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ABSTRACT

This paper presents two cases of tribal development based on Treaty of Waitangi settlements between Māori tribes and government in New Zealand. Breaches of the Treaty, resulting from government actions or inactions since 1840, have seen the diminution of tribal economies and well-being. The Waitangi Tribunal, created in 1975 to address these grievances, is the vehicle through which tribes have negotiated and settled Treaty claims to springboard economic, social, and cultural development. Two such tribes are Ngāti Tapuika and Ngātikahu ki Whangaroa. The authors of this paper are both Māori scholars and Treaty negotiators for their tribes. Here they outline the histories of their tribes, grievances, settlement and beyond, through the organisations (Post-Settlement Governance Entities) that operate at the interface between the tribe, the government, and the wider world. These organisations are also the interface between a history of conflict, despoliation, and destitution on the one hand, and aspirations for an empowered and enriched future on the other.

Keywords: Indigenous, development, New Zealand

Introduction

New Zealand is a relatively newly founded nation in the South Pacific. Māori are the indigenous people of New Zealand. The country was formally annexed by the British on February 6th, 1840, when a gathering of Chiefs signed the Treaty of Waitangi with William Hobson, representing the British Crown (Walker 1990). The Treaty came about after over seventy years of mutually beneficial interaction and trade with Europeans since the arrival of Captain Cook in 1769. It also followed the signing of the Declaration of Independence in 1835, which clearly articulated the sovereignty of the Māori Chiefs, as rulers of New Zealand. The Declaration was recognised by the British Parliament in 1836, thereby ensuring Māori vessels would receive protection from the Royal Navy when trading in international waters (Henry 2012).

The Treaty signed at Waitangi was written in Te Reo (Māori language). It contains three clauses, the first gives Kawanatanga (the right to govern) to the British Queen. The second clause ensures the Queen will protect the chiefs in the exercise of their chieftainship, as well as protecting all the things that Māori deem precious (like land and other estates), and in return Māori give to the Crown the rights of pre-emption over all land sales. The third clause confers the rights of British citizens on all Māori. In the months after February 6th, other versions of the Treaty were dispatched around the country for signing by over 500 Chiefs. One version was in English, and it varied widely from the Māori ones. It ceded absolute sovereignty, as opposed to the right to govern, to the British Crown (Orange, 2012).

These different Treaty versions have caused enormous conflict between Māori and first the British, then the Settler government (after the New Zealand Constitution Act of 1852 came into being). The conflict resulted in open warfare in the 1850s, which resulted in large tracts of Māori land being confiscated by the Crown, for the ever-insatiable needs of new settlers (Belich, 1989). Between 1840 and 1900, Māori went from owning 60 million acres to less than 6 million, and that was reduced to less than 3 million by the middle of the 20th Century. Alongside the loss of land, a raft of legislation was enacted that destroyed Māori sovereignty, decimated the Māori economy, and reduced Māori people to poverty and alienation in their own country (King, 2003).

This is a story that has been replicated in other New World colonies, such as the USA, Canada, and Australia. However, in New Zealand, Māori have maintained a population and

level of political participation that has provided some protection from the worst excesses of colonial rule. In the 1960s, as a significant proportion of Māori relocated to cities as part of an urban drift towards work in the Post-War industrial boom, a growing body of disenchantment and activism emerged, culminating in what is now referred to as the Māori Renaissance since the 1970s (Walker, 1990). Protests and political lobbying in the decade saw the creation of the Waitangi Tribunal, "a commission of inquiry to make recommendations on claims brought by Māori relating to Crown actions which breach the promises made in the Treaty of Waitangi" (Tribunal, *nd*). For the first ten years of its existence, the Tribunal could only look at contemporary grievances, but the 1984 Labour Government extended the authority, "which was given retrospective power to investigate claims from the date of the signing of the Treaty of Waitangi in 1840" (Derby, 2012, Te Ara). The Tribunal can only make non-binding recommendations, so government is not required to accept their findings. Since 1985, more than 2000 claims have been lodged, citing grievances including invasion, massacre, deception, expropriation, and inaction on the part of the Crown, resulting in the loss of land, life, and cultural wellbeing for the tribes (Durie, 1998). The Office of Treaty Settlements, which sits under the Ministry of Justice, is charged with negotiating the settlement of these claims. Whilst some of the larger claims incorporate many tribes and thousands of acres of land (Orange, 2012; Kawharu, 1989), there are still over a thousand claims to be heard.

