

HE WHIRITAUNOKA

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The Whanganui Land Report

Volume 3

WAI 903

WAITANGI TRIBUNAL REPORT 2015



The cover photograph shows knotted taunoka (native broom) against a backdrop of Ruapehu and Tongariro National Park. The image references Hōri Kingi Te Anaua's act of tying a knot in taunoka as an expression of his desire to see an end to the conflict caused by the New Zealand Wars of the nineteenth century. The photograph of the taunoka was taken by Carolyn Blackwell and the photograph of the mountain and park by Brian Robinson. The montage of the two was created by Carolyn Blackwell.

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CHAPTER 21

EDUCATION, HEALTH, AND OTHER STATE ASSISTANCE**21.1 INTRODUCTION**

In order to agree to sell their land, Māori had to see ahead a mutually beneficial relationship with the new dispensation. Part of the picture offered to them was always the provision of health and education services. As regards the 1848 Whanganui purchase, the Crown said in closing submissions that ‘Governor Grey was most likely motivated to provide a hospital to demonstrate the benefits of settlement to Maori.’¹ Independently of any express promises at the time when the Crown was buying land, though, Māori were entitled to health and education, and any other welfare-enhancing services that the State offered, as incidents of their citizenship, guaranteed in article 3 of the Treaty. We look into housing as an adjunct to our inquiry into health, although the parties did not focus much on this issue.

In the nineteenth century, the State’s activity in the social area did not usually go beyond health and education. From the 1930s on, though, the State assumed more and more responsibility for the general welfare of citizens, moving into areas such as housing and working conditions, and helping those in financial or social need by means of grants, pensions, and other benefits.

In this chapter, we survey the education and health services available in this inquiry district from the 1840s onwards, and examine whether the provision to Māori was reasonable, fair, and equitable. In particular, and as best we can on the basis of the evidence that was available to us, we assess whether the provision of services to them was on the same footing – in terms of its generosity and appropriateness – as the provision to comparable Pākehā communities.

As well as considering access to education and training in the context of equity, we also examine it in another context. We saw in chapter 9, which explores the concept of ‘sufficiency’ in relation to land, that the Crown argued that prosperity was possible without land ownership. This is an important concept to grapple with, especially in Whanganui where land quality meant that land ownership was an even less sure route to affluence than in places better suited to agriculture. However, most other routes to wealth in the nineteenth century involved capital, a high level of training, extensive experience, or some combination of these. Whanganui Māori had little capital, so it is important to assess their access to education and other opportunities required to gain skills and experience necessary for economic success.

21.2 THE PARTIES' POSITIONS

21.2.1 What the claimants said

In relation to social services, the claimants agreed with Crown submissions that it was obliged to provide services to Māori on an equitable basis with non-Māori, and that differential treatment was not necessarily inequitable.² For the claimants, the key question was not what the Crown's duties were – on this they largely agreed with the Crown's submissions – but whether these duties were fulfilled.

(1) Education

The claimants in this inquiry submitted that the Crown has an obligation to provide adequate educational opportunities to Whanganui Māori, both because it promised to do so, and because education was part of its governance role.³ Claimant counsel submitted that the Crown consistently failed to provide reasonable access to education in many rural parts of the inquiry district.⁴ A key issue for the claimants was how the State education system suppressed te reo Māori. This started in the nineteenth century, but we have much more evidence about the twentieth century, and explore this topic fully in a later section.

(2) Health

The claimants cited the *Napier Hospital* and *Te Tau Ihu* reports to submit that the Crown had a range of duties in relation to the provision of health services to Māori. These included obligations to protect Māori from the ill effects of settlement, to provide services which were respectful and accommodating of tikanga Māori, to consult with Whanganui Māori, and generally to provide the 'benefits due to British subjects'.⁵ In Whanganui, these duties were particularly strong because Crown agents there had promised that Māori would receive benefits from settlement, including health care.⁶ Claimants contended that the Crown did not fulfil its obligations in the nineteenth century. Amongst other things, they said that Māori were virtually excluded from Wanganui Hospital, rural parts of the inquiry district lacked access to medical services, and no sanitary assistance was given to Māori communities.⁷ They also quoted contemporary officials as stating that the Wanganui Hospital would 'fully provide for the medical

wants' of the district, and ensure the eradication of haki-haki (skin diseases) and scrofula (a form of tuberculosis). Since these diseases were not eradicated, and other ill health was widespread amongst Whanganui Māori, the claimants submitted, the Crown's provision of health care could not have been adequate.⁸

21.2.2 What the Crown said

The Crown denied that it had a Treaty duty to provide social services or economic assistance to Māori. If it chose to do so, that created no new Treaty duty, nor committed the Crown to guaranteeing that the services it provided would have a positive effect.⁹ When it did provide aid or social services, however, the Crown acknowledged that article 3 of the Treaty obliged it to provide them equitably to Māori and non-Māori alike.¹⁰ Like the claimants, it submitted that differential treatment of Māori might, in some circumstances, be equitable and Treaty-compliant.¹¹ It stated that 'the critical question is whether the Crown treated Maori *equitably* in all the prevailing circumstances', adding that it is important to look at its actions in their contemporary context, and avoid judging historical actors and actions by today's standards.¹² However, it did concede that 'the Government might have assured Maori that they would take steps for the education of Maori children when settlement occurred'.¹³

The Crown also contended that it had no general or Treaty duty to provide health care to Whanganui Māori,¹⁴ although here too it accepted that Māori had the same rights as other New Zealanders under article 3. It also accepted that it had a number of obligations arising out of specific circumstances. For example,

It was justifiable for Maori to expect a reasonable degree of government activity in the area of medical attention as in the early purchase period, as part of the sales negotiations, hospitals and medical treatment were mentioned.¹⁵

Accepting a duty to provide services equitably, the Crown did not state whether or not it had met these obligations, but did submit that there is no evidence that it did not take 'reasonable steps' to provide the medical attention

Māori expected in the context of purchase negotiations.¹⁶ It also emphasised that all health services before the mid-twentieth century were ‘inadequate by current-day standards’, that access to medical care was difficult for all rural people, and that the Crown provided some services to Māori that it did not supply to non-Māori.¹⁷

21.3 STATE ASSISTANCE IN THE 1800S

We examine the state and development of the Māori economy in chapters 9, 19, and 27; here we provide only a snapshot of the circumstances of Māori in the nineteenth century.

Between 1840 and 1900, the amount of land that Māori owned in the inquiry district declined from 100 to 34.2 per cent.¹⁸ The remaining land included urupā and other wāhi tapu, infertile areas such as sand dunes and very steep hills, and areas used for housing, none of which could produce an economic return. Hapū and iwi also lost access to other resources, particularly fishing grounds. The prices they received for their land were low, and they faced real difficulties in making the land they had left produce an income, as we saw in chapters 18 to 20. Anecdotal evidence suggests that some were poor and unwell, and although Māori quickly took up new resources like pigs and potatoes, which produced more calories for less effort, the impression generally is that Māori were not faring well in the introduced economy. We do not have data that demonstrates that any hapū of this district were actually in poverty by 1900, but we can say with certainty that they were in a very different position from the one they were in in 1840.

What did the Crown do in the course of the nineteenth century to help Māori survive in, adapt to, and participate in, the new economy? It gave various handouts, and also provided some education and health services.

21.3.1 State assistance

The Crown encouraged Māori to grow new crops and set up a couple of new flour mills by providing seeds and equipment rather than money.

As far as money was concerned, the Crown paid out

to certain Māori in the district various wages and pensions. Many were employed in various minor capacities, but there were a few Whanganui rangatira to whom the Crown paid salaries of several hundred pounds a year.

