

**Te Hunga Roia Maori o Aotearoa
(Maori Law Society Inc.)**



SUBMISSION

Local Government (Auckland Council) Bill

25 JUNE 2009

Te Hunga Roia Maori o Aotearoa, Submission regarding the Local Government (Auckland Council) Bill

1 Te Hunga Roia Maori o Aotearoa

- 1.1 This submission is made for and on behalf of Te Hunga Roia Maori o Aotearoa (THRMOA).
- 1.2 The THRMOA has a membership totalling more than 350 members of Maori lawyers. In addition to these members THRMOA also incorporates students who are studying towards a Bachelor of Laws (LLB).
- 1.3 THRMOA ensures the effective networking of members, holds a mandate to make submissions on a range of policies and proposed legislation, ensures representation of its membership on selected committees and organises regular national hui which provides an annual opportunity for Maori lawyers to discuss and debate issues relevant to Maori.
- 1.4 The current co-presidents of THRMOA are Damian Stone and Jolene Patuawa

2 Local Government (Auckland Council) Bill

- 2.1 As outlined in the explanatory note this Bill provides the governance structure of the Auckland Council including the high level framework for the structure of the Auckland Council, direction and provision of powers for the Local Government Commission to determine boundaries of wards and the partition of Franklin District.
- 2.2 THRMOA **strongly opposes** this Bill.

3 Concerns

- 3.1 THRMOA has a number of concerns regarding the Bill in its current format;
 - a. Failure to implement the recommendations of the Royal Commission.
 - b. Failure to provide for appropriate input of Maori and those with mana whenua in particular.
 - c. Failure to recognise the reciprocity owed to Ngati Whatua in particular following the gift of Auckland.
 - d. That the failure to include Maori seats in these circumstances would be in breach of the Local Government Act 2002 (and the Treaty of Waitangi).

4 Principles of the Treaty of Waitangi

- 4.1 It is appropriate that these submissions commence with a review of applicable principles of the Treaty of Waitangi.
- 4.2 The principles begin with the principle of partnership. It is a timely reminder when looking at governance issues in particular that the Crown and Maori established a partnership via the Treaty of Waitangi. This was found by the Court in the *Lands Case (New Zealand Maori Council v Attorney General 1987)*.
- 4.3 Cooke P in *Te Runanga o Wharekauri Rekohu v Attorney-General 1993*, stated
- “It was held unanimously by a Court of five judges, each delivering a separate judgment, that the Treaty created an enduring relationship of a fiduciary nature akin to a partnership, each party accepting a positive duty to act in good faith, fairly, reasonably and honourably towards the other. The words of the reasons for the judgment of the five judges differed only slightly; the foregoing is a summary of their collective tenor.”
- 4.4 With regard to the need to consult adequately, Cooke P in the Lands case stated:
- “The responsibility of one Treaty Partner to act in good faith, fairly and reasonably towards the other puts the onus on a partner, here the Crown, when acting within its sphere to make an informed decision, that is a decision where it is sufficiently informed as to the relevant facts and law to be able to say it had proper regard to the impact of the principles of the Treaty”
- 4.5 The manner in which the decisions regarding the formation of the Auckland Council and the political posturing behind this Bill leads us to remind decision makers of this very important Treaty context as a platform for decision making.

5 Recommendations of the Royal Commission

- 5.1 The Royal Commission made a number of findings which were key to ensuring that the Treaty relationship between Maori and the Crown could be upheld. The recommendations were premised on the basis that when faced with a clean slate, representation for Maori and Mana Whenua needed to be enhanced in order for those Treaty obligations to be fulfilled going forward. In essence the recommendations provided the basis for avoiding the creation of a new Treaty grievance.
- 5.2 Those recommendations included;
- a. Maori seats on the Council
 - b. Mana Whenua seats on the Council (Tainui and Ngati Whatua)
 - c. Co Management proposals for the Kaipara Harbour
- 5.3 THRMOA support the findings of the Royal Commission, they have been researched and consultation has been widespread. In contrast, the decision to reject the recommendations has had no Treaty analysis and no consultation.

- 5.4 It is understood that this Bill does not finalise this issue, however the issue is highlighted as a result of the overall planning that is necessary to implement the recommendations. It is submitted that they must be considered within the context of this Bill.

6 Failure to provide appropriate input

- 6.1 The Bill provides no opportunity for Maori input and has not to date sought appropriate Maori consultation on the effect of the Bill on Maori, Maori communities and on Mana Whenua in Auckland.
- 6.2 The principles of the Treaty involve the notion that good faith partnership requires consultation. It is submitted that this has been lacking in this process.

7 Reciprocity owed to Ngati Whatua

- 7.1 The historical context surrounding the gift of Auckland to the Crown was done on the basis that Ngati Whatua would share in the economic benefits of the establishment of the head of state amongst their people. The Orakei Report of the Waitangi Tribunal notes;

“Auckland was off to a propitious start, for the settlers came not as conquerors, not as interlopers, but as Te Kawau’s invitees to share the land with Ngati Whatua”

- 7.2 Ngati Whatua in particular had findings made which support the need for the Crown to pay greater heed to the duties owed for the past. It is submitted that the Crown has not yet made recompense for those wrongs, but to now create a new injustice when faced with an opportunity of a clean slate would be to exacerbate the past.

- 7.3 In reaching its recommendations, The Waitangi Tribunal made the following observations which sum up the obligations which the Crown has yet to meet for Ngati Whatua;

“Those recommendations we make that the Crown may yet support its Treaty commitment to Ngati Whatua. For a tribe that initiated and aided substantially the establishment of Auckland on its land, that stood by the Crown in moments of great crises, that held fast to law and order despite every vicissitude put upon it, and which suffered the most dreadful consequences and then through no fault of its own - and great fault on the part of others - what we recommend is small recompense indeed. Yet it would be a major step to implementing the principles of the Treaty, that the tribal right long denied should now be re-affirmed in a realistic way and that the Crown should move in no unstinting manner to promote the re-establishment of the tribe it displaced.

8 Local Government Act 2002

- 8.1 The Local Government Act 2002 provides as follows:

4 Treaty of Waitangi

In order to recognise and respect the Crown's responsibility to take appropriate account of the principles of the [Treaty of Waitangi](#) and to maintain and improve opportunities for Maori to contribute to local government decision-making processes, Parts [2](#) and [6](#) provide principles and requirements for local authorities that are intended to facilitate participation by Maori in local authority decision-making processes.

- 8.2 It is submitted that this Bill does not contain a similar Treaty acknowledgment and is therefore inconsistent with the Local Government Act 2002. Even worse, the Bill provides at clause 6 that if there is any inconsistency between this Bill and the Local Government Act (or the Local Electoral Act 2001) that this Bill prevails.
- 8.3 The deliberate avoidance of Treaty obligations specifically provided through statute and intended to apply to all local government is submitted to be a gross breach of good faith by the Government.

9 Proposal for Mana Whenua seats

- 9.1 We understand that a proposal is to be submitted to allow for 2 Mana Whenua seats to be established with an electoral College to monitor the candidate process.
- 9.2 We submit that this is the minimum requirement.

10 Request for Hearing

- 10.1 THRMOA is available to be heard on this submission if required.

CONTACT PERSON REGARDING THIS SUBMISSION

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