The entity that hears the grievances, as previously stated, is Waitangi Tribunal. However, the body that represents the Crown in Treaty negotiations is the Office of Treaty Settlements (OTS). It is part of the Ministry of Justice, and brings together lawyers, historians, and social policy experts to present the case on behalf of the Crown. OTS also allocates funding to the tribes for the costs associated with negotiation and settlement. This puts tribes in a parlous position, as the body they are taking a case against (the Crown), is also the body they are beholden to for funding for the case. It is a tenuous position, and each tribes manages those relationships and complexities in their own ways.

This paper refers to two of those cases, from Ngātikahu ki Whangaroa in the Far North to Ngāti Tapuika on the East Coast, both in the North Island, the most populous part of New Zealand. These two cases differ in terms of tribal origins, causes of grievances, processes the tribes have developed and outcomes at the time of writing. However, they are both examples of the ways that tribes struggle to create organisations, able to operate at the interface between the tribe and the wider world. These organizations are called upon to deliver enduring and

positive outcomes for and between their tribespeople, despite confounding variables like the lack of funds to engage in the Claim, the urban diaspora, the ongoing poverty and disenfranchisement, and a history of conflict and colonisation that continues to undermine the wellbeing of Māori (Dew et al, 2016). The primary purpose of these cases is to illustrate the challenges faced by these organizations and communities, and the ways they are attempting to address these challenges as part of a larger agenda for the revitalisation of their people, places, culture and language, the cornerstones of Māori identity and wellbeing.

Ngātikahu ki Whangaroa

Ngātikahu ki Whangaroa is a small tribe in the Far North of the North Island. The tribe, as do most in the Māori world, trace their origins to a specific voyaging canoe (the Māmaru), and eponymous ancestor, Kahukuraariki. She married the captain of the Māmaru, Parata, upon its arrival in Taemaro Bay. For the next seventeen generations, as recited in the whakapapa (genealogy), the tribe grew and expanded along the coastline from Taemaro to the Whangaroa Harbor, then inland to Otangaroa, and along the Oruaiti River towards Mangonui, a total of 50,000 acres. At the arrival of Europeans in the late 18th Century, the tribe maintained an extensive network of villages along the coast, Pa (fortifications) on each of their mountain tops, and community gardens in the warm, protected hinterland.

The first arrival of Europeans into the Whangaroa was cordial. However, the massacre of the Boyd crew in 1809, after they had broken a tapu (sacred rule), set back relations (Whitaker, 2005; Maxwell & Roberts, 2014), but a Wesleyan mission was opened in 1823, and Catholic priest Pompallier arrived in the area in 1838. Thus, relations were again cordial by 1840 when the Treaty was signed. One of the first post-Treaty government actions was the creation of the Protectorate of Aborigines (from 1840-1846) to advise on Māori issues, among these the ratification of pre-Treaty land sales, many of which were spurious. This was the case for Ngātikahu ki Whangaroa, because large tracts of their land had been sold illegally by neighbouring Chiefs, with no right to do so. Members of the tribes sought to have these dealings overturned, first at the Land Claims Commission in 1843, which did not go ahead in the Mangonui District. Thus, the Crown presumed it owned these lands without formal enquiry into the land sales. This situation was exacerbated by further land acquisition, which the people of Ngātikahu ki Whangaroa protested vociferously through every channel they could find, from the 1850s up until petitions and letters sent in 1870s through to the final one in 1912. All these

were ignored until the Waitangi Tribunal was given the power to look retrospectively, and a Claim was lodged in 1987 by Pita Pangari, then a young, urban businessman who had been implored by his elders to take up the struggle.

The Ngātikahu ki Whangaroa Claim (WAI 116) is based on Crown inaction, rather than overt actions of invasion and expropriation. Through Crown inaction, the people of Ngātikahu ki Whangaroa, were reduced to penury, losing over half their lands through illegal and inappropriate transactions. After lodging the Claim in 1987, Pita began researching the Claim, gathering evidence from elders, finding documents and records in archives around the country, all at his own expense. It was not until 2001, when the then six Marae (community centres) joined together to form a united body, the Kahukuraariki Trust Board, that the tribe was able to meet the onerous requirements set by the Crown to gain a mandate, thereby formally representing the tribe and the Claim. This was conferred in September 2001, and over the next three years the terms of negotiation and general procedures for the negotiations were accepted by both parties. At that time, the tribes comprised approximately 1800 people, according to the 2001 Census, a small tribe compared to many others.

