

Te Ahi Kā: Relationships, collaboration and communication. A study of the Ocean Bay Environment Court Case

In 2009 the Ocean Bay Protection Society and others appealed a proposed consent in the Environment Court to subdivide an area of land in Ocean Bay in the Marlborough Sounds. The outcome was by no means a ‘win-win’ for all affected parties – the Court upheld the appeal of the Protection Society meaning the applicants (Environment Court 2009), the W R Strang Family Trust, were unable to parcel their family farm into smaller lots - yet the case serves to highlight the mechanisms available to local people facing issues of resource management, and the types of knowledges and relationships that are beneficial to successful outcomes. The Ocean Bay example also shows what can be achieved when groups work together rather than in isolation to bring about change, and how coupled with open communication, can enable more effective processes, afford greater protection of taonga, wāhi tapu, the environment, and reduce financial and time burdens on Iwi¹.

Ocean Bay (Oihenga), located in Port Underwood in the Marlborough Sounds, has a rich and varied history. It was a site of major Maori occupation prior to as well as following the arrival of Europeans, and played an important role in the 1843² Wairau Incident, in which twenty-two Europeans and between four and nine Māori, including Te Rongo, the wife of Ngāti Toa Rangatira chief Te Rangihaeata, died (Mitchell and Mitchell 2010). The Wairau Incident started from Ocean Bay over Blenkinsopp’s Deed and finished there with Te Rauparaha (Paramount Chief of Ngati Toa Rangatira) relocating the Ngati Toa Rangatira people from Ocean Bay back to Kapiti Island fearing reprisal from the European. From here Te Rauparaha was detained without trial for 18 months and in order to have him returned to his people, the junior Chiefs of Ngati Toa Rangatira were put under pressure by the Crown to ‘sell’ the Wairau Plains to secure his release³.

Early Europeans used the bay as a central base for the thriving whaling industry that dominated commerce in New Zealand during the nineteenth century. Many whalers married into Ngati Toa Rangatira and Ngati Rarua Iwi. Following the decline of whaling, and the deforestation of much of the native vegetation the area was mainly used for farming (Smith 2009). Over the past twenty years however as sheep and beef farming in the area has become less productive and the popularity of coastal areas for tourism has

¹ All quotes in this report, unless attributed to other sources, are from an interview with Tracey Williams, Iwi Development Officer for Ngāti Toa Rangatira Manawhenua ki te Tau Ihu Trust, conducted in December 2010.

² Exactly three years to the day since Ngati Toa Rangatira signed the Treaty of Waitangi at Horahora Kakahu on 17 June 1840

³ Blenkinsopp’s Deed, signed by Te Rauparaha, gave Blenkinsopp the rights of wood and water from Ocean Bay in return for a ships cannon. Blenkinsopp, knowing that Te Rauparaha could not read English however, substituted Oihenga for the Wairau Plains and classed this as a deed of sale.

Upon returning to Kapiti Island, Te Rauparaha had the deed translated and when he realized that he had been duped, tore up the Deed and declared it was null and void. To make matters worse, the cannon had been tampered with so it would only fire backwards. The cannon now resides outside the front of the Marlborough District Council offices in Blenheim

grown, Ocean Bay has become a destination for holiday makers and is now dotted with baches, smaller lifestyle blocks and commercial forestry⁴.

The growing popularity of the Marlborough Sounds as a recreational destination, along with family considerations, was in part responsible for the application by the W R Strang Family Trust to subdivide a considerable area of private land in the bay. Some of the proposed lots however included areas of significant historical importance which were of great concern to other local residents and Ngāti Toa Rangatira. Lot 4 of the subdivision was considered by Ngāti Toa Rangatira Manawhenua Ki Te Tau Ihu Trust to be a wāhi tapu area, the site of a pre-1900 Pa and most likely to contain or be situated close to a burial ground or urupa. Tracey Williams, Iwi Development Officer for Ngāti Toa Rangatira Manawhenua ki Te Tau Ihu Trust, noted in her submission to the Environment Court that “Ngāti Toa Manawhenua Ki Te Tau Ihu Trust strongly recommend and advocate that Lot 4 not be developed or in fact disturbed” (Williams 2009).

