

IN THE MATTER of the Resource Management Act 1991 (**RMA**)

AND

IN THE MATTER of a proposed review of the Kapiti Coast District
Plan: Chapter 10 Historic Heritage (Waahi Tapu)

BETWEEN **MAYPOLE ENVIRONMENTAL LIMITED**

Submitter [No. 263] Further submitter [No. 125]

AND **KAPITI COAST DISTRICT COUNCIL**

Local Authority

**PRIMARY STATEMENT OF EVIDENCE OF MORRIS TE WHITI LOVE ON
CHAPTER 10 HERITAGE FOR MAYPOLE ENVIRONMENTAL LIMITED**

28 September 2016

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SUMMARY OF EVIDENCE

1. My name is Morris Te Whiti Love and my area of expertise is Maori Cultural matters. My evidence can be summarised as addressing the following key headings and matters:

Proposed Kapiti Coast District Plan 2012 – Chapter 10 Historic Heritage (Waahi Tapu)

2. In my evidence I will look at how waahi tapu are dealt with in the Proposed Kapiti Coast District Plan (**PDP**) and how Taewapirau is delineated within the Maypole property.

The meaning of waahi tapu

3. I will set out my understanding that waahi tapu are discrete places that have been made tapu or sacred and therefore unusable for normal land use functions including for subdivision. I will discuss the fact that the presence of a Pa or kainga does not necessarily mean the site is tapu and hence waahi tapu. However, there may be some instances where that is the case. My evidence considers whether there is evidence that Taewapirau, or parts of that site, are waahi tapu.

Is Taewapirau all waahi tapu or does it contain waahi tapu?

4. Taewapirau was an area occupied by Te Atiawa iwi from the early 19th century and at that time would be described as waahi tupuna or (in today's language) places connected with ancestors. On the Maypole development site, the archaeology does not indicate areas that were used for burials or tribal tuahu/altars which would make such areas waahi tapu in the traditional sense. Others claim to have seen koiwi from the area generally and those were re-buried elsewhere, but there is no evidence that they came from this site.

Are Pa and Kainga inherently waahi tapu?

5. There is a tendency today to describe all places associated with ancestors as waahi tapu. However, this approach has the effect of degrading the importance of places where tapu still remains, such as burial grounds, places where tohi rites were observed, tuahu or their modern equivalent of churches and some other types of sites. In this case the PDP takes a very broad approach to what they call waahi tapu, which are not necessarily tapu in the traditional sense (i.e. in accordance with tikanga).

Is Taewapirau a Pa and should it be regarded widely waahi tapu?

6. The answers to this questions need to be based on good evidence as the result of that decision has significant impacts on private property rights.
7. In my view, supported by the archaeological evidence of Kevin Jones dated 15 September 2016, the Pa was not located on the Maypole land and so the question as to whether this land is waahi tapu diminishes.

What is to be made of the various reports on this matter?

8. There have been a number of cultural reports from the hau kainga, from the broader iwi and from outside experts, which should be correlated. I will look at what can be drawn from these various reports including the extensive archaeological investigations that have been completed.

Conclusion

9. What does all this mean in context, and can we draw conclusions that take account of both the independent evidence and advice from tangata whenua. I consider we can draw conclusions supported by the independent evidence and the views of tangata whenua as to the cultural significance of this part of Taewapirau.
10. However, in my view the description of this site as waahi tapu due to the existence of a Pa (in the traditional sense of a fortified village) and burial sites following battles is not supported by the evidence of independent experts or tangata whenua.

INTRODUCTION

Qualifications and experience

1. Tēnā koutou. Ko Morris Te Whiti Love toku ingoa. My name is Morris Te Whiti Love. My tribal affiliations are to Te Atiawa, Taranaki, Ngāti Ruanui and Ngāti Tama iwi of Taranaki. I am the managing director of Raukura Consultants, a resource management consultancy specialising in Māori issues.

2. I have the following qualifications and experience relevant to the evidence I shall give:
 - (a) I have a Bachelor of Engineering (Agricultural) degree from University of Canterbury, awarded in 1974, and in the early stages of my career I worked for various local authorities in water and soil engineering roles;

 - (b) I have held roles in Central Government advising on Māori Resource Management matters: with Maruwhenua,¹ which was part of the Ministry for the Environment; and in Manatu Māori, which has since been incorporated into Te Puni Kōkiri;

 - (c) I was Director of the Waitangi Tribunal for seven years;

 - (d) I am the Chairman of the Wellington Tenths Trust, an Ahu Whenua Trust.

 - (e) I am a Trustee of Port Nicholson Block Settlement Trust.