In 1888, at least 110 Māori from around the country were receiving pensions, mostly from the native section of the Civil List but also as war widows, wounded ex-soldiers, and New Zealand Cross recipients.¹⁹ The last each received £10 a year, while other pensions varied. Māori pensioners tended to receive less than their non-Māori counterparts; Māori war widows received £25 a year on average, compared to £63 for non-Māori war widows, while wounded Māori soldiers received an average of £16 compared to their non-Māori counterparts' £40.²⁰ Most Civil List pensioners got £12 to £20 a year, although a handful of rangatira received £100 or more.²¹

Civil List pensions were granted primarily to men who had fought for the Government in the New Zealand Wars and had since fallen on hard times, although they also went to important Kingitanga-allied chiefs such as Rewi Maniapoto. Decisions on whether to grant a Civil List pension, and how much it should be, do not seem to have followed a formula. Rose observed that they were usually granted only in

cases of severe poverty where there were no other possible means of support. Crown assistance appears to have been conditional on the recipients being of ‘good character’ and political considerations were another factor influencing the government’s decision . . .²²

One Whanganui recipient was 60-year-old Reone Te Maungaroa, who was granted £12 a year from 1900, because he fought for the Crown in the New Zealand Wars and was now living ‘hand to mouth.’²³ It is not clear how many Māori pensioners lived in our inquiry district, nor how much difference the relatively small pension made.

For most of the nineteenth century, the Crown’s main intervention in the Whanganui economy was the purchase and resale of Māori land. However, the Liberal Government elected in 1890 expanded the State’s economic role. One of its aims was to make credit more

accessible to new farmers, who were finding it difficult to get 'on the land' and take up new opportunities in export agriculture.²⁴ It passed the Government Advances to Settlers Act 1894, which James Belich argued enabled new farmers to 'turn raw proto-farms into viable production units', and indirectly encouraged private banks to provide more credit to small farmers.²⁵ We covered the Advances to Settlers programme in some depth in chapter 19. It is sufficient to note again here that although Māori landowners were theoretically eligible for Advances to Settlers loans, in practice the criteria excluded most.²⁶ Access to credit was arguably more critical for Māori at the time, for as we explained this was a period where they needed to develop their land if they were ever going to participate in the agrarian economy. Fashioning criteria that meant that only Pākehā landowners would qualify was detrimental to the economic well-being of Māori, and in effect negated their Treaty right to develop their land.

21.3.2 Education

Here, we outline what the Crown did to provide education to Whanganui Māori, comparing these services with those available to the wider population in the same period.

(1) *Missionary schools*

Before the new colony developed much in the way of state infrastructure, Māori and settlers alike were educated at church or private schools, many of which received some Crown funding.²⁷

The first schools in Whanganui were founded by Anglican missionaries and staffed mostly by Māori. By 1849, there were 14 mission schools along the river, catering to both adults and children, with an average total attendance of 972. There was also a small boarding school at Pūtiki, run by the mission's only non-Māori teacher, William Baker.²⁸ These schools do not appear to have received Crown funding, but the number of pupils indicates that Māori were enthusiastic about European education and were happy to receive it from missionaries and their followers. On the whole, these schools were a promising start for Māori education in the region.

(a) *A boarding school at Wanganui*: According to Richard Taylor's diary, in January 1848, Governor George Grey told him that 'I was to have £200 this year for a native boarding school'.²⁹ However, no evidence has been found of specific pledges concerning education during the Whanganui purchase negotiations that year.³⁰ It was not until September 1852, however, that Grey instructed Taylor and Donald McLean to select 200 acres for a school.³¹ According to Stirling, the land chosen in the township area was intended as an endowment to provide income for the school, not as the school site itself. Another site, at Pūtiki, was chosen for the school, and gifted to the Crown by its Māori owners.³² Grey also asked Commissioner of Lands Francis Dillon Bell to ascertain settlers' opinions on a school; he reported 'a great desire to see the School established', and added that education was the town's most pressing need.³³ We saw no evidence of engagement with Whanganui Māori on the topic, but the previous year Resident Magistrate William Hamilton reported to the colonial secretary that they were 'very anxious to learn' and were requesting British teachers, so the Crown knew Māori desired a school.³⁴

The school opened in 1854 as Wanganui Industrial School, on the endowment land in the township.³⁵ We do not know what became of the land gifted at Pūtiki. The township land that the Crown granted to the Anglican Bishop of New Zealand specified that it was for the education of 'children of all races, and of children of other poor and destitute persons, being inhabitants of the islands of the Pacific Ocean'.³⁶ In its first year, 1854, the school had 24 Māori pupils, aged from eight to about 25, who paid no fees and were fed, clothed, and accommodated by the school.³⁷ They remained for only a few weeks each, however, and by the time the school burnt down in 1860 there were only three Māori pupils, plus four settler day pupils and the teacher's five children.³⁸ It reopened five years later, as Wanganui Collegiate, an academically focused school for fee-paying pupils, and remained a fee-paying private school until 2012. In 2006, Māori made up 31 per cent of 10 to 19 year olds in Whanganui District, but only seven per cent of Wanganui Collegiate pupils.³⁹

(b) *Wanganui Collegiate becomes a fee-paying institution*: The school became a fee-paying institution apparently because the income from the endowment land was insufficient to fund the school. This was a result at least in part of the school's inability to borrow money to develop the land.⁴⁰ Appearing before a parliamentary select committee in 1879, school trustee George Hunter agreed that the land grant stipulated that 'the children of the poor' should be educated for free at the school, but 'we never had funds', he said.⁴¹ As a result, fees were £6 per annum for children under 11 years, and £7 for older children.⁴² By 1906, the fees were £12 a year, plus £46 for boarders, although the school subsidised the boarding fees of less well-off boys.⁴³ Some poorer boys were admitted under scholarships from the Wanganui Education Board.⁴⁴

There were still some Māori pupils at the school, though. In 1906, school trustee William Quick claimed that there were 'nearly always one or two Maori pupils there'; this was confirmed by the Bishop of Wellington, who also said that the majority of Māori pupils were 'half castes'.⁴⁵ At least one Māori boy appears to have attended under a scholarship.⁴⁶ There seems to have been a strong feeling among Whanganui Māori that Wanganui Collegiate should educate their children for free, as it was founded for the purpose of Māori education.⁴⁷

Why was the school not successful in its first iteration? Part of the problem may have been its location in the township, rather than at Pūtiki as originally planned. Māori pupils and their whānau seem to have been generally dissatisfied with its operation. One of the early Māori pupils, Hoani Mete Kingi, later said, 'Owing to myself and the other Native boys who went to the school at that time not getting what we considered sufficient or suitable food we left, and returned to our homes at Putiki'.⁴⁸

Pupils worked on the land five afternoons a week, growing grain and vegetables for school consumption, building fences, and erecting a small windmill to grind corn.⁴⁹ According to one former staff member, Māori pupils were persuaded that they were being 'ill used' by being made to do such work.⁵⁰ Māori in other parts of the country are recorded as objecting to their children being

made to do work for the school, as it was seen as a form of servitude.⁵¹ Stirling and Macky both considered that a key problem with the school was its emphasis on manual labour, which was intended to support the school financially, and to train young men in agricultural and other practical skills. It does not appear that officials conceived this as a problem at the time, however, and given that it was well accepted that agricultural training for Māori was a good thing, it seems a little unaccountable that teaching boys about work on the land was not approved. Perhaps the way in which the training was delivered made it unacceptable or inappropriate, or maybe there was too much emphasis on work and not enough on instruction. Unsurprisingly, there was no troubled introspection about this at the time. In 1858, the school inspectors ascribed the school's failure to the 'indifference exhibited of late years by Natives generally towards the measures for their welfare so freely undertaken both by the Government and Clergy'.⁵²

(c) *Missionary schools decline*: At the same time as the Wanganui school was drifting away from its founding principles towards being a school where boys paid fees, the missionary school system was also going into decline in Whanganui, and elsewhere. By the end of the 1850s, there were no mission schools in our inquiry district.