The Trust appointed four negotiators, who worked from October 2004 until 2007, to come to an agreed position on the history of the Claim, and the redress for grievances, which was signed off in an Agreement in Principle in December 2007. The AIP comprised an acknowledgement of the grievance and apology from the Crown. It also encompassed lands which would be returned as 'cultural redress', in some cases because these lands were part of the Conservation Estate, so the tribe would be acknowledged as the spiritual owner and guardian, but the government would continue to administer and protect the lands. The bulk of the financial redress comprised a 2275-hectare farm, and $1 million worth of stock and plant. At that time, the farm generated a $500,000 surplus per annum, which would become the springboard for economic development.

In the immediate aftermath of signing the AIP a small group of protestors, who disagreed vehemently with the outcome of the negotiations illegally occupied the farm. They ejected the farm manager and his family and began operating the farm themselves. Their argument was that they were the families who had remained on the land around the farm, they represented the sub-tribe from that piece of land, and wanted the farm given back to themselves alone. This caused internal conflict within the tribe, especially given that the majority of the tribe lived outside the region, part of the urban diaspora, this included the four negotiators who were city-

based professionals with business, legal and negotiation skills. For the next six years, the occupation and protest continued. The Kahukuraariki Trust implored the Crown, through OTS, to remove the protestors. However, there was great antipathy to the idea of removing Māori protestors, from their own land, which would have been a public relations nightmare. Alongside these tensions were also the inter, and intra-family problems, as some members of the occupier group were not supported by their wider families. Over the years this tension has erupted into threats of violence, which has undermined community cohesion and family wellbeing.

This internal conflict served to halt the progress of the negotiations and settlement until 2013, when under a different government and Minister of Treaty Settlements, the negotiations were resumed, with a strategy to bring together all parties and complete the settlement of the Claim. Only one of the original negotiators was brought back for the final round of negotiations, aided by a new Trust Board. The last round of negotiations resulted in a far greater return of land (an extra 800 hectares of farmland) and cash, $6.3 million, plus another $300,000 to develop a management strategy for the Kowhairoa Peninsula, which would remain part of the Conservation Estate, but co-managed by the Tribe, enabling the development of eco-tourism and other ventures. Extensive consultation with the tribe occurred throughout 2013-2014, including a 'Road Show' around the North and including Auckland, where much of the tribe now live. In August 2015, the roll for the tribe comprised almost 2,000 names of people aged over 18 years, able to vote and ratify the final offer from the Crown. That vote resulted in 78% acceptance of the offer. Another element that had to be approved by the people was the creation of the Post-Settlement Governance Entity, and a set of Initial Trustees, who would have one year to hold elections for permanent Trustees. These would receive and manage the redress. Again, this received, albeit slightly lower at 71%, the approval of the people. Once ratified, the crown followed with a Deed of Settlement, which was signed between the Trust Board and the Minister of Justice on December 18, 2015.

The final stage of completing the settlement of the Claim was to be the enactment of legislation, the norm for all Treaty settlements, allowing the redress to be handed to the tribe. That was due to occur in October 2016, but was held up by one member of Parliament, who refused it to pass. Thus, the final enactment is still to occur in 2017. The Initial Trustees are still charged with managing the progression to settlement and setting up the structure for an election of permanent trustees. However, one of their key tasks in the previous year has been

working with the crown and other experts to address the ongoing issue of the illegal occupiers. The role of the trust Board, rather than having the time to begin developing a post-settlement economic development strategy, has instead been the development of a plan to incorporate the occupiers back into the tribe. The goal of the occupiers has been to convince the wider public that they, and they alone should receive all the redress. It is a complicated and fraught task, which has seen cousin fight cousin, and exposed the distance between rural and urban Māori, even members of the same family. This conflict has drawn out a Treaty settlement process or many years more than needed. However, it also highlights the ongoing problem that many Māori and Māori organizations must address. That is, to find a pathway forward that includes all parties, whether rural or urban, well-educated, and well-heeled or not, land based or professional. This case highlights how Māori communities have been divided by their recent past, rather than united, which makes the task of the organisations charged with developing future plans, and managing significant resources, that much more difficult and challenging.