Code of conduct

3. I confirm that I have read the 'Code of Conduct' for expert witnesses contained in the Environment Court Practice Note 2014. My evidence has been prepared in compliance with that Code. In particular, unless I state otherwise, this evidence is within my sphere of expertise and I have not omitted to consider material facts known to me that might alter or detract from the opinions I express.

¹

Now named Kāhui Taiao

Background to evidence preparation

4. I have been briefed by Maypole Environmental Limited (**Maypole**) to prepare cultural evidence in response to PDP provisions identifying Taewapirau as waahi tapu. I have visited Taewapirau and I am generally familiar with the cultural matters concerning Te Atiawa iwi in the surrounding area.
5. I am familiar with the history of this area from the perspective of being a tribal historian with whakapapa connections to those who lived in the area and fought in the battle of Kuititanga. My primary affiliation is with Te Atiawa in Wellington.
6. In preparing this evidence I have read the following reports and evidence:
 - (a) Proposed Kapiti Coast District Plan 2012; Section 42A Report: Part B – Chapter 10 Historic Heritage;
 - (b) Appendix A to the s.42A Report - *Waahi Tapu & The Kāpiti Coast: A Research Report* prepared by Pātaka Moore (September 2012);
 - (c) Appendix B to the s.42A Report – *Review of the 'Wāhi Tapu and Kapiti Coast Research Report'* prepared by Des Tātana Kahotea PhD (October 2015);
 - (d) *The Cultural Impact Report on the Ngarara Development Waikanae* prepared by Anthony Thomas (February 2009);
 - (e) *"Cultural Impact Assessment for archaeological authority application for Waimeha Village"* prepared by Ms Mahina-a-rangi Baker (September 2015);
 - (f) The archaeological evidence of Mr Kevin Jones for Maypole dated 15 September 2016; and
 - (g) The planning evidence for Mr Chris Hansen for Maypole dated 19 September 2016.

Proposed Kapiti Coast District Plan 2012 – Chapter 10 Historic Heritage (Waahi Tapu)

4. The approach taken in the PDP under Chapter 10 Historic Heritage (Waahi Tapu) is to identify all sites of significance to Maori and label them as waahi tapu. The PDP then sets out four groups of waahi tapu:
 - (a) Group A – urupa;
 - (b) Group B – Taewapirau as Pa and urupa;
 - (c) Group D – other urupa with a mix of urupa, pa, taipu aitua, kainga, niu/pou, taumata Tauranga waka/ika, mahinga kai and awa; and
 - (d) Group E – marae.
5. Each group has its own set of rules that establish different levels of restriction for proposed activities. The attempt has been made not to make one group more significant than the others. It appears that this is why they are broadly included under the heading of waahi tapu.
6. The traditional meaning of waahi tapu is broadened widely under the PDP to include areas where food is gathered and people currently occupy.² Culturally I do not agree with that use of the term in such a broad way, as it is inconsistent with the meaning of tapu and its traditional usage.
7. I acknowledge the heading for the Four Groups in Schedule 10.1 reads: *“Waahi tapu and Other Places and Areas of Significance to Iwi (and surroundings/setting, if applicable) (including tauranga waka, historic marae, maunga, awa, mahinga kai, pa, midden, Māori archaeological sites)”*. However, in my view, it is not appropriate to include waahi tapu under the PDP together with other matters of cultural significance to iwi. This is because it undermines the importance and meaning of tapu by making its application relative to other matters of cultural significance.

² Kapiti Coast District Council, *Proposed Kapiti Coast District Plan 2012, Section 42A Report: Part B – Chapter 10 Historic Heritage (Waahi Tapu)*

What is Taewapirau?

6. The location of Taewapirau and its relationship to Maypole's Ngarara landholding is shown under PDP Map 6. This planning map identifies the Taewapirau site as waahi tapu under reference number WTS0318. A copy of Map 6 is attached to my evidence as **annexure "A"**.
7. In my view it is clear from the traditional oral evidence and other documentary evidence that Taewapirau was an occupation site associated with Ngati Kura hapu of Te Atiawa and was used also as a cultivation site. At some point there were burials in the vicinity of Taewapirau, and part of the general area may be waahi tapu.
8. The geographical extent of Taewapirau was probably the area of elevated sand dune structure identified by Carkeek and others. However, this description is not particularly precise. For instance, cultivation areas in sand dune country would not likely be on the dune itself, but in the lower lying land which would have been less prone to desiccation.
9. The first question seems to be whether there is evidence of waahi tapu on the Maypole site. If there is evidence of waahi tapu, how should the location of the waahi tapu and its traditional Maori heritage values be protected under s.6(f) of the Resource Management Act in 1991 (**RMA** or **Act**)? Secondly, what was the extent of the occupation site and how should that be considered in a modern planning context under s.6(e) of the RMA?
10. Taewapirau is a waahi tupuna or a place associated with ancestors and it is important in the narrative for Te Ati Awa people and others. It was part of the area in which the battle Kuititanga was fought, but Taewapirau was probably not central to that battle. From the archaeological evidence there was nothing to suggest any burials on the site that would have resulted from the battlefield. Kuititanga was a running battle and the dead would have been buried where they had fallen.