A new Catholic mission school opened in Kaiwhaiki in 1860, but war conditions forced the mission to withdraw from the area shortly afterwards, and the school was shut down.⁵³ In 1862, Resident Magistrate John White stated that there was one school at the Kauaeroa mission and possibly one other beyond Pipiriki. He proposed that the Government should set up a school at Parikino, but no action was taken.⁵⁴

(d) *A miscellany of efforts*: As we will see shortly, the Crown began opening native schools in our inquiry district in the 1870s, but these did not last very long. The gap was partly filled by missionary and private endeavours. The native school at Hiruhārama reopened briefly in 1881, after the Government accepted an offer from Presbyterian



missionaries to operate it. Woon was not confident that the attempt would succeed, writing that 'No school will thrive in the Whanganui river till the commotion and excitement resulting from survey, investigation of title to, and sale of their surplus lands, ceases'.⁵⁵ As Woon predicted, attendance gradually declined and the school closed again in 1882.⁵⁶ The Catholic mission returned to the river in 1883 and soon opened a school at Hiruhārama, but the Crown declined a request for financial assistance.⁵⁷ The Crown also declined aid for a Māori-built Anglican mission school at Pūtiki in 1894, and again in 1900, on the grounds that it did not fund denominational schools.⁵⁸ Philanthropist Henry Churton ran a Māori girls' boarding school at Aramoho from 1880 until his death in 1887.⁵⁹

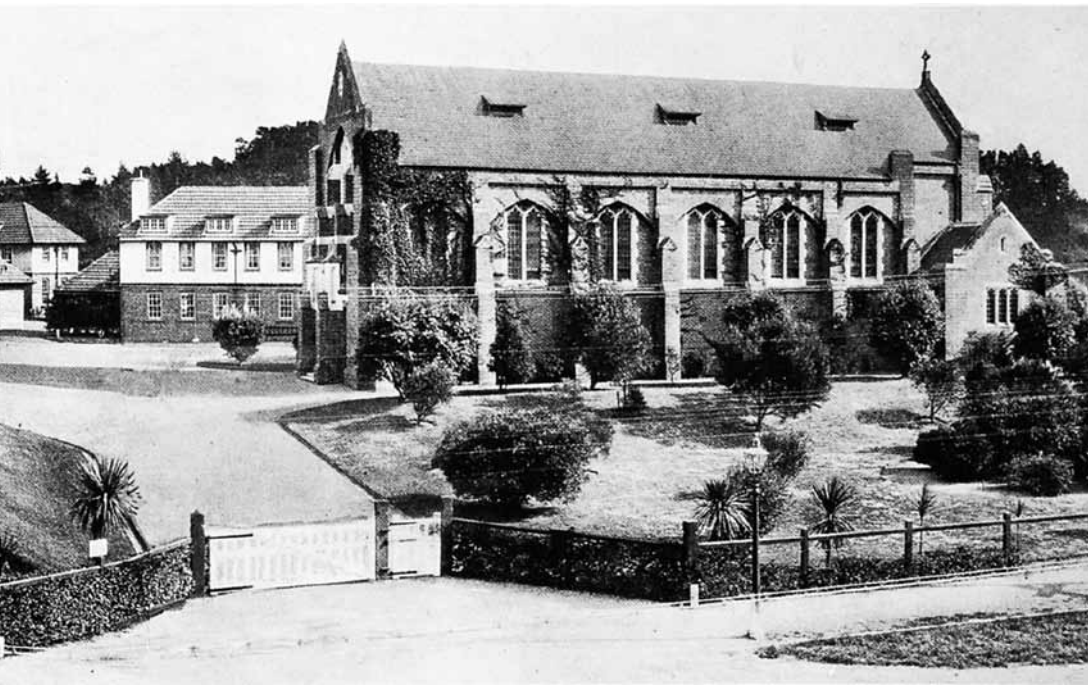
(2) *Native schools*

To fill the gap left by the faltering mission school system, the Government passed the Native Schools Act 1867 and began building a network of village primary schools for

Māori. Communities wanting a school had to provide a site, contribute to the school's construction and maintenance costs, and promise an average attendance of at least 30 children. From 1871 the financial requirements were relaxed, but a site still had to be provided and attendance maintained.⁶⁰ By the time native school administration was transferred from the Native Department to the Education Department in 1879, there were about 60 such schools nationwide.⁶¹ The Crown funded native schools at an average of £8 2s per pupil per year, compared to £6 for general Education Board schools. The difference arose from native schools being small and often very rural, which drove costs up.⁶²

The Native Schools Code, published in 1880, provided that a teacher in a native school

will be expected to teach the native children to read and write the English language and to speak it. He will, further, instruct them in the rudiments of arithmetic and of geography, and,



Wanganui Collegiate School for Boys, 1933. In the centre is the main building and to the right is the chapel. Described by the *Auckland Weekly News* as 'a leading Dominion Secondary School in the River City of the North Island', Wanganui Collegiate was able to be established only after a Crown grant of about a third of the original Wanganui township, the rents from which were intended to fund the free education of Māori and impoverished children of all ethnic groups.

generally, endeavour to give them such culture as may fit them to become good citizens.⁶³

The native school teachers' exam included sections on te reo, Māori traditions and customs, and the history of New Zealand, but the exam was not compulsory, and it was possible to pass it without knowledge of these topics.⁶⁴ Fluency in te reo was clearly considered an asset for teachers, but according to the code it was 'not necessary that teachers should . . . be acquainted with the Maori tongue', and while they were allowed to use te reo Māori in junior classes, '[t]he aim of the teacher . . . should be to dispense with the use of Maori as soon as possible.'⁶⁵ In addition to their core tasks, teachers were

expected to exercise a beneficial influence on the Natives, old and young; to show by their own conduct that it is possible to live a useful and blameless life, and in smaller matters, by their dress, in their house, and by their manners and habits at

home and abroad, to set the Maoris an example that they may advantageously imitate.⁶⁶

Judith Simon and Linda Smith wrote about how the native schools system was 'established in accordance with the "civilising" agenda of the nineteenth-century state, specifically to facilitate the "Europeanising" of Māori'.⁶⁷

The Whanganui district's first native school was at Hiruhārama, founded in 1873. A native school at Parikino followed the next year. Woon thought that Whanganui Māori had been put off European education by 'the failure of boarding schools here and elsewhere, from a variety of causes, in days gone by'. He saw a change, though: 'Now, however, the Wanganui Natives are awaking to the necessity of educating their children.'⁶⁸ The Māori community at Hiruhārama demonstrated their enthusiasm for a school there by contributing £51 for the school building, and by transporting the timber from Wanganui up the river 'over rapids and against a strong current' on waka (canoes).⁶⁹

It was intended that the school at Parikino would serve all the lower river communities. Woon anticipated that a school would be built at Ūtapu to meet the needs of the settlements beyond Pipiriki.⁷⁰ In 1876 a school inspector praised the progress of students at Parikino, particularly Walter Williams (Wī Waata Hipango), 'son of the late John Williams [Hoani Wiremu Hipango], a celebrated Whanganui chief'. Among other accomplishments, the young 'Walter' was able to explain an essay on the British Navy and a poem about the burial of British general Sir John Moore, and draw maps of New Zealand and Palestine.⁷¹

(a) *Native Schools decline and close*: Despite a good start, attendance at the schools declined and became irregular. Reasons included the burden of school fees and the attitude of the first teacher at Hiruhārama who, according to Woon, believed Māori 'should be made to feel their inferiority to the Europeans'.⁷² That teacher was replaced shortly afterwards, and Woon attributed the problems with attendance to other factors:

