

# THE PHENOMENA OF PARTNERSHIP - THE NGĀWHA EXPERIENCE

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**Keywords:** Partnership, protection, participation, principles, values, whakapapa, goodwill, Te Tiriti o Waitangi

## ABSTRACT

In 1840 Te Tiriti o Waitangi containing three articles was signed between rangatira of hapū and English Crown agents. This paper will discuss Article Two which states in part: ‘... full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess so long as it is their wish.’ In 2015 a consent application to construct and operate two new 25 MWe geothermal power stations was approved. This paper will discuss the building of a relationship that began in 2013 and culminated in a partnership between the Ngāwha Marae Komiti Trustees and Top Energy Ltd that will exist for at least 35 years.

## 1. BACKGROUND

### 1.1 What is a partnership?

A partnership is where parties agree to share their respective values, assets and skills for mutual benefits.

In 1840 Te Tiriti o Waitangi was signed between rangatira of hapū and English Crown agents. From that time debate of its existence and influence in contemporary New Zealand has been passionate, many theses have been written and expensive court battles waged between Māori appellants and developers.

In the 1890s early English visitors were photographed beside large surface mineral and sulphur springs at Ohaeawai and Ngāwha with children.

From 1968 to the mid-1980s government scientists drilled 13 test wells around Ohaeawai and Ngāwha near Kaikohe. The feasibility studies showed exploitation of the resource was not financially viable and the wells were capped and the land was subsequently sold - wells in situ.

In 1992 the first resource consent application to exploit the Ngāwha geothermal resource which initially involved the Taitokerau Māori Trust Board was lodged with the Northland regional council. A group known as Ngā Hapū of Ngāwha lodged an urgent claim with the Waitangi Tribunal opposing the application alleging that a grant of consent would directly contravene their title to and rangatiratanga of the Ngāwha geothermal resource and deny their Treaty right to act as kaitiaki of the taonga.

In 1993 the Tribunal released its Ngāwha report which held that the treaty rights of Ngāti Rangi hapū had been extinguished when they sold the land which included the subsurface features. The finding paved the way for the regional council to grant consent for Top Energy to proceed.

### 1.2 The Ngāwhā Marae Trustees Komiti

The (Trustees) are the Administrators of Waiwhariki 1D1A Māori Reservation which is located on SH 12, near Kaikohe.

In 1871 a Crown grant formalised the traditional ownership of the land which had been gifted by a tūpuna. In 1941 the Māori Land Court confirmed the appointments of the first 11 trustees to the Komiti – a practice that continues to the present day.

The 1994 Māori Reservation Regulations (Maori Reserve Regulations 1994) require Trustees to draw up in agreement with their members a Charter for the reservation. It has certain objectives namely: To provide a marae complex for the benefit of all hapū, whanau and iwi where culture, religion and traditions can be practiced and fostered in their entirety, and to act on behalf of the hapū of Ngāti Rangi on a range of environment and commercial activities. It is the only Marae nearest to the Top Energy geothermal plant in Ngāwha Springs Road and the Northern Regional Corrections Facility on SH 12.



**Figure 1: A dip in one of the springs at Ngāwha which has gain a reputation for the cure of rheumatics. G Williamson. Weekly News, 25 May 1922, page 32.**

## 2. INTRODUCTION

Tangata whenua are spiritually and culturally partnered with Papatūānuku and Ranginui. Land is their tūrangawaewae. It is their place to stand. It is the history of their past. It is an important resource to their future and must be treated with respect. Whenua has special cultural and historical significance which contain urupa, kainga and battle grounds of wahi tapu. Their presence in the physical landscape exemplifies the importance of whakapapa - the basis of Māori social, political and legal structures - the essence of being Māori, (Webster, 1994).

### 2.1 Te Tiriti o Waitangi 1840

To honour the signatories of rangatira who made their marks on the Māori version of the Treaty of Waitangi 1840, it will be referred to as ‘Te Tiriti o Waitangi’ or ‘Te Tiriti’. The intention of Article two was to protect Māori custom in relation to land and Māori land ownership. But over time the rights that Māori held were fundamentally altered by legislation and property rights litigation. Their cultural values

have not been afforded the legal protections and political recognition that were guaranteed under Te Tiriti.

Despite that its status continues to evolve, Te Tiriti is part of our country's constitution as it was the initial agreement that established British authority.

For more than 30-years successive governments have recognised the significance of the Treaty in the life of the nation by inserting its principles in Acts of Parliament. Te Tiriti is not considered part of New Zealand domestic law, except where its principles are referred to in those Acts.