This case does not have a happy ending, yet, as it is still in-train, it does not have a set of easy solutions. It does present the problems and challenges faced by the Interim Trustees, each of whom has been appointed by a Marae. Half of the Trustees are rural, elders, with little formal education but a depth of knowledge about culture, language and the tribal lands. The other half are urban, well educated, with extensive experience of governance and management. They are the team that will take the Claim to final settlement, and some of those have been nominated for the Post-Settlement Governance Entity. They are the people who must solve problems that no amount of dialogue has ameliorated in ten years, they must also manage an election for the future Trust and begin discussions around potential economic development strategies for a small tribe in an isolated, rural community. Finally, they must fulfil the role at the interface amongst the tribe and its members, and between the tribe and the outside world. The Academy, of scholars and practitioners, in business and management, has a role, with this and other Indigenous, marginalized, diverse, impoverished communities, to provide support, advice, models that can further enable these organizations to deliver the best possible outcomes for their people and their places.

Tapuika Iwi (Tribal) Authority

In the post-Treaty settlement environment tribal members have a legitimate stake in influencing tribal organisations. Tapuika Iwi Authority (TIA) is a Post-Settlement Governance

Entity (PSGE),[1] responsible for managing tribal assets. The organisation is legally accountable to members of the Tapuika tribe who are genealogically linked to a common ancestor. At this interface, the organisation can clearly distinguish, between insiders (Tapuika tribal members) and outsiders (non-Tapuika). As such the Tapuika tribe, with all its incumbent cultural beliefs and values, has a legitimate stake in influencing the organisations, missions, decisions and activities. Achieving this has not been without its challenges because "…while the Crown is relatively flexible in its approach to the choice of legal entity made by the settlement group, expression of *tikanga* (cultural mores) is limited. Most entities were created without Māori values in mind. They instead derive from English law" (Law Commission 2013, p11).

Furthermore, the principles of governance for PSGE's must also be endorsed by the Crown and informed by business models as the template. This approach has caused concern.

> … [d]ifferent concerns about modern tribal governance structures have … been raised in connection with the emphasis on business models, which appear to corporatise iwi. Tribal members are aware of the corporations in Alaska which have all but ousted traditional tribal structures and are keen to avoid creating economically orientated organisations which fail to capture the essential cultural basis of the tribe (Durie 1998: 13).

However, as part of the endorsement process PSGE's must also describe any subsidiary bodies accountable to the governance entity, such as asset management (commercial) and charitable providers (social). Therefore, cultural, and social outcomes are part of PSGE organisations' mandate.

The tension between growing tribal wealth and addressing the social needs of the people requires constant monitoring because most tribal beneficiaries are poor, particularly those still living within their traditional tribal boundaries. Māori PSGE tribal organisations cannot ignore the unacceptable level of poverty of many beneficiaries - neither can they be held solely responsible for addressing it. Perhaps the answer can be found at interface between businesses, non-government organisations (NGO's), and government and other tribes.

The following w*hakatauki* (proverb) captures the material wealth/cultural wealth paradox.

Mā te huruhuru, ka rere te manu

[1] A PSGE is a tribal organisation (that meets the Crown's governance criteria) to manage settlement redress from the Crown for historical Treaty of Waitangi breaches.

Adorn the bird with feathers so it can fly

Metaphorically, the feathers represent economic wealth and the ability to fly represents the social and cultural wellbeing.

Treaty settlements include cultural redress. To secure this redress claimants must provide compelling evidence from credible sources to support the claim. Tapuika, as a *raupatu* (confiscation) tribe had retained less than 95% of the original tribal estate (of 57,729 hectares) by the turn of last century (1900). As the losses mounted Tapuika became more introspective and as a consequence Tapuika families hid their ancestral knowledge. Concealed *whānau* (family) manuscripts were held sacred, treasured, and passed on to family members.

These manuscripts, carefully written in the most beautiful script, details the tribe's identity and history preserved in genealogical charts, song, incantations, and narratives. These treasures were made available to the TIA and provided compelling supporting evidence that proved to be invaluable to the tribe's Treaty claim.