The Natives seem quite alive to the importance of education, and the value to them of their two Schools, but there are so many disturbing influences at work amongst them, that in practice it is found most difficult to keep up anything like a regular attendance of the children at the schools.⁷³

Elsewhere, Woon identified the 'disturbing influences' as the disruptive effect of land sales, which caused people to change their place of residence, and the need to attend Native Land Court hearings.⁷⁴ He repeated in 1879 that Māori were so busy with hui, surveys, and hearings, all of which were expected to continue 'for years to come', that

it is not a matter of surprise that the Maoris could not give their continued attention to other affairs, and in a manner be compelled, from the force of circumstances, to neglect the education of their children.⁷⁵

He suggested on another occasion that the 'novelty' of the schools had worn off.⁷⁶ Insufficient attendance caused

the closure of both of Whanganui's native schools by 1880. 'This was most discouraging', wrote Woon, 'after all that had been done, and the promises of support given, and evident interest taken by the Maoris in matters of education'.⁷⁷

(b) *Suspicion of State education in some places*: In many parts of the country, political factors and general antipathy towards the Crown made Māori less than enthusiastic about State education.⁷⁸ The north of our inquiry district, which mostly supported the Kingitanga, was one such area. In 1881, at Taumarunui, the Government apparently offered to build a school, but the offer was rejected because it was seen as a ploy to counter 'Hauhauism'. A school was discussed again when Ballance visited in 1885, and during Seddon's negotiations tour of 1894, when the Government renewed its offer. This time, local Māori were divided as to whether they wanted it.⁷⁹ In 1899, Ngāti Hāua told the Government that they had selected a site, and that at least 70 children would attend a school if it were built. Hāuaroa Native School was finally established in Taumarunui in 1902, although there was still some opposition.⁸⁰

Meanwhile, three more native schools had been founded at Pipiriki (in 1896), Karioi (1898), and Koriniti (founded in 1898, expanded in 1900, later renamed Pāmoana). Each served multiple settlements.⁸¹

(3) *Māori pupils at Education Board schools*

Māori children who lived near schools that were known as general or Education Board schools were free to attend them. Nationwide, Māori pupils in general schools numbered 632 in 1881 (26 per cent of all Māori enrolments), and 2,522 by 1900 (47 per cent).⁸² However, although officially entitled to attend, it was not unusual for Māori children to be prevented or discouraged from enrolling in board schools.⁸³

(a) *Primary schools*: Evidence on Māori attendance at general primary schools in our inquiry district is scarce. We know that Māori children were excluded from the general school at Kaitoke in the mid-1870s despite the advocacy of the local Resident Magistrate, Richard Woon, and

although the Government provided funding for Māori pupils. Woon wrote that what happened at Kaitoke discouraged him from directing potential Māori pupils to other board schools.⁸⁴ In 1896, however, there were Māori and settler children attending a general school at Kai Iwi, founded thanks to a donation of land from local Māori.⁸⁵ Parapara School was an Education Board school, but it seems to have had a mostly Māori roll for most of its brief existence in the late 1890s. There was some discussion of turning it into a native school, but it was never able to achieve the 20 regularly attending pupils that the Education Department set as the minimum number for a viable native school.⁸⁶ The school building seems to have been very sub-standard, described while the school was still operational as ‘quite unsuitable . . . The roof is really a kind of sieve.’⁸⁷

(b) *Secondary schools*: At this stage, New Zealand had a small handful of secondary schools specifically for Māori, all run by the churches. The nearest to Whanganui were in Auckland and Hawkes Bay; the Crown provided scholarships to these schools for a few Whanganui Māori children.⁸⁸ Otherwise, Whanganui Māori struggled to get a secondary education in the nineteenth century. We have seen that the endowed school that started off in 1854 as a facility for Māori evolved into one primarily for the European sons of the well-off.⁸⁹ There were also State high schools in Wanganui township from about the 1870s.⁹⁰ The schools were funded partly by fees of £1 per child per year, with a maximum of £3 per family. From 1892, there was also a technical college, which initially seems to have focused on adult learners, as there were no day-time classes until 1902.⁹¹ The curriculum was focused on art and design, but also included shorthand and building construction.⁹² We do not know whether Māori attended any of these schools; it does not appear that they were excluded.

It is important to note at this point that secondary schooling was not common for any part of the population in nineteenth century New Zealand. At the turn of the century only about 0.4 per cent of all children went to secondary school.⁹³ Given that many Māori had limited or no

access to primary education, their proportion was almost certainly lower.

(4) *Vocational training*

Historically, a constant theme of discussion about Māori farming was always their need for training. Generally, the lack of it was bemoaned, and informed observers like Stout and Ngata in their 1907 royal commission report on Māori land emphasised the need for Māori to be trained in agriculture so that they could engage in it successfully.⁹⁴ It is therefore useful to see whether there was a nineteenth century endeavour to provide it.

We have already noted the efforts of missionaries in Whanganui to teach Māori modern agricultural methods, particularly through the endowed school founded in 1854. We observed its relative failure as a training school for Māori, for reasons that are a little obscure. Whatever it did was not what Māori parents or students were seeking at the time.

There were some other attempts at training and education outside the formal education system (see section 19.4.1(2)(c)).

21.3.3 Health

During the nineteenth century, Whanganui Māori suffered repeated and severe epidemics, and, in general, health problems caused the population to decline. In this section, we examine whether the health care that the State provided was consistent with its response to Pākehā health needs at the time.

We agree with the Crown’s submission that, in the nineteenth century, western medicine had limited ability to deal with infectious diseases and other health problems.⁹⁵ In the second half of the nineteenth century, doctors were reasonably good at dealing with injury, and could conduct surgery under general anaesthetic. However the risk of infection from injury, surgery, and childbirth was very high, and chest and cranial surgery were generally considered too risky to even attempt. In the 1860s, Joseph Lister made important discoveries about the spread and prevention of infection, but the medical profession was slow to take up his methods, and it was not until the twentieth

century that antiseptic methods became standard in surgery. Nor was there much that could be done about disease, other than vaccination against smallpox and quinine for malaria. Hospitals treated sick patients essentially by providing them with rest and nourishment while their immune systems fought the disease; there was little in the way of cures until the development of antibiotics in the 1940s.⁹⁶ The spread of disease was not properly understood until the late nineteenth century; for example, it was not known that many diseases spread in contaminated water supplies, or that tuberculosis was infectious.⁹⁷ We will therefore assess the Crown's provision of health services in this period in accordance with what was possible and practical at the time.

(1) *The health of Whanganui Māori in the 1800s*

We received very limited information on the health of Whanganui Māori in the nineteenth century: Rose called the evidence 'generally fragmentary and impressionistic'.⁹⁸ What we do know points to serious health problems and depopulation. Population estimates indicate that the Whanganui Māori population of 1891 was possibly less than half that of 1843, dropping from an estimated 3,243 to 1,252.⁹⁹ Although the population figures from this era are not entirely reliable, especially those from the earlier period, they consistently show that population fell. Officials based in Whanganui noted high rates of illness and mortality, especially among children.¹⁰⁰ For example, in 1881 Resident Magistrate James Booth reported that 'comparatively few children are born, and . . . of those few a great number die at one or two years of age'.¹⁰¹ General research on nineteenth century Māori health supports this.¹⁰²

As the Crown pointed out, the main cause of Māori ill health at this time was limited immunity to diseases that Europeans inadvertently introduced to New Zealand.¹⁰³ The new diseases seem to have arrived in Whanganui in the late eighteenth century, via Māori from areas already populated by Europeans.¹⁰⁴ Infants were particularly vulnerable: demographer Ian Pool estimated that, in Whanganui in the 1850s, nearly a third of Māori infants died before their first birthday.¹⁰⁵ Neither Māori

nor Europeans understood disease well enough to know why Māori were afflicted so badly, although they realised that it was connected in some way with the arrival of Europeans.¹⁰⁶

