiwharawhara development – Covid fast-track decision[8]

1. This recent decision concerned the Kiwirail ferry terminal redevelopment.

2. The panel determined that Muaūpoko should be included in consent conditions regarding archaeological finds since the development might, as a matter of logic, uncover taonga of importance to Muaūpoko.

3. The panel also determined that Muaūpoko should not be involved in advising on design of the terminal, but urged te Ati Awa and Ngati Toa to include them through manaakitanga.

4. The limits of a manaakitanga approach are demonstrated by the Te Ati Awa submission finding it offensive to mention by name other iwi in the district plan.

Statutory acknowledgments

5. Both the Port Nicholson Block (Taranaki Whānui ki Te Upoko o Te Ika) Claims Settlement Act 2009 and the Ngati Toa Rangatira Claims Settlement Act 2014 include statutory acknowledgments in Te Whanganui a Tara. The Council must consider those when making its plans and may incorporate them as information in the plans.

6. They are not exclusive. For example section 37 of the 2009 Act provides:

> ***37 The Crown not prevented from providing other similar redress***
> *(1) The provision of the specified cultural redress does not prevent the Crown from doing anything that is consistent with that cultural redress, including—*
> *(a) providing, or agreeing to introduce legislation providing or enabling, the same or similar redress to any person other than Taranaki Whānui ki Te Upoko o Te Ika or the trustees; or*
> *(b) disposing of land.*
> *(2) However, subsection (1) is not an acknowledgement by the Crown or Taranaki Whānui ki Te Upoko o Te Ika that any other iwi or group has interests in relation to land or an area to which any of the specified cultural redress relates.*

7. In relation to Te Whanganui a Tara, the acknowledgments present a complex picture of the relevant interests. The Taranaki Whānui statement for Wellington Harbour refers only to fishing interests and occupation established 'just prior to colonisation':[9]

> ***Wellington Harbour***
> *The harbour was one of the highways used by Taranaki Whanui ki Te Upoko o Te Ika. At the time of pakeha settlement in 1839, it was crowded with waka of all types and was used for transport, fishing and sometimes warfare.*
> *The harbour was a very significant fishery both in terms of various finfish and whales as well as shellfish. The relatively sheltered waters of the harbour meant that Maori could fish at most times from simple waka. The rocks in and around the harbour were named such as Te Aroaro a Kupe (Steeple Rock), Te Tangihanga a Kupe (Barrett's Reef)*

[8] Kaiwharawhara Wellington Ferry Terminal Redevelopment decision report: https://www.epa.govt.nz/fast-track-consenting/referred-projects/kaiwharawhara-wellington-ferry-terminal-redevelopment/the-decision/
[9] https://www.govt.nz/assets/Documents/OTS/Taranaki-Whanui-ki-Te-Upoko-o-Te-Ika/Taranaki-Whanui-Deed-of-Settlement-Documents-19-Aug-2008.pdf

and so on. There were takiwa for whanau around the harbour and each had associated fisheries such as for ngōiro (conger eel). Each marae around the harbour had its rohe moana and the associated fishery. Pipitea Pa was named for the pipi bed in its immediate rohe moana. There are places within the harbour which were special for certain species such as kingfish and hapuku. Matiu Island had several pa or kainga situated around the island, each of which had a rohe moana to provide the food source to sustain them. Other resources came from the harbour including the seaweed such as karengo (sea lettuce), the bull kelp (rimurapa) and many others along with shellfish used variously at the pa. The mouths of the streams held their special resources such as the inanga (whitebait), piharau (lamprey) kahawai and tuna (eel).
The freshwater sources of the harbour were well known and highly prized not only by Taranaki Whanui ki Te Upoko o Te Ika, but also by the European traders who would fill water barrels while their sailing ships were anchored in the harbour. It is noted that these freshwater puna are still used to supply fresh water to Matiu/Somes.
The bed of the harbour is associated with the pa including Te Aro, Pipitea, Pito-one/Te Tatau o te Po, Waiwhetu, Owhiti, Hikoikoi, as well as those pa such as Kaiwharawhara, Ngauranga and others which were around the harbour just prior to colonisation.