## **2.2 The 'Lands Case'**

In 1987 the Court of Appeal heard the 'Lands Case' (NZMC v A-G 1987) and characterised the Treaty relationship as 'akin to a partnership'. In its judgment, the Court recognised several fundamental principles of Te Tiriti including: fiduciary duty; good faith; protection and participation.

## **3. DEVELOPMENT OF GEOTHERMAL ENERGY IN NEW ZEALAND**

In 1958 Wairakei geothermal power capacity plant was the first dedicated station in the world to generate electricity using the geothermal resource. Today New Zealand is a world leader in renewable energy and has attracted interest from other countries looking to improve their renewable energy opportunities.

From humble beginnings in 1958 New Zealand has the world's 5<sup>th</sup> largest installed geothermal generation capacity (Bertani, 2015). International demand for renewable energy has created the need for a world leading workforce that boasts expertise in geothermal science, engineering and construction. Top Energy contributes to New Zealand's international success and is proud of its commitment to the people of the Far North.

## **3.1 Contemporary Partnerships**

Today Māori land owners and Trustees of Māori incorporations are now partners with some of the country's largest energy operators. It would appear from publicity comments (Tauhara No 2, 2016) that those partners have applied or adopted the process and principles of partnership and redress. The parties have focused on developing a partnership that reflects their common shared interest and common concern – the health and well-being of the environment driven by the sustainable nature of geothermal operation. Most of these partnerships connect to geothermal fields in the central North Island.

Māori Trusts own the land - under which the resource lies - and operate the power station in agreement with an energy company. For the Trustees and whānau kaitiakitanga is key – a discipline respected and applied with rigour. The land is protected and other natural resources are preserved as is the economic future of their hapū and whānau.

This is kaitiakitanga in its purest form. The Trustees are kaitiaki of their resource and are exercising kaitiakitanga by taking care of it in ways they have chosen. The Trustees do this with confidence as they hold rangatiranga (management and control) of their resources. Each partnership is unique and in some reflects the principles of Te Tiriti as elaborated in the 'Lands Case' (NZMC, 1987).

The partnerships provide opportunities to adopt a new era of co-operation and co-management over the relevant geothermal fields and waterways. The outcome reflects the

highest level of participation, engagement and protection of their lands, forests and taonga katoa.

## **4. SUMMARY**

The concepts of partnership and co-management are not revolutionary - as 176 years ago - a Treaty that encapsulated these principles was signed between the hapū rangatira and the British crown agents.

That was revolutionary. Twenty-nine years ago, the Court of Appeal's articulation of these principles as being the spirit, or intent of Te Tiriti were also considered to be revolutionary (Burton, 2007).

Hence, when viewed against the history of Māori land rights set down in Te Tiriti these contemporary agreements are extraordinary. In the 'Lands Case' the President of the Court of Appeal Sir Robin Cooke issued a Minute which stated: The Court is glad that they have succeeded ... the Court hopes that this momentous agreement will be a good augury for the future of the partnership. Ka pai!

## **5. THE NGĀWHA EXPERIENCE**

### **5.1 Introduction**

#### **5.1.2 The relationships**

The Māori Trust Boards Act 1953 established several provincial Trust Boards for the purposes of distributing Crown funding to specific Māori communities. Given this statutory role Te Taitokerau Maori Trust Board formed a joint venture arrangement with the Bay of Islands electric power board (now Top Energy) in the first consent application.

The Trust Board members included two individuals from the hapū of Ngāti Rangi.

At the 1993 Waitangi Tribunal hearing several people representing their families or hapū filed urgent submissions. The Tribunal referred to them as 'Ngā hapū of Ngāwha'.

The Ngāwha geothermal field covers lands owned by families which whakapapa to the hapū of Ngāti Rangi which has over 7,500 members. There are many other land owners within the geothermal field, one of which is Top Energy. The Ngāwha Marae Trustees Komiti also has a statutory responsibility and represents the interests of the hapū of Ngāti Rangi.

In 1993 the Waitangi Tribunal opened its Ngāwha geothermal resource hearing [WAI 304, 1993]. The claimants argued that the Ngāwha geothermal field in its entirety was a taonga of which they were kaitiaki. They invoked Article Two of Te Tiriti to support their claim. They strongly opposed the development and sought several findings from the Tribunal. As part of their evidence they described an 16th century ancestress Kareariki who was renowned for using geothermal waters to assist in childbirth.