Tapuika: an overview

For all Māori, irrespective of tribal affiliations, the interface between people and the natural environment is predicated on the genealogical link to the gods. The Māori world begins with the creation narratives defined by kinship. In traditional Māori thought, the entire universe is personified. The progenitors of life are primeval parents are the gods (ātua), Ranginui (sky) and Papatūānuku (earth). The natural environment, trees, waters animals and ultimately people are linked together through kinship. As such the Māori physical and spiritual world is defined through *whakapapa* (kinship). *Kaitiakitanga* (custodianship) is caring for the natural environment and is, in a sense, a sacred duty because it is associated with the gods.

Tapuika is a coastal tribe whose identity is inseparable from the natural environment and is expressed in the *pepeha* (tribal proverb) which connects the tribe with the ancestral mountain and the river.

Ko Rangiuru te maunga	Rangiuru is the mountain
Ko Te Kaituna te awa	Kaituna is the river
Ko Te Arawa te waka	Te Arawa is the canoe
Ko Tapuika te iwi	Tapuika is the tribe

Tapuika take their name from their ancestor who came to Aotearoa (New Zealand) from Hawaiiki[2] on the Te Arawa canoe. As the canoe came into Wairakei[3], Tia, the eponymous ancestor of the tribe claimed the land for his son, Tapuika[4].

> *Mai i ngā pae maunga ki te toropuke e tū kau mai rā ki te awa e rere mai ana, waiho te whenua ko te takapū o taku tamaiti a Tapuika'*
>
> From the range of mountains in the distance to the hill which stands before me, to the river that flows towards me, I proclaim these lands as the belly of my son Tapuika.

This *taumau*[5] describes *Te Takapū o Tapuika*, (the belly of Tapuika) the original tribal estate of the Tapuika tribe. The "belly" as a metaphor for the land is apt because the *takapū* is rich in natural resources because the land is particularly fertile. The land is coastal and traversed by rivers that were used for transportation as well as a major food source. Enveloped in forests Tapuika had access to plentiful food supplies from cultivations, forests, sea and fresh water sources

Tapuika flourished in their new homeland and maintained *mana whenua* (sovereignty) over their tribal estate through undisturbed continuous occupation. According to tribal oral accounts Tapuika were uncompromising in defending their tribal estate and this was the main cause of warfare (Koning 1998). *Tapuika turi paru* (Tapuika dirty knees) refers to Tapuika's reputation as fearless fighters, knee deep in grease from the dead killed in battle. Defining and defending tribal boundaries is the interface that differentiates, marks space and reinforces identity at a tribal level. The other side of this interface is the collaborative and mutually beneficial relations developed between Tapuika and other tribes.

Through chiefly marriages and alliances Tapuika, for the most part, established mutually beneficial relationships with neighbouring tribes. This was the status quo until the 1830's when the missionaries, traders and early settlers moved into the territory (Ballara, 2004; Gillingham 2001; Marsh et. al. 2005). During the 1830s Maketū[6] became a hub of early commercial and trading opportunities, leading to a struggle between Tapuika and other Māori over control over the area's coastal resources. These struggles culminated in protracted inter-tribal warfare (Maketū Minute Book 5, Smith 1923).

[2] Original Māori homeland thought to be in East Polynesia.
[3] A place on the coast of the north island, NZ that is an important site within Tapuika's tribal area.
[4] The tribal account aligns with the area described in Native Land Court Minutes (Maketū Minute Book 1, pp.142-143).
[5] Land claim through discovery.
[6] Coastal settlement within the *takapū*

In 1840 the Treaty of Waitangi heralded the onset of colonisation and the separation of Tapuika from most of their ancestral lands. In the 1860's New Zealand Land Wars, Tapuika fought against the Crown's[7] encroachment on their land by destroying survey equipment and engaging in armed conflict. The Crown responded by using a scorched earth policy which decimated the population and destroyed villages and cultivations. Tapuika were labelled rebels by the Crown. Today, having settled with the Crown over breaches of the Treaty of Waitangi, Tapuika (proudly) remain un-surrendered rebels.[8] The consequences of rebellion resulted in land confiscations exacerbated by Native Land Court proceedings, further alienated the tribe from their land (Mackey 2004, Pickens, 2004, Sorrenson 1956). This included coastal land, which left Tapuika (a coastal tribe), with no coastal land.