By around 1880, most adult Māori had some degree of immunity from common infectious diseases, and from about the 1890s the population decline reversed.¹⁰⁷ By this time, dislocation and associated poor living conditions were affecting health, although probably to a lesser extent than introduced diseases.¹⁰⁸ Another new factor was alcohol abuse. We do not know when Whanganui Māori began feeling and expressing dismay about the effects of alcohol, but in 1874, Haimona Te Aotearangi and 167 others petitioned Parliament to ban alcohol sales to Māori.¹⁰⁹ Alcohol abuse and consequent violence was reported as a serious problem for tangata whenua throughout the 1870s and 1880s.¹¹⁰ There were cases where the alcohol was adulterated to the point of being toxic.¹¹¹ Claimants in this inquiry alleged that the Crown failed in its duty to protect Māori from alcohol, adulterated or otherwise.¹¹² The Crown did not respond to this allegation, but did list prohibition in the upper Whanganui district as one of its health initiatives.¹¹³ The sale of alcohol was banned from the 1880s to the early 1950s in an area from about Parikino north to Kihikihi in the Waikato, although river vessels still sold liquor in the prohibited area.¹¹⁴

Earlier in this report, we canvassed another factor that contributed to the ill health of Māori: Native Land Court sittings, which were notorious, in Whanganui and elsewhere, for compelling Māori to live in encampments that were insanitary, damp, and cold for months on end.¹¹⁵ Lack of proper accommodation for Māori visiting Whanganui township was an acknowledged problem from the 1850s, when Grey and McLean promised a hostel similar to those in some other areas.¹¹⁶ There was an accommodation house for a time, but it soon fell into disrepair and was not replaced.¹¹⁷ The lamentable health situation for Māori visiting the town, especially during land court sittings, was a theme of public commentary (see section 11.7.5).¹¹⁸ Visiting Māori stayed at Pākaitore until the latter part of the nineteenth century, although we do not know what facilities were available there in the 1870s and 1880s. After

they were no longer permitted on land that had become a public park, their encampments stretched right along the riverbank (see *matapihi* 2). In 1895, the Government finally erected some shelters that were not large enough for the numbers needing them.¹¹⁹ Two years later, the *Yeoman* newspaper reported that through months of land court hearings ‘the natives will go on living on the fore-shore amidst stagnant water and filth of all kinds enough to breed typhoid or any other deadly zymotic [infectious] disease’. It stated that the shelters ‘cannot accommodate a tenth of those requiring house room’.¹²⁰ No doubt the situation was exacerbated by the failure, when the Crown undertook the Whanganui purchase, to reserve land for Māori at Pākaitore, where upriver visitors traditionally stayed. If there was still a *kāinga* there, it would have gone some way towards accommodating Māori from elsewhere, as the *marae* at Pūtiki did. The problem would also have been mitigated if the Crown had set up the Native Land Court so that it sat in closer proximity to the land that was the subject of its cases – especially the large title determinations, where *tangata whenua* had to be present over long periods. As we saw, the rule-makers had very limited appetite for this. (For more information on the location of Native Land Court sittings, see section 11.5.4.)

(2) *Whanganui Hospital*

In its closing submissions, the Crown stated that it

accepts that the government promised to build a hospital for Whanganui during the negotiations for the 1848 purchase. Governor Grey was most likely motivated to provide a hospital to demonstrate the benefits of settlement to Maori.¹²¹

We agree.¹²² In fact, though, it was earlier than 1848 that a hospital was destined for Whanganui. The missionary Richard Taylor was given the news in 1846, and presumably he passed it on to local Māori.¹²³ Funding was authorised two years later, when Donald McLean was in Whanganui to negotiate the land sale. Lieutenant Governor Edward Eyre told McLean that he could ‘tell the Natives that I have given orders for the plans to be prepared for a Native Hospital’. He added that the funding

had been secured and the work would begin as soon as possible.¹²⁴ The hospital planning continued in Wellington while hui about selling the land were underway in Whanganui.¹²⁵ Although the decision to build the hospital predated the conclusion of the land purchase, it is entirely possible that Whanganui Māori assumed that the two were linked. At any rate, it is likely that health care was presented as an example of the benevolence of the Crown and the general benefits that government and settlement would bring.¹²⁶

Did the hospital live up to the likely expectations of Whanganui Māori? Claimant counsel submitted that it did not; rather than the ‘Native hospital’ promised, the Crown allowed it to become an institution for settlers, from which Māori were essentially excluded.¹²⁷ The Crown acknowledged that Māori made little use of the hospital from about the 1860s, but did not consider that it was responsible for this.¹²⁸ We will now examine the health services that the hospital provided, and assess their suitability for *tangata whenua* at the time.

(a) *Location of Whanganui Hospital*: Whanganui Hospital opened in 1851, after delays caused by a shortage of skilled tradesmen.¹²⁹ It was not situated in the Māori community at Pūtiki, the site chosen by Taylor at Grey’s request, but across the river in the settlers’ town.¹³⁰ Taylor thought that the riverside site selected by the Government was swampy and unhealthy, and less ‘agreeable to the native wishes’, but still believed the hospital was ‘a great acquisition’ and would ‘prove a blessing to the natives’.¹³¹ In 1851, hospital doctor George Rees wrote that it was ‘well situated, every native coming into the town from the interior, or proceeding up the river from the coast, having to pass it’.¹³²

(b) *The patients of Whanganui Hospital*: Like other early New Zealand hospitals, Whanganui was set up to cater for Māori and settler patients alike; Grey wrote that Māori were to be ‘admitted on equal terms with other subjects of Her Majesty’.¹³³ Māori patients initially predominated, accounting for 92 of the 99 admissions in the second half of 1851.¹³⁴ At this stage, the institution was often referred to as ‘the Native Hospital’, and Rees thought that it had been



Victoria Ward, Wanganui Hospital, 1907. A hospital at Wanganui was built in 1851, when Māori patients were in the majority. By the 1870s, however, Māori no longer went there. When a new hospital, on a different site, opened in 1897, fees and the monocultural nature of the hospital probably put Māori off. It was not until the 1920s that Māori began to be more comfortable with going to hospital, although the cost continued to be a deterrent. Free hospital care was not introduced until 1939.

established 'principally for the reception of aborigines'.¹³⁵ Māori made up the majority of patients until at least the mid-1850s, even though the number of settler patients quickly increased.¹³⁶ Māori patients tended to be from the nearby lower reaches of the river, with a few coming from upriver and other distant areas.¹³⁷ By 1865 there were more

European than Māori inpatients, although Māori outpatients still outnumbered Europeans three to one. In 1876, however, the admission of a Māori patient to the hospital was unusual enough to draw comment from the *Wanganui Chronicle*, which stated that it was 'some considerable time since any of the aboriginal race have received treatment at

this institution.¹³⁸ Low levels of Māori hospital admission in the later part of the nineteenth century have also been noted in other districts.¹³⁹

Why did Whanganui Māori stop using the hospital? There is some evidence that they were excluded from it. In 1871 Resident Magistrate Richard Woon found it necessary to remind the Native Minister that Māori and Europeans were equally entitled to admission.¹⁴⁰ Six years later, he wrote that Māori were 'practically shut out of the Wanganui Hospital, an institution originally endowed and set apart for their special benefit.'¹⁴¹

(c) *Funding and cost*: If Māori were now less than welcome at the hospital, this might have been at least partly because of changes to its funding.