The Tribunal stated: 'In 1840 neither Māori nor Europeans had any scientific knowledge of the geothermal field. In Ngāwha the field was not assessed and its approximate extent determined until resistivity studies were carried out by scientists of the Geophysics Division of the Department of Scientific and Industrial Research – DSIR - in 1966 and 1977' (WAI 304, p82).

The Tribunal was not only considering the Ngā hapū o Ngāwha claim – it dealt also with an application from the Bay of Islands Electric Power Board. The EPB had joined the proceedings in relation to a resource consent application which was underway in the form of joint venture proposal

The Tribunal found that Ngā hapū o Ngāwha were disadvantaged on two separate counts. The first occurred when the Crown acquired ownership of that part of Parahirahi B block on which hot springs were situated. At that time the hapū owners lost the right of access to the land and the hot springs on the land. In other words, they lost rangatiratanga (right of management and control) over the surface and sub-surface components of the geothermal system on and under the alienated land.

The Tribunal in its conclusion expressed frustration with the wording of the RMA saying ‘those exercising powers and functions which may impact on Māori taonga (natural resources) are not required to ensure that Māori Treaty rights are accorded their appropriate standing. Accordingly, such rights are at risk of being depreciated or outweighed by other considerations which means Māori Treaty rights are not given the protection which article 2 requires.’ (WAI 304, p 158).

In 1994 Top Energy and TMTB jointly applied for resource consents to develop the field with for a 10MWe generator. In 1994 NRC / FNDC granted a 10-year consent to take 10,000 tonnes of fluid per day. There was no appeal. Two generators of 5MWe each were commissioned in 1998. The JV was discontinued.

Top Energy as a network utility operator has provided 20 years of service to the Far North. Previously (as Bay of Islands Electric Power Board) it brought electricity to the area in the late 1930s. It supplies energy, maintains its obligations to its customers, the community and their people. Its team is diverse and united with a vast array of skills and provide a range of services across multiple work streams (Top Energy, 2016).



In 2013 Top Energy began its initial consultation with land owners around Kaikohe which included the Trustees at Ngāwhā. Though they were empowered by its Charter to engage in discussions geothermal science was a topic about which they knew little. Instead their focus centred on preparing their Marae for the most important cultural event since 1871. In October 2013, the ‘Reawakening’ of Ngāwhā Marae occurred when the name plaque for the Whare Tūpuna ‘E Koro Kia Tutuki - (the principal house) was unveiled and blessed.

The Trustees are affiliated with an Ahu Whenua Trust 1986 which protects and manages 296.8465 ha for 1,455 owners. Ngāti Rangi whānau are kaitiaki of Te Hato Mikaere te Whare Karakia / St Michael's Church and urupā at Ohaeawai. They also honour their tūpuna who lay at rest in Mārunui/Māranui urupa which is located near Ngāwha Marae. The Trustees and members are also kaitiaki of the Ohaeawai Community Cultural Centre. It supports the social, educational, cultural, recreational and spiritual needs of its community.

## 7.1 The learning curve

In June 2014, the Trustees engaged an Advisor with project management and planning experience. The brief was to research previous history, attend a geothermal conference; to read and assess the AEE, the consent application reports and charts and present that knowledge at wananga organised by the Trustees at the marae. The purpose of those sessions was to inform the members and community about the geothermal project and to seek and welcome their input. Top Energy provided support and materials and spent many hours with the Advisor, the Trustees, Kuia and Kaumātua clarifying matters. The main objections related to the water take. It was amicably resolved after Top Energy's scientists and the Advisor talked

through the issues and conditions to protect and direct the application were agreed.

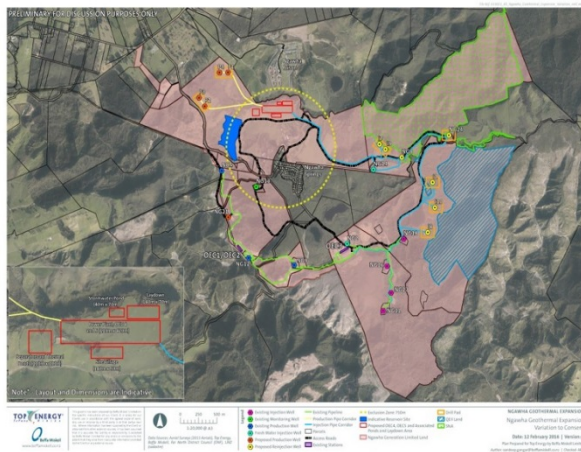


Figure 3: Top Energy expansion project. (TEL, 2016).