11. Taewapirau has its own category under the PDP suggesting it is different to other sites. However, the reason for that difference is not made clear under the PDP or the advice under the Kapiti Coast District Council's (**Council**) s.42A Report. The s.42A report states:

Group B – 'Taewapirau': this group contains one site (Taewapirau) which is a pa and urupa. It is unclear why this grouping only applies to one site, but it is understood that this is intended to reflect the more developed nature of this site and to allow for a level of development to occur. It may also have been envisaged that Group B would be appropriate for other waahi tapu sites to be scheduled in the district plan in the future.

12. Group B is similar to the mixed sites in Group D, which does include mahinga kai or food gathering areas. There arises some confusion by extending the definition of waahi tapu to include sites which have no tapu element attached. The net result is a set of definitions that are unclear, and, in a practical sense, policies and rules which are also unclear or even conflicting with a high degree of interpretation required.

The meaning of waahi tapu

13. The term waahi tapu is provided for under the RMA, but it is not defined under the Act. The Environment Court considered at some length the issue of assessing tikanga Maori concepts, in particular waahi tapu, in the context of an application for consents for a new quarry in *Winstones Aggregates Limited v Franklin District Council*:³

- (a) When assessing a concept from tikanga Maori, the Court used a 3 stage inquiry:⁴
- i. Determine the meaning of the concept in English if possible;
 - ii. Assess the evidence available; and
 - iii. Determine how the concept is to be recognised and provided for.

³ A080/02 (EC).

⁴ Ibid, at para [248].

- (b) After considering dictionary definitions and definitions from the regional policy statement, and Historic Places Act 1993, Waitangi Tribunal findings, and other case law as well as evidence presented in the hearing, the Court found that the term waahi tapu referred to very small specific places, such as burial sites, the birthplace of a founding ancestor or the site of a significant historic event. A claim that the whole rohe or area used by the relevant hapu was waahi tapu was rejected.⁵
- (c) When asking for the Court to make a finding of fact on matters of tikanga Maori, it should be noted that while the identification of waahi tapu is a matter for tangata whenua, such claims must be objectively established, with material of probative value that persuades the Court on the balance of probabilities.⁶
14. In my view the important concept is that of tapu. That a place is rendered tapu and therefore not fit for usual human use is the point. The opposite and related concept is noa when an area can be used for occupation, gardening, cooking and ordinary things. Waahi tapu in times gone by would never be used, for example, to gather wood for a cooking fire. The common place where tapu applied are burial grounds, tuahu or tribal altars, and places associated with rites such as the tohi or baptismal rites.
15. Waahi tapu are places where the tapu remains and so the restrictions on what can be carried out on those places.
16. The s.6(e) matters of national importance under the RMA include “[t]he relationship of Maori and their culture and traditions with their ancestral land, water, sites, waahi tapu, and other taonga”. The range of terms used to express the forms of cultural relationship that might exist, as opposed to a single term such as waahi tapu, demonstrates that waahi tapu is simply one form of relationship of significance to Maori.

⁵ Ibid, at paras [274] and [277].

⁶ Ibid, at para [248].

17. The description of all sites of significance to Maori as waahi tapu, as is done in the PDP, is unusual and has the effect of elevating the importance of all sites to the highest level of protection. This is inconsistent with sites other than waahi tapu being recognised under s.6(e) of the RMA, which may warrant a lesser level of protection.

Are Pa and Kainga inherently waahi tapu?

18. Pa being fortified villages, and kainga being unfortified villages, were the places of occupation for whanau and hapu where all the functions of life were carried out. Pa and kainga contain houses for all functions along with gardens, places for animals and places to gather. A single Pa may have several marae or gathering places. Within many Pa or kainga there were places where uses were restricted by tapu but generally the pa and kainga were noa. If a pa or kainga was abandoned they would only become tapu if there was some event such as major sickness or people killed and buried within the pa. If a Pa existed on the Taewapirau site, there would have been physical evidence of its existence.
19. Did Taewapirau generally attain waahi tapu status as a result of the battle of Kuititanga and did that cause the site to be abandoned? I would have thought if that was the case there would be more evidence of burials, which does not seem to be the case. In my view there is no evidence that Taewapirau Pa existed, let alone that it was placed under siege or sacked during battle.
20. I acknowledge that Ra Higgott found human bones in the vicinity of the Maypole site as recently as 2003 and re-interred them. However, there is no evidence they came from the Maypole site. They may well have come from land nearby.