By the 1870s, hospitals were funded by a mixture of central and local government money, patient fees, and donations. The fee for a week's hospital stay in 1883 was 21 shillings (a guinea, or £1 1s).¹⁴² To put this in perspective, at this time the Crown was paying about 3.9 shillings an acre for Māori land (see section 12.5). The average length of hospital stay was one month, so a month's hospital treatment would cost the equivalent of 24 acres.¹⁴³ Local authority funding was also problematic. Wanganui Borough Council was the only local authority required to contribute at this stage, even though the hospital served an area far larger than the borough.¹⁴⁴ Since Māori were usually not ratepayers, they did not contribute to this aspect of the hospital's funding, and since many were also unable to pay fees, the hospital authorities may have regarded them as a drain on resources, as we know hospital boards did elsewhere.¹⁴⁵ Having few if any votes in the property-franchised local elections, and generally having a limited political voice, Māori could not influence hospital boards to be more sympathetic.

(d) *Going to the hospital only one option for Māori*: Although the hospital attracted Māori patients from the beginning, many still sought the aid of tohunga in the 1850s. Māori probably regarded hospitals as just one option.¹⁴⁶ No doubt there were many occasions when cultures collided: the colonists would have generally disdained Māori

attitudes and values as regards health and mortality, and Māori would have associated doctors and hospitals with surgical mutilation and patient death.¹⁴⁷ When he visited the recently opened Wanganui Hospital in June 1851, Taylor found

the patients all in a commotion, not being satisfied with the hospital rules. One, an old chief, was the ringleader. He did not see why he should lose his liberty whilst in the hospital and be obliged to do as Dr ordered him, to keep to his bed and have low diet.¹⁴⁸

Eventually, Taylor was able to persuade the Māori patients that 'it was for their good to do just as the Dr bid them and they promised they would do so'. One man with scrofula (a form of tuberculosis) grudgingly accepted that he 'must make up [his] mind to remain a prisoner here.'¹⁴⁹

Neither would the hospital's ministrations necessarily have succeeded. The limits of western medicine at this time meant that hospital patients often died, which would have undermined Māori confidence in that system. This was no doubt exacerbated by the fact that Māori tended to wait until the late and least treatable stages of illness, making death in hospital more likely.¹⁵⁰ There is evidence of Wanganui Hospital discharging dying Māori patients so that they would not die in hospital, possibly so that the hospital would not become associated with death and be therefore tapu.¹⁵¹

(e) *Hospital in a poor state of repair*: It could not have helped that Wanganui Hospital quickly became run down; in the late 1860s the building was reported to be in very poor condition.¹⁵² In 1871 Woon argued that it was 'now in such a state of decay and ruin, as to be past repair.'¹⁵³ However a new hospital, on a different site, was not opened until 1897.¹⁵⁴ The inspector of hospitals described this new institution as 'the most up-to-date hospital in the colony.'¹⁵⁵ Improvements in medical science and nursing practice meant that hospital treatment had become somewhat more effective by this point. There is, however, no indication that the number of Māori admissions increased at this time.

(3) *Other nineteenth-century health services*

Wanganui Hospital was not, however, the Crown's main effort to improve Whanganui Māori health in the nineteenth century. Its most important initiative was the funding of doctors as native medical officers to attend Māori, free of charge to those who could not pay.

(a) *Native medical officers*: The scheme was funded from the annual Civil List allocation of £7,000 for 'Native Purposes', under the New Zealand Constitution Act 1852.¹⁵⁶ The first such appointment in Whanganui was George Rees, the hospital doctor, who seems usually to have been available only in and near town. During a measles epidemic in 1854, he asked for an extra annual payment to enable him to visit upriver settlements. After his death in 1858, other doctors were appointed to replace him. In 1870, Robert Earle was receiving £150 a year for his work as native medical officer, but this was reduced to £75 and then to £50. Māori living away from the town had to travel to him; as he pointed out, he could not provide these patients with continuing care and usually never saw them again.¹⁵⁷ Upriver Māori received little benefit from the native medical officer system, because the doctor was based at Wanganui. In 1876, it was reported that tangata whenua living up the river had paid for another doctor to visit, and were considering giving him land in order to entice him to relocate there.¹⁵⁸ This appears to indicate that Whanganui Māori still wanted European doctors.

(b) *Native medical officer service declines*: Further funding cuts reduced the native medical officers' range even more. Earle's funding was reduced to £25, and by 1895 he had even stopped visiting Pūtiki and Aramoho, adjacent to the town, and started asking for payment from those he thought could afford it. Māori in these settlements were going to other doctors, and some who could not afford to do so had died. The missionary at Pūtiki said that the people had lost confidence in Earle. His replacement saw so few patients that the subsidy was terminated, and in 1904 an unsubsidised doctor took over.¹⁵⁹ The duties of this 'Honorary Native Medical Officer', as stated that year, were the same as those of his paid predecessors:

to attend the natives at Putiki and Aramoho, and also those up-river natives who come down to Wanganui and for whose benefit the accommodation house on Taupo Quay was erected; to provide medicines free, and if any natives are too ill or too old to visit the surgery, to visit them in their homes.¹⁶⁰

As with the subsidised native medical officers, this did not benefit Māori living away from the town.

(c) *Native school teachers*: Some medical assistance was provided by native school teachers, who provided free medicine to their pupils and their communities. Teachers were also expected to provide health education, and during epidemics teachers and their families often nursed the sick and convalescent.

The wife of the teacher at Pipiriki was a nurse, but we do not know of any other nineteenth century teachers or teachers' spouses who had medical training. In many isolated areas, school teachers and their families were the only people able to provide any kind of western-style medical care.¹⁶¹ Woon wrote in 1876 that teachers in the upper river area had saved many lives by distributing medicine.¹⁶² However, as we saw, the schools were soon closed down. They did not reopen until the 1890s, when they once more assumed an important health role. The Koriniti teacher wrote in 1898 that as a result of his success in treating the people there, they had 'given up their Maori "Doctors" and bring all their cases to me'.¹⁶³ Teachers at Karioi and Pipiriki around this time also reported that they frequently provided medical and sometimes surgical aid.¹⁶⁴

(d) *Native dispensers*: Ordinary settlers were sometimes appointed as native dispensers, distributing free medicine to Māori. At Taumarunui, Alexander Bell was appointed as a dispenser in 1897 as a result of his efforts distributing medicine and nursing the sick during an epidemic two years previously. His appointment came after ongoing lobbying from local Māori and from Wanganui chemist Allan Hogg for more aid. Hogg wrote that Taumarunui Māori were 'incensed at the callousness of the govtmt in

not sending them assistance' to deal with ongoing and widespread illness.¹⁶⁵ Bell was paid £15 per annum with medicines supplied.¹⁶⁶ The Under-Secretary of Native Affairs also sent him a book called *The Ship Captain's Medical Guide*, apparently because it was 'suitable for use by unskilled persons'.¹⁶⁷

The only other sources of medical care were the missions – the Church Missionary Society at Pūtiki and Suzanne Aubert's Catholic mission at Hiruhārama – but the Government did not support them financially.¹⁶⁸

(e) *Contemporary attitudes to health care*: Access to health care was generally not considered a right at this time. Settlers who could not afford doctors' fees usually went without medical aid, and those living away from the town generally had little or no access even if they could pay fees. As Alan Ward wrote, 'the system of subsidised medical officers represented an advance in the Government's conception of its responsibilities, creditable in a laissez faire age'.¹⁶⁹

There was also a general shortage of doctors in New Zealand. In 1878 there were 273 'medical men' in a total population of 457,231, or one for every 1,675 people.¹⁷⁰ The ratio was somewhat better in Whanganui, with six registered doctors serving a population of about 8,713, making a ratio of one doctor to every 1,452 people.¹⁷¹ However, all the doctors appear to have been resident in the town, with rural citizens, whether Māori or Pākehā, having to fend for themselves.