## 7.2 Early geothermal investigations

The research into the previous history provided a basic introduction to the original size of the geothermal field and the locations of the major waterways in the district. DSIR scientists undertook the initial investigations during the 1968-mid-1980s period without advising the wider community.

Of the original 13 wells drilled 7 remain in the land and are part of Top Energy's operation. There are three production wells (NG4, NG9 and NG12) each take about 300 - 400 tonnes/hour. The four injection wells (NG11, NG16, NG18 and NG27) each inject about 150 – 350 tonnes/hour.

## 7.3 Scholarship of learning

In every relationship, a consolidation of fact and comfort is ultimately achieved. The technical papers provoked questions and the debates were passionate. Both parties sought clarification on different topics. Site visits were arranged. Maps displaying the topography of the land were freely available to use. The synergy between the Trustees and Top Energy improved and of greater importance the residual issues that arose from the 1993 Tribunal hearing were laid to rest.

## 8. MĀTAURANGA MĀORI INDIGENOUS DEVELOPMENTS

The development of the geothermal industry in Aotearoa strongly engages Māori citizens, land holdings trusts and their companion communities. The ethic of kaitiakitanga, the values of whanaungatanga, the connection to their lands and to each other is the basis of whakapapa. The economic advantages are apparent as are their decisions to provide for future generations are vital components of the partnerships that are formed. Some are strategic, others are tactical.

The power of determining their future by utilising ancestral land which was once declared 'waste lands' is a celebration of life. In parallel as is the gradual merging and acceptance of Mātauranga Māori – the Māori world view – the values, the tikanga, the ethics, and customary practices and standards - now sit comfortably alongside western concepts of science. Each are complemented. The integration of indigenous values into geothermal development approaches will not only facilitate progress it will enhance it (Hikuroa, 2010).

## 9. CONCLUSION

In 2015 Top Energy and the Trustees of the Ngāwhā Marae Komiti signed a cultural and partnership agreement to support the expansion project to construct and operate two new 25MW geothermal power stations at Ngāwhā.

In 1840 the Kuia and Kaumātua at Waitangi saw Te Tiriti in the context of it being a kawenata, a covenant something sacred and special. Its sacredness was linked to the way they treated their cultural faith. They viewed Te Tiriti as a kawenata which today is a far cry from the notion that they conceived: it was a covenant between their tūpuna, marked with the moko and blessed in the presence of God. They were of a different time, vastly different in terms of their life experience. For all of that there were some things that they certainly wanted. They wanted to see this generation far better endowed; they wanted them to carry on their moemoea and to hold fast to the three taonga tuku iko – tumanako, whakapono and aroha: hope, faith and goodwill and maintain the faith. That was their wish [Jones, 2005].

The faith expressed by those elders to maintain whakapono lives on in Ngāwhā, Tauhara, Mokai, Tuwharetoa, Miraka, Ngatamariki, Rotorua, Tuaropaki Putauaki, Ngā Awa Purua and Kawerau (Land blocks in the Bay of Plenty and the central North Island).

In July 2015 Top Energy and the Ngāwhā Marae Trustees consummated their partnership agreement and they did so because the mutual benefits of sharing values and skills and holding fast to the three taonga tuku iho - hope, faith and goodwill - ultimately prevailed.

## ACKNOWLEDGEMENTS

Top Energy for its support and contributions. And the contributions of Kuia, Kaumātua, Trustees and members of the hapū of Ngāti Rangi are greatly appreciated.

## Glossary

Kainga	Home, collection of homes
Kaitiaki	A carer, protector, keeper
Kaitiakitanga	Act of caring for resources and people
Kaumātua	Respected elderly male
Kawa	Blessing when opening a whare
Komiti	Group for ideas and decisions
Kuia	Respected older woman
Manaaki	Support, hospitality
Mātauranga Māori	Māori world view
Ngāwhā	location
Ngāwhā	Geothermal fluid
Papatūānuku	Earth Mother - all living things originate
Rangatira	Senior whānau / hapū leader
Ranginui	Sky Father - all living things originate
Taonga katoa	All resources and property
Taonga tuku iho	Heritage prized
Tūrangawaewae	Place to stand
Urupā	Final resting place
Waiata	Song melody
Wānanga	Shared learning
Whakapapa	Lineage, descent, ancestral links
Whenua	Terra firma – land.

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#### **Declarations**

- \*\* The author was Advisor to the Ngāwhā Marae Trustees from 1 June 2013 to 30 April 2016. She also worked closely with Top Energy Ltd during that period.
- \*\*\* This paper does not discuss the privately owned Parahirahi C1 Trust pool complex located at Ngāwhā Springs.