

# Who Owns Te Hau Ki Turanga Whare?

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## **Extracts from the Waitangi Tribunal Report.**

In July 1867, Rukupo petitioned the Government for the return of the Te Hau Ki Turanga whare. But the Government's response was that the building appeared to be deteriorating, a considerable amount of money had been paid for it, and, because the owners of the land and the whare were 'rebels', the whare had 'strictly speaking' been 'forfeited to the Government'.<sup>1</sup>

In October 1878, Wi Pere, Keita Wyllie, Paora Kate, and Otene Pitau petitioned the Government for the return of the whare. The native affairs select committee concluded that the original payment of £100 was inadequate, and it recommended that the Government pay the owners the sum of £300. In 1880, that amount was paid.

From 1868 to the 1930s, the whare was on display in the Colonial Museum in Wellington. In the 1930s, it was restored under the supervision of Sir Apirana Ngata. It was removed from the former National Museum in the 1990s and reinstalled as the center piece of the Maori collection of the Museum of New Zealand/Te Papa Tongarewa, where it remains on display.

Major Biggs stated, he paid the £100 on board the Sturt to 'ten different natives who got £10 each; they all signed a receipt for the money which Major Biggs took, and then went away'.<sup>31</sup>

Ms Edwards noted two conclusions from the committee's report:

that 'the House could have been, strictly speaking, forfeited on the basis that the owners were rebels, but a generous amount of money had been paid' and that the motive for the acquisition was to preserve the house from decay. The committee reported that the house would be 'taken care of and preserved from permanent destruction to which it seems to have been fast advancing when discovered by the Hon JC Richmond'.<sup>4</sup>

It is our finding that the acquisition of Te Hau ki Turanga by the Crown in 1867 was in breach of the article 2 rights of Rongowhakaata to the exclusive and undisturbed possession of their property and other taonga. (ONZF note, the Tiriti o Waitangi makes no mention of exclusive and undisturbed possession of their property and other taonga).

In late December, Colonel Gudgeon urged the Government to pay the compensation, because, if it was not sent soon, one of the petitioners 'will be put in gaol for debt'

Because the Crown had not acquired title to the house legally, it could not 'transfer good title to the Colonial Museum'.<sup>55</sup> (ONZF note, if the Crown has receipts for the payments then surely it has title to ownership)

It was Mr Moeau's understanding, and that of others involved in discussions with the museum on behalf of Rongowhakaata, that Rongowhakaata never relinquished ownership of Te Hau ki Turanga. He acknowledged that, in the late 1980s, representatives of Rongowhakaata agreed to let the museum have 'custodianship' of the whare, because Rongowhakaata could not maintain the whare in addition to the four already at Manutuke and Te Kuri a Tuatai.<sup>5</sup>

### **10.3.2 The Crown's case**

Crown counsel submitted that, while Te Hau ki Turanga was recognised as a taonga of Rongowhakaata, it was not 'owned at law' by them.<sup>60</sup> Instead, it was owned by the museum, under the Museum of New Zealand Te Papa Tongarewa Act 1992. Counsel

argued that, though a Crown entity, Te Papa was legally separate from the Crown. However, in terms of this inquiry, counsel stated that it did not wish to take the jurisdictional point that Te Papa was not acting on behalf of the Crown for the purposes of section 6 of the Treaty of Waitangi Act 1975. Crown counsel noted, however, that this was not to say this point would never arise.<sup>61</sup>

Crown counsel further submitted that this Tribunal 'need not and should not' formulate a view on the legal ownership of Te Hau ki Turanga. Counsel submitted that it was 'sufficient for the Tribunal to vent legal issues and on occasion express an opinion about the correct position in law'.<sup>62</sup> Counsel further suggested that in the present case the Tribunal should proceed on the assumption that Te Papa holds legal title to Te Hau ki Turanga by operation of statute.<sup>63</sup>

**17. Ownership of exhibits**—Where, in respect of any exhibit held in any of the institutions at the commencement of this Act, it cannot be clearly established whether the exhibit is owned by the Board [of Trustees of the National Art Gallery, the National Museum, and the National War Memorial] or is owned by any other person, the exhibit shall be held to be owned by the Board.

Crown has been unable to point to any freely given agreement by the traditional owners to transfer the title they held in 1867 to the museum or to the Crown. It must at least be arguable therefore that, in 1972, the ownership of Te Hau ki Turanga remained with the traditional owners, as we have indicated. That being the case, section 17 is not triggered and title could not pass to the museum. Though we are not a court of law, and any opinion we express on the matter will not be binding on the parties, we have considered it prudent to express a view in the hope that it may inform any negotiations between the parties over the future custody and management arrangements with respect to this taonga. (ONZF note, if the owners accepted the payment of 400 pounds and

receipts were issued then surely title was transferred.)

Mr Moeau referred to the recognition of Rongowhakaata ownership as being a key component – perhaps even a non-negotiable component – of the agreement, but Dame Cheryll Sotheran's evidence made no reference to ownership being a component of any agreement. Instead, she referred to Te Papa's belief that it owned Te Hau ki Turanga, as a result of legislation.<sup>94</sup>

In 1867 100 pounds was paid to 10 members of the Rongowhakaata tribe for the Te Hau Ki Turanga Whare. On the recommendation of the Native Affairs Select Committee, another 300 pounds was paid in 1880 making a total of 400 pounds in "full and final" payment, a very high price at the time for a, "building that appeared to be deteriorating because Rongowhakaata could not maintain the whare in addition to the four already at Manutuke and Te Kuri a Tuatai. This money was accepted and receipted by members of the Rongowhakaata tribe at the time. Since then, the taxpayers have spent thousands of dollars to restore the whare to its present day condition.

### **Details of the Rongowhakaata settlement**

#### *Properties being given to Rongowhakaata:*

- Part of Opou Station (118.60 hectares).
- Rakaukaka Scenic Reserve near Manutuke (5ha).
- The Railway Station reserve (excluding KiwiRail yards).
- Part of the former Gisborne Abattoir site on Awapuni Road.
- Land within Waikanae Creek conservation area.
- 295 and 285 Palmerston Road.
- 75, 77 and 79 Birrell Street.
- The old police station in Peel Street.

- 1861 Waingake Road (the old Waingake School).

Properties being offered to Rongowhakaata for sale as part of their \$22 million redress:

- The Gisborne courthouse in Customhouse Street (on a sale and leaseback basis).

- Manutuke School (sale and leaseback).

- Small Crown vacant lots in Lytton Road, Stanley Road and two in Grey Street.

Rongowhakaata will also have first right of refusal should the Crown decide to sell the Railway Station yards, the new Gisborne Police Station, Awapuni School, Makaraka School, part of the Waipaoa riverbed in Browns Beach Road.

Further schools and reserves will come to the iwi when when the Te Aitanga a Mahaki and affiliates' claims are settled.

The Crown is also giving the iwi \$100,000 towards weed eradication and regeneration of the Waikanae Creek and Rakaukaka reserves.

The question that must be asked before the Hon Christopher Finlayson returns this whare to Rongowhakaata with the above settlement goodies, **“Who are the rightful, legal owners of the Te Hau Ki Turanga Whare”?**

Research Department, One New Zealand Foundation Inc. 28 July 2011.