In fact therefore, however ad hoc and amateur from today's perspective, the Crown's delivery of medical aid to Māori through school teachers and native dispensers was more than was available to out-of-town Pākehā of the day.

21.3.4 Conclusions

(1) Education

Although the churches and the Crown made several attempts to provide schools to Whanganui Māori, none was particularly successful until the 1890s. There were obviously many reasons for this, some of which would have been particular and local and impossible now to discern. There would have been more instances like the one

we know about – Hoani Mete Kingi's dislike of the boarding school food. These kinds of preferences – personal, cultural, or both – would have affected school attendance. Moreover, contemporary commentary makes it clear that Māori communities were coping with many other exigencies, especially those involving their land – both holding on to it, and selling it – which distracted from establishing a regular way of life in which children went daily to school. Māori were reported to be enthusiastic about education, but the reality of incorporating school-going into their lives when so much else was going on was plainly not easy. In the case of the endowed school, it appears that the education provided did not meet Māori needs or expectations. Some also had reason not to engage with State-run institutions. The result was that Māori in our inquiry district were usually not able to gain from schooling the levels of literacy, numeracy, and vocational training that would have ensured they had the skills necessary to fully and successfully participate in the new economy.

Because working in this economy required European knowledge, Māori started from behind. They had to learn a new language – not only English, but also the cultural language of money, debt, borrowing, banks, and reading a market that fluctuated, with different prices for the same commodities as they were more or less in demand at different times. Māori not only lacked the training and experience that the most successful settler farmers and traders had, but also the instinctive understanding that came with growing up speaking English and dealing with basic elements of the western economic system. Regular attendance at school would have helped with some of this. And on the face of it, there would have been real advantage in providing to young Māori instruction in modern agricultural methods. However, such evidence as we have indicates that parents in Whanganui generally seem to have wanted teachers to focus on literacy and the English language. Perhaps they believed that practical learning was something you acquired in life rather than at school. That would certainly have been their experience.

The embryonic State of the 1850s was not prepared to contribute the necessary money to keep the endowed school going as an institution that provided free education

to Māori. Instead, it became Wanganui Collegiate, and a completely different kind of entity. As far as we can tell, the Crown did not become involved in this transformation, leaving it to the school's trustees. This was consistent with the *laissez-faire* philosophy of the time. But the tenor of the early engagements between Māori and the Crown was that schools were one of the benefits of settlement that would come to Māori, and in this district it took too long for regular primary education to be consistently available to all the Māori children in the population.

We saw no evidence that the Crown fully investigated the reasons for the endowed school's failure, nor the failure of native schools in the 1870s. It is difficult to imagine that, if Pākehā children were not attending school, there would have been no investigation into what was going wrong. There might have been little that could have been done to keep the schools going, but without proper understanding of why they failed, it was not possible to make changes that might have made a difference. The consequence was that, until the very end of the nineteenth century, Māori in our inquiry district generally did not get a proper primary school education, and going to secondary school was virtually unknown. This decreased their chances of entering the new economy.

(2) Health

The causes of Whanganui Māori ill health in the period are relatively easy to explain. When Europeans arrived in New Zealand, they inadvertently brought with them new diseases that Māori had never encountered and were immunologically unprepared for. Neither Māori nor Europeans had much understanding of how disease was spread, and apart from quarantine, smallpox vaccination, and basic nursing, there was nothing that either could do to prevent the spread of disease or to cure the sick. Given these limitations, epidemics and high death rates were inevitable consequences of Māori–European contact.

By the end of the century, after a period of drastic population decline, most Māori adults had acquired personal immunity; the high epidemic death toll of previous decades might have selected for disease resistance. Māori health improved, and the population began to

rise. However, even at the end of the nineteenth century, Whanganui Māori were still experiencing frequent epidemics and far worse health than their non-Māori counterparts. Social dislocation, alcohol abuse, and other factors were by this time probably also affecting health, but not enough to cancel out the health improvements that increased immunity brought. The medical services and medicines that the Crown provided probably had some positive impact. In a period when State-provided health services were generally minimal by comparison with modern times, the share provided to Māori was reasonable.

(3) Appropriateness

We have assessed the services that the Crown provided to Māori and non-Māori in the period as broadly equitable in terms of the quantity of services provided. There were certain instances of discrimination – the teacher who deliberately made his students feel inferior (but seems to have been quickly removed); and the unwillingness of Wanganui Hospital later in the century to receive Māori as patients – perhaps primarily because of their inability to pay, but possibly also because of discrimination. Those instances were regrettable; no system should tolerate discrimination. However, that is not what we address under the rubric of appropriateness. What we are talking about is the undeniable fact that the same services provided to different communities or citizens were not equitable if, although the services were the same, they were appropriate to one community but not the other. Of course, the colonists were generally not in the business of adapting services to Māori needs: part of the process of colonisation was to require the colonised to adapt to the new (superior) culture. Amalgamation had as its goal that Māori would change, not that the system would change to meet their needs.

However, the whole purpose of providing health and education services to Māori was to improve their situation. That goal was incapable of achievement if the services were delivered in a format that meant they would not achieve the desired end – whether the goal was to educate a child or make a person well.

We postulate that the early failure of the native schools

in Whanganui was not entirely to do with the many other things that Māori communities had to attend to. We think it likely that, although the idea of European education was appealing, its mode of delivery was simply inappropriate to the Māori children of that time. Sitting cooped up in an unfamiliar environment being instructed on alien topics in a language not your own might well have been a fairly hellish experience for many children, and it is unsurprising that they had no appetite for repeating it daily. We have no way of knowing to what extent the teachers in the Whanganui schools were knowledgeable in Māoritanga or language (it was not a requirement of the job). We do not know whether they were able, or willing, to adapt the lessons to make them meaningful for children largely unfamiliar with white people and their ways. If the main problem was the distraction for the Māori communities of their business in the Native Land Court, needing to be away for months at a time, or if there were periods when children had to help with cultivation, it is not apparent that anyone focused on providing education in a format that tried to accommodate these circumstances. It is difficult to imagine that more effort would not have been put in to ensure that Pākehā children in such situations received some schooling.

Certainly, as far as the evidence goes, it indicates that, for no doubt myriad reasons, Māori in Whanganui did not subscribe to the formal education of Europeans until late in the century. They were keen on the idea of Pākehā education for their children, though, and it would have been advantageous if the necessary adaptations had been made to enable that schooling to succeed earlier.

As for health care, none of it seems appropriate or efficacious from today's perspective. However, applying the standards of the day, the means of delivering health services that were at the disposal of the Pākehā community were offered to Māori. In fact, the health decision-makers engaged in a level of flexible and creative thinking that their education equivalents might have envied. Deploying native dispensers and native school teachers to augment the reach of doctors meant that there were medications available to rural Māori communities that their Pākehā counterparts might have struggled to access. Māori seem

to have treated western medicine as one available option, and its mode of delivery in Whanganui seems to have been as appropriate as could reasonably have been expected.

21.4 THE PERIOD FROM 1900 TO 1935

In the early decades of the twentieth century, before the welfare state began, Māori continued in the economic doldrums. Land sales continued, but prices tended to be too low to fund the development of what little, mostly low quality, land remained. This was the period when Whanganui Māori vested their land in schemes designed to facilitate income from leases. Barriers to developing the Māori land that remained under owners' control were numerous, and we discuss them elsewhere (see chapter 14). The traditional economy had all but disappeared, and tangata whenua resided on their remaining land, usually living on a combination of subsistence agriculture and seasonal or temporary wage labour on farms, public works projects, and in the timber industry. The population decline of the previous century had reversed, due to increased natural immunity to infectious diseases, but communities remained vulnerable to epidemics, and also to crop failure. The potato blight at the turn of the century was a real threat to the ability of Māori communities to feed themselves, and the effects of this lingered for several years.¹⁷²

21.4.1 Financial assistance for hardship and unemployment, and pensions

This was not a period in which government regarded the provision of financial aid for hardship as part of its core business. As a result, its provision of assistance to Whanganui Māori was typically limited and ad hoc, generally occurring in response to local agitation or crisis, rather than as part of any wider plan.