Is Taewapirau a Pa and should it be regarded widely waahi tapu?

21. Taewapirau was sparsely occupied and the evidence does not point to this being a Pa, however various authorities such as Pataka Moore, Ben Ngaia and Tony Thomas broadly agree it was a Pa along with the nearby Upoko te kaia Pa. This seems to go against physical evidence which would have been found on this site. I do not consider Taewapirau was a Pa, but rather that it was an area with some occupation by tangata whenua.

22. However, even if Taewapirau is a Pa, this does not mean that it is also a waahi tapu requiring a high level of protection. Some event might make an old or abandoned Pa a waahi tapu. If it was overtaken by disease or if it was overcome in battle and many died in the Pa then it could attain waahi tapu status. I do not believe this is the case here.
23. This question is, however, circumvented through the PDP waahi tapu provisions by simply identifying everything within Taewapirau as waahi tapu, without basing that on any form of archaeological evidence. The PDP relies solely on oral evidence as to the existence of archaeological sites of cultural value. It is inappropriate in my view to provide a very high level of protection over the entire Taewapirau site, without archaeological evidence to support the existence of those values.

What is to be made of the various reports on this matter?

24. In Tony Thomas' report⁷ on the Ngarara Development he states:

There are two sites that concern the Ngarara Development, them being Taewapirau and Te Maumaurapura. Wakahuia Carkeek state these places as being cultivations, this maybe so, but our research show's these areas were also pa site.

These places may not be what we envisaged a pa site being fortified, but a cluster of houses.

25. Although there is some oral evidence to the effect that Taewapirau was a Pa site, archaeological evidence seems to contradict this particularly on the Maypole site. I consider the use of the term waahi tapu under the PDP is confusing and unhelpful and should be carefully re-examined, especially in relation to the Taewapirau site.

⁷

Antony Thomas, Cultural Impact Report on the Ngarara Development Waikanae, February 2009, Ati Awa ki Whakarongotai Charitable Trust

26. The approach taken by Des Kahotea appears to be to delineate the site by elevation simply saying that the higher ground was the area that is culturally significant. That results in an easily defined area that does not need to rely on any archaeology. Pataka Moore appears to have taken a similar view. This begs the question as to whether elevation accurately and sensibly defines the area from which any development is excluded.
27. I think that approach lacks the necessary precision to achieve the objective of protecting any tapu areas that are properly identified. Those are areas of recorded archaeology, as well as those places where the Pa can be clearly identified. There needs to be a high level of proof in order to identify areas as either archeologically or culturally significant and then protect them. This is consistent with the Environment Court's approach, and only fair if the Council uses wishes to employ sections 6(e) of (f) of the RMA to restrict the rights of landowners.
28. The proposed extension of the of the waahi tapu site further needs to be considered against the amount of development that has already been undertaken on the Maypole site. The site has been largely reshaped, and the natural contours have change as part of Maypole's redevelopment of the Ngarara land. These works were monitored by Mr Jones, an archaeologist, as required under the operative District Plan (Plan Change 80). Mr Jones did not find any evidence of koiwi, burial sites or pa during these works which might justify the considering the imposition of waahi tapu over the land. One area of natural dunescape remains which can be used to recognise and provide for the historical association of tangata whenua with the site and their mana. This land is to be set aside from development, along with the neighbouring wetland which is under a QEII covenant.

CONCLUSION

29. The Proposed Kapiti Coast District Plan has its own unique way of dealing with sites of significance to Maori by identifying them all as waahi tapu regardless of whether they fit traditional definitions of waahi tapu. That approach, in my view, is unhelpful and confusing.
30. The heritage section of the PDP on waahi tapu sets out various groups of waahi tapu. One of those groups is "Taewapirau" which is described as a Pa and urupa. The archaeological evidence does not support the parts of Taewapirau identified in the PDP as being a waahi tapu in the traditional sense. In my view the area was probably sparsely occupied, but did not constitute a Pa in the traditional sense or the archaeological meaning.
31. Taewapirau needs to be re-defined in the PDP, to reflect that it is already partly developed.
32. If private property rights are to be encroached upon, there needs to be a sound basis for doing so. In this case, despite significant archaeological investigation, there is no evidence to support the identification of Taewapirau as a waahi tapu site.

28 September 2016

Morris Te Whiti Love

ANNEXURE A

PDP PLANNING MAP 6 DELINEATING THE TAEWAPIRAU SITE (WTS0318)