The original application to subdivide the land, including that of Lot 4, was granted consent by the Marlborough District Council (MDC) over opposition by Iwi and local individuals such as those comprising the Ocean Bay Protection Society. Consent was granted even though no engagement or consultation between Ngāti Toa Rangatira Manawhenua ki Te Tau Ihu Trust, the applicant or MDC had taken place⁵. This lack of consultation, at the initial consent application stage, was identified by Williams as being in part responsible for the protracted, expensive and ultimately disappointing outcome for the applicant (and the MDC). Williams commented in this interview that had face to face consultation taken place at the outset then a more mutually agreeable outcome was more likely to have been achieved. What was also of interest to Ngāti Toa Rangatira Manawhenua ki Te Tau Ihu Trust was that even though the MDC’s Resource Officer, Keith Heather, supported opposition to the subdivision of Lot 4, the MDC nevertheless granted resource consent for the allotment creation to take place. This highlighted to Ngāti Toa Rangatira Manawhenua ki Te Tau Ihu Trust the importance of not only having sound, working relationships with individuals in organisations but also the need for environmental management plans developed alongside, supported, and valued by statutory authorities such as local and regional councils. Under the Local Government Act, any planning document submitted by Iwi must be taken into account in planning processes/procedures, the value of having these documents as part of any local planning processes *prior to* tackling issues of resource consent was recognised.

The granting of resource consent to subdivide these culturally and historically significant sites without due recognition of their cultural and historical importance “deeply aggrieved” those opposing the subdivision (Williams 2009). In her submission to the Environment Court Williams noted that the MDC Hearings Committee had failed to consider Statutory Rights of the RMA when making their decision to grant consent. These included Sections 6 - Matters of National Importance, 7 – Kaitiakitanga, 8 – The Treaty of Waitangi, and the Fourth Schedule – Assessment of Environmental Effects on

⁴ For a full analysis of the history of the area, including evidence to support that Ocean Bay was the site of the first cattle landing in the South Island, refer to Smith’s evidence presented at the Environment Court 2009.

⁵ A consultation letter was in fact sent out however it was sent to another Iwi who had no interest in the area.

the Environment. That is, the need to identify and consult with any affected parties, and, should the consent be approved, how and by whom any effects will be monitored.

Williams' submission on behalf of Ngāti Toa Rangatira Manawhenua ki Te Tau Ihu Trust was not alone in highlighting to the Environment Court the historical and cultural importance of Ocean Bay as can be seen from the collective and individual submissions of the Ocean Bay Protection Society with whom Ngāti Toa Rangatira Manawhenua ki Te Tau Ihu Trust worked in collaboration. Working collaboratively and pooling their skills allowed those opposing the consent to first consider and then eventually finance and present a strong (and successful) case to the Environment Court; had they been working alone, they would not have had the resources to bring this matter to justice. What is also of interest in this case is that even though the applicant to subdivide was the W R Strang Family Trust, it was the MDC's decision to approve consent without due consideration of the taonga status of the area that ultimately led to the case going before the Environment Court. "It should never have gone to Court, [resource] consent should never have been granted in the first place, they [the MDC] let the Strang's [W R Strang Family Trust] down."

The outcome of the Environment Court proceedings was a success for the Ocean Bay Protection Society and Ngāti Toa Rangatira Manawhenua ki Te Tau Ihu Trust, and highlights the benefits of a collaborative approach to issues of resource management⁶. The joint effort on behalf of those opposing the subdivision allowed for the sharing of knowledge which they drew from a variety of sources including oral histories, reviews of literature, interviews with past and present residents, museums, and archival searches. Presented in a clear and concise manner, and, where possible, backed up by references, the information submitted by those opposing the consent helped to communicate to the Environment Court Judge why Lot 4 should not be included in any consent to subdivide. The experience of the Ocean Bay proposed subdivision highlights the value in local people – both Māori and Pākehā – sharing their sets of knowledges and skills to address issues of resource management. It also presents a strong case for having Iwi Environmental Management Plans in place (and signed and acknowledged by local authorities) before matters such as these arise.

References:

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Williams, T. 2009. *Evidence of Tracey Marie Williams on behalf of Ngāti Toa Rangatira Manawhenua ki Te Tau Ihu Trust*. ENV-2007-CHC-143. Environment Court: Christchurch.

⁶ This case is also historical significant as noted by Williams as "the first case in NZ [New Zealand] where Iwi has won a case on sites of significance on private land".