8. The corresponding statement in the Ngati Toa settlement reads:

> *Wellington Harbour (Port Nicholson)*
> *Wellington Harbour has high cultural, historical, spiritual and traditional significance to Ngati Toa Rangatira.*
> *A well known narrative tells of how Wellington harbour was formed by nga taniwha Ngake and Whataitai. Ngake escaped, forming the entrance to the harbour and, as the water shallowed from what is now Wellington Harbour, Whataitai became stranded. The body of Whataitai became the hills close to the harbour entrance. The soul of W hataitai left him in the form of a bird named Te Keo. Mount Victoria is known by Maori as Tangi Te Keo or the weeping of Te Keo.*
> *Ngati Toa Rangatira's claim to the Wellington Harbour region is primarily based upon their early invasion of the region during the 1820s and their political and military influence, rather than occupation. Ngati Toa Rangatira also traded with the settler community at W ellington and sent produce to Wellington by sea.*
> *Harataunga was an important source of large trees suitable for the construction of waka. These waka were fashioned in the area and tested in Te Whanganui a Tara. Te Whanganui a Tara was also important in conjunction with the Hutt River as access to and from Porirua and the developing Wellington town.*
> *The Harbour is also an important source of kai moana.*

9. This also acknowledges an interest based on invasion in the 1820s. It refers to a 'well known' narrative, and places named thereafter - which is a Ngai Tara / Rangitāne narrative.

10. The Ngati Toa settlement also contains a statement regarding the Hutt River and its tributaries which contains the statement:

> *Although Ngati Toa Rangatira did not remain in the area after this invasion, the Hutt River continued to be important to the iwi following their permanent migration and settlement in the lower North Island in the late 1820s and early 1830s. The relationship of Ngati Toa Rangatira to the Hutt Valley and River was not one defined by concentrated settlement and physical presence. Rather, the iwi felt their claim to the land was strong based on the powerful leadership of Te Rauparaha and Te*

Rangihaeata and the relationship they had with iwi residing in the Hutt Valley who had been placed there by Ngati Toa in the 1830s. For some years these iwi in the Hutt Valley paid tribute of goods such as canoes, eels and birds to Te Rauparaha and Te Rangihaeata.
Ngati Toa Rangatira have a strong historical connection with the Hutt River and its tributaries, and the iwi consider that the river is included within their extended rohe and it is an important symbol of their interests in the Harataunga area.

11. Ngati Toa Rangatira focus on a 'strong historical connection' an 'extended rohe' and no actual occupation to assert these claims.

12. Neither settlement or acknowledgments refer to the peace agreements of 1840 as a source of rights.

13. Consequently, in Te Whanganui a Tara, if we analyse the evidence about customary connections to date there is a complex of overlaying interests that does not neatly and mixed bag of interests:

    a. Centuries of interaction of Kurahaupo groups prior to 1820 that the Waitangi Tribunal says must continue to be noted

    b. Some limited rights gained by Te Ati Awa at 1840, but leveraged through a land sale, and occupation thereafter

    c. No customary rights for Ngati Toa, even through conquest (according to the Tribunal), but their significance in the district acknowledged in their Treaty settlement. And a claim of rights through conquest asserted (it seems contrary to the Tribunal findings).

    d. Neither Te Ati Awa nor Ngati Toa citing peace agreements as a source of interests.

Conclusion

14. Without these amendments, there is essentially no protection for Muaupoko in relation their taonga in Te Whanganui a Tara and northwards to Otaki.

15. Recognition of Muaupoko's significant and ongoing cultural interests in these areas does not in any way threaten the continued existence of groups with substantial Treaty settlements here, which are enshrined in statutes.

16. If the Council decides not to amend as proposed, the Council will be, in effect, determining the relative strength of Muaupoko customary interests against the overwhelming evidence before it, and contrary to the recent case law that it is not the role of the Council at the planning stage to be making any such final determinations, unless in some manner that threatened in some very substantial way, the rights and interests of other groups to have their connections recognised as a matter of national importance.

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