While Tapuika has had access to the coast, exercising sovereignty over the sea and waterways has been challenging. Tapuika treasure their waterways but as a result of European mismanagement, the waterways have been modified, polluted and *wāhi tapu* (sacred places) have been destroyed. Consequently, Tapuika's traditional sources of food and water have been compromised. Because Tapuika believe that the land and the people are inextricably linked, the alienation of the tribal estate has widespread ramifications affecting the spiritual, economic and wellbeing of the people and the environment they inhabit. The Crown's land transactions and acquisitions in the late 1800's to early 1900's, fraught with inconsistencies, biases, and suspicion, has been well documented (Ballara, 2004; Rose, 1997; Sewell, 1870; Sorrenson 1956).

Tapuika is a microcosm of the colonial experience of indigenous peoples representing the extremes of disenfranchisement. The colonial legacy has caused Tapuika considerable economic and social deprivation. However, the Crown did not just take the physical property of the land as an economic commodity, the traditions and history of the people lie across the land was also lost. Certainly, the interface between the people and the land was inexorably compromised. Relationships are complicated and the interface between the colonisers and colonised is no exception.

Said (1979) argues that if anything, the colonial experience has complicated the patterns that create cultural diversity. This process of cultural syncretism has contributed significantly

[7] The Crown in NZ refers to the government. It is used deliberately and officially in NZ government legislation, particularly in relation to the Treaty settlements because the Treaty was signed on behalf of the British Crown (Queen Victoria) and the Māori.

[8] The Crown offered to quash the un-surrendered rebel status, which Tapuika declined.

to the emergence of more numerous culturally different configurations throughout the world. In the process, the ensuing cultural exchange has impacted on the cultures of both the colonised and the colonisers. His argument should not vindicate or distance in the west from the devastation imperialism wrecked on native populations, or the effects of neo-colonialism in the modern global environment. Edward Said (ibid) can, with some justification, be criticised for not giving enough credence to the destructive impact of colonisation on the languages and cultures of formerly colonised peoples. Frantz Fanon (1967), conceivably the most influential black decolonisation theorist and philosopher of the twentieth century, harnessed the shared experience of colonial oppression, which precipitated a deluge of 'indigenous' discourses on the subject.

The problem is that most post-colonial discourses see the world as a nemesis of (white) colonisers and (non-white) colonised peoples, who portray colonised peoples as passive victims of colonial aggression. It can be argued that Māori, and many other previously colonised people, have maintained a remarkable degree of power and control over their own lifeways. The language, while still under threat has not been extinguished, marae-based communities and the culture is for the most part valued. This has been achieved in the face of British imperialism and aggression. Recently the New Zealand government has been involved in a Treaty settlement process to address breaches of the Crown.

Tapuika Treaty Settlement

James Anaya the United Nations Special Rapporteur on the Rights of Indigenous Peoples visited New Zealand in 2010. In his 2011 report, he notes that "The Treaty settlement process in New Zealand, despite evident shortcomings, is one of the most important examples in the world of an effort to address historical and ongoing grievances of indigenous peoples" (p.2). Interestingly Anaya is also critical of the process:

> An overarching concern is that the negotiation procedure is flawed from the outset because the party responsible for the breaches of the Treaty of Waitangi—the Government—is wholly responsible for determining the framework policies and procedures for redress for those breaches, resulting in a situation that is inherently imbalanced and unfair to Māori (p12).

While the process is blatantly unfair the tribes have no other viable choices to improve the socio-economic status of the tribe. It is for that reason that most tribes have, albeit reluctantly and resentfully for many, opted to participate in the treaty settlement process.

The settlement redress package includes:

- Crown acknowledgements and formal apology for Treaty breaches
- Financial and commercial redress
- Cultural redress (tribe's spiritual, cultural, historical or traditional associations with the natural environment)

Despite well founded reservations, the perseverance of the tribes to settle historical treaty claims has had positive outcomes for most tribes. The decision to engage with the Crown to address Tapuika's grievances under the Treaty of Waitangi claims process has been the catalyst for a change. Tapuika are under no illusions about the limitations of the Crown to adequately right the wrongs of the past. However, the process has provided the opportunity for Tapuika to address Tapuika's grievances under the Treaty of Waitangi claims process and has been the catalyst for positive social and economic development.