We look at pensions and unemployment relief provided to Whanganui Māori, and compare them with provisions for non-Māori. We assess the claimants' argument that the Crown's meagre provision of hardship relief at this time breached the principle of equitable treatment,¹⁷³ and the Crown's response that although Māori were treated

Pūtiki

More than any other Māori settlement in our inquiry district, the history of Pūtiki is strongly bound up with European settlement. Before Europeans arrived, Pūtiki was primarily a seasonal fishing village, although the area did sometimes have cultivations and permanent kāinga. The land was poor compared to many upriver places, and the coastal location vulnerable to attack.¹

When Europeans came to the Whanganui River, they found Pūtiki and the land across the river convenient places to camp and trade, and missionaries set up a station there in 1840.² Drawn by the new opportunities, many Whanganui Māori came to live at Pūtiki on a semi-permanent basis, including 'much of the river's leadership'.³ As a result of this influx, today's Pūtiki people come from a mix of eight different river hapū: Ngā Paerangi, Ngā Poutama, Ngāti Pāmoana, Ngāti Patutokotoko, Ngāti Rangī, Ngāti Ruakā, Ngāti Taipoto, and Ngāti Tūmango.⁴

As the closest kāinga to the settler township, Pūtiki has always been a point of connection between Whanganui Māori and Europeans, and between Whanganui Māori and the Crown.⁵ Pūtiki has traditionally hosted whanaunga (kin) visiting town, and in the 1870s and 1880s, the Crown made a reserve available for upriver Māori to stay when they were at Native Land Court hearings or attending to other business.⁶ More latterly, the Pūtiki marae frequently hosts dignitaries who come to Whanganui, and was the venue for important Māori events such as a homecoming of the 28th Māori Battalion, the 1975 Māori land march, and the 2004 foreshore and seabed hikoi.⁷

Pūtiki marae chairperson Hone Tamehana explained to us that the kāinga's position has a negative side. He said:

It is no secret that many of our River whanaunga have seen those of us at Putiki as more 'Pakehified' or label us as 'Kupapa'. That is the perception engrained from early contact times. We have had to live with this as a hapu and as a Marae and as a people.⁸

We heard from other witnesses that, as early as the 1930s, Māori children at Pūtiki mostly spoke English, and had been 'assimilated to a large degree by the Pākehā culture'.⁹

The Pūtiki marae and community has often been expected to speak for all Whanganui Māori and sometimes for Māori in general. The district council in particular has often talked with the marae committee about matters that had little to do with Pūtiki, in order to be able to claim to have consulted Whanganui Māori.¹⁰ Mr Tamehana emphasised that this was not the committee's role, and 'we did not have the mandate to speak for the entire Whanganui iwi or the hapū in the District Council area'.¹¹ In addition, he said, kaumātua sometimes feel pressured to make decisions on things they do not fully understand.¹²

The Pūtiki community has not chosen to be the Whanganui region's 'go to' location for all things Māori and, by and large, it has not benefited from this role. Early in the twentieth century the Pūtiki stretch of the river, where the community bathed, became heavily polluted by town sewage and freezing works waste.¹³ The kāinga did not get a reliable water supply or drainage until several decades later.¹⁴ Until at least the 1950s, some housing in Pūtiki was as bad as anywhere in the district, with some homes overcrowded, and others described as 'wretched shanties'.¹⁵ Around this time, most Pūtiki families had enough land for vegetable gardens and perhaps a cow or two, but this had to be supplemented by employment in town.¹⁶ More recently, 'this reserve has been slowly eaten away where today very few who are from here own sufficient land. Pūtiki today is surrounded by Pākehā people and their flash homes'.¹⁷ Planning restrictions prevented some families from building homes on their own land, which forced them to move further afield.¹⁸

Mr Tamehana told us:

What the Council do not appreciate is that our people at Putiki had full time jobs, but were expected to be at the beck



Pūtiki Marae. Prior to European settlement, Pūtiki was a seasonal fishing village. When Petre/Wanganui was established across the river, Māori began to live at Pūtiki more permanently. It has always been common for Pūtiki residents to host relatives visiting town, and in the 1870s and 1880s, a reserve was made available for upriver Māori visiting for Native Land Court hearings and other business. In recent times, the Pūtiki marae is where dignitaries visiting Whanganui are welcomed and important Māori events held.

and call of the Council without adequate funding or resources to assist . . .

In many instances our Putiki Marae has become 'dial up a Maori' type marae where we are expected to drop everything to meet Council needs and requirements. We are almost expected to welcome key dignitaries whenever they are visiting the Whanganui region. This is fine, and it is part of our manaaki to manuhiri but when we approach Council to

address significant concerns to us, especially in recent times, we are seemingly ignored. Examples include the Pakaitore issue and the spelling of our township.¹⁹

Despite their relationship with the council, the people of Pūtiki often find themselves unable to influence decisions which strongly affect them, such as the motorway which has 'had the effect of cutting the Putiki community in half'.²⁰

differently at times, this was neither necessarily unfair nor a breach of Treaty principle.¹⁷⁴

(1) *Aid for those affected by the potato blight*

An early example of Crown aid was its response to the potato blight of 1905 and 1906. It indicates the minimalist view that the Government took of what it should provide; its reluctance to accept that there was a real exigency; and its desire not to give anything away except in cases of dire need.

Initial aid consisted of the distribution of seed potatoes in the winter of 1905. The 270 pounds (122 kilograms) provided were not enough to go around, however, and several areas went without.¹⁷⁵ Requests for aid from some settlements were declined on the grounds that there were no 'deserving cases'; that those requesting aid were receiving timber royalties, rent, or wages, or were known drunkards; or that reports of need were 'much exaggerated'. This was despite reports from native school teachers and census enumerators that famine was imminent in some areas.¹⁷⁶ More seed potatoes and some vegetable seeds were distributed in the winter of 1906, but recipients were expected to pay for them unless they were completely unable to do so.¹⁷⁷ Māori at Pūtiki were said to be very annoyed at being asked to pay for the seeds. The Under-Secretary of the Native Department somehow concluded that this 'shows that they are not really in great necessity'.¹⁷⁸

(2) *Pensions*

Before the passage of the Old Age Pensions Act, pensions were often granted unevenly and arbitrarily. War widows, war orphans, disabled war veterans, and New Zealand Cross recipients, including Māori, were generally entitled to pensions as of right, as long as they or their father or husband had fought for the Crown. Retired civil servants also received pensions.¹⁷⁹ Parliament sometimes also passed Acts granting pensions to specific individuals, usually dependents of soldiers killed in action, who were not covered under general provisions.¹⁸⁰

(a) *The Native Purposes section of the Civil List*: In addition, Māori could gain a pension from being included in the

Native Purposes section of the Civil List.¹⁸¹ In 1901, there were seven Whanganui Māori in receipt of Civil List pensions, ranging in amount from £10 to £125 per year, with £12 being the most common amount.¹⁸² Civil List payments were still being made to destitute Māori in the 1920s, in our inquiry district and elsewhere.¹⁸³ The Civil List was also used to supply food, with £120 worth of rations being supplied to 'indigent Maori' in Whanganui in 1906.¹⁸⁴ The system was highly discretionary. In 1905, the Whanganui magistrate declined the pension renewal applications of four Māori because they had interests in land, even though these produced no income. Each was instead granted food supplies worth £6