Tapuika Negotiation Process

TIA was fortunate to have the support of the tribe throughout the entire negotiation process. The process was initiated by participation of Tapuika as a claimant in the Waitangi Tribunal in 2007.[9] The purpose of the Tribunal is to investigate Crown breaches. However, the Waitangi Tribunal like the Treaty, is not legally binding. As such the Tribunal's powers are limited to making recommendations to government. It needs to be emphasised that even though Waitangi Tribunal findings are not legally binding they exert considerable power and influence on government. The tribe were also aware that any issues could still be taken to the Tribunal to investigate.[10]

Because of the tribe's misgivings about the Crown's integrity, there was considerable debate about the wisdom of entering into direct negotiations with the Crown. Based on the experiences of tribes who had successfully negotiated settlement Tapuika collectively agreed

[9] The failure of the Crown to meet its Treaty obligations culminated in the establishment the Waitangi Tribunal in 1975.

In 2016 Tapuika joined the NZ Māori Council and other tribes and gave evidence to the tribunal on the Māori claim to fresh water rights.

to direct negotiations with the Crown. On the 14 August 2008 Tapuika gave the five tribal negotiators a mandate to negotiate a Deed of Settlement with the Crown. All of the negotiators were members of Tapuika and all had remained actively involved in tribal affairs.

James Anaya's (2011) criticism of the Treaty negotiation process was evident from the outset of the negotiation process. The imbalance of power between the Tapuika negotiators and the Crown negotiators from the Office of Treaty Settlements (OTS) created an interesting power dynamic complicated by social or person relationships that developed between both sides. The negotiation process designed to empower the Crown and disempower the tribes. However, Michel Foucault's (1980) defines power as a force that cannot be objectified. According to Foucault, neither an individual nor a group can possess power, they can only exercise power. Therefore, power is dynamic, functioning within all social networks, so that even the most oppressed have potential to exercise power.

It soon became apparent at the interface of negotiations that there were perceptible shifts in power. Negotiation, even with disparate power relations, relies on discourse to reach agreement. "Discourse transmits and produces power; it reinforces it, but also undermines and exposes it, renders it fragile and makes it possible to thwart" (Foucault 1998: 100-1). The Tapuika negotiators engaged in discourse, supported by compelling evidence to expose the truth. The negotiations exposed the "truth" about the social and cultural and psychological impact of the Crown breaches of the Treaty on Tapuika. This is reflected in excerpts from the Crown Apology in the *Tapuika Deed of Settlement* (2012).

> To the iwi[11] of Tapuika, to the tūpuna[12], the descendants, the hapū[13] and the whānau, the Crown now makes this apology. It is long overdue. Your grievances are acutely felt, and they go back generations. For too long the Crown has failed to find a way to respond to them appropriately (p.30).

As already described kinship relationships with the natural environment is fundamental to tribal beliefs. Tapuika consider the Kaituna river to be an ancestor. The special relationship between Tapuika and the Crown is acknowledged in the apology.

> The waterways you live beside and cherish have, since the 1950s, been degraded and polluted. The Crown profoundly regrets the anguish this has caused for Tapuika, and failing to protect the special relationship Tapuika has with the Kaituna River and its tributaries (p.19).

[11] tribe
[12] ancestors
[13] Sub-tribe

The Crowns apology does not directly correlate with compensation for the acknowledged breaches. The redress received by the tribes is as much a gesture of goodwill because the government is very clear about compensation:

> The claimant group can't be fully compensated for their losses. Instead, settlement redress is intended to recognise the losses, restore the relationships between the group and the Crown, and contribute to the group's economic development.[14]

Many smaller tribes (such as Tapuika) have limited resources even after concluding their respective Treaty settlements. Therefore, the interface between Tapuika and other entities are areas that present opportunities to build tribal wealth.

Housing is one example of a business opportunity that TIA has identified to create instrumental and intrinsic wealth (profit and wellness) for the tribe. To that end TIA has developed a partnership with Ngā Pōtiki to provide quality affordable housing to the tribe. Ngā Pōtiki have a proven track record providing quality, affordable, well designed mixed typology housing developments (including housing maintenance).

Moving Beyond Grievance

The Tapuika tribal estate (te takapū o Tapuika) borders those of Ngā Pōtiki. The close kinship relationship between Ngā Pōtiki and Tapuika reflects geographical proximity and inevitable marriage alliances between the two tribes. Both tribes have established a sound working relationship to collaborate with housing initiatives.

Their tribal estate is in Tauranga one of the more affluent cities in New Zealand. Ngā Pōtiki a Tamapāhore Trust reported that:

> Tauranga is one of the most unaffordable cities in New Zealand to live in. The average house costs 6 times the average annual salary and 11 times the average Māori annual salary. As the cost of home ownership becomes unaffordable so too does the cost of rental housing (Ngā Pōtiki a Tamapāhore Trust, 2013 p.1).

High decile areas such as Tauranga include enclaves of deprivation that are typically Māori. However, poverty is cross cultural and cross class and in acknowledgement of this, and in the spirit of altruism, Ngā Pōtiki a Tamapāhore Trust housing developments are open to the entire community. This not only makes sound business sense because this interface expands the market but the inclusivity breaks down social barriers within a community.

[14] http://www.treaty2u.govt.nz/the-treaty-today/settling-claims/

In 2015 Tapuika and Ngā Pōtiki formed a housing consortium. They were invited to submit bids to the New Zealand Government for over a thousand state owned houses in the Tauranga and Te Puke area. The tribes formed partnerships with non-Māori organisers, including British property investors, Morrison and Co. The inclusion of multi-nationals in the consortium created negative publicity. When the government announced the state housing shortlist the media responded negatively. On the 18th March 2016 Radio New Zealand expressed concerns about foreign multi-national involvement.[15] Tapuika and Ngā Pōtiki are convinced that the publicity thwarted their bid.

In terms of due diligence, the investment was considered viable. To engage a specialist to develop the bid, both tribes share of upfront costs was $60,000 each. For the smaller tribes in the partnership, Tapuika and Ngā Pōtiki, upfront costs are high but acceptable given the potential to deliver positive economic and social outcomes for the tribe. Moving forward, Tapuika has a small portfolio of commercial and residential investment properties although social housing is a key priority in the tribe's strategic plan. Tapuika and Ngā Pōtiki recognise the benefits of collaboration, and this is not confined to property development. The relationship between the tribes is well established opening up possibilities for future opportunities to advance the material and intrinsic wellbeing of the people.

Conclusion

Tapuika negotiators can rightfully claim to have been instrumental in moving the imbalance of power at the interface of negotiations to effect better outcomes for the tribe. This is reflected in the statement made in the *Tapuika Treaty Settlement Information Booklet*, which provided tribal members with information to make an informed choice about accepting the Treaty settlement and endorsing TIA as the mandated tribal authority.

> The TIA Negotiation team believes it has negotiated the best possible settlement for Tapuika and that the proposed Post-Settlement Governance Entity ("PSGE") model will provide for the benefits of settlement to look after the best interests of all its members. These benefits will apply to members of the current and future generations of Tapuika wherever they may be (p.6).

[15] http://www.radionz.co.nz/news/national/299202/shortlist-announced-for-transfer-of-social-houses

For Tapuika the negotiation process was not exclusively about monetary redress. It became a deeply emotional and fulfilling journey that reinforced the cultural, values and beliefs that underpin the organisation. This experience has influenced the way that TIA developed as a PSGE and the emphasis the organisation places on Tapuika language, cultural beliefs and values.

In the case of Ngātikahu ki Whangaroa, the Treaty negotiation and settlement process has created upheaval. It has pitted family against family and unearthed old antipathies, some dating back decades. It has also required those with a passion for and commitment to settlement to be strong in their resolve, to put themselves forward and represent their Marae, their family and their community. This Claim is not completed, but it is envisaged that will occur in 2017. Trustees of the Kahukuraaki Trust Board, whether Interim of Permanent, will face severe challenges moving forward. They may look to other tribes, like Tapuika, for inspiration and insight. They will also need to draw on the body of management knowledge and expertise to help navigate the future.

However, tribal organisations cannot be held solely responsible for addressing deprivation. The "interfaces develop connections that facilitate communication, negotiation, and exchange across organizational boundaries." In the New Zealand post-Treaty context these interfaces can bring together government, non-government organisations (NGO), business and tribes together to effect spiritual, cultural, social environmental and economic wellbeing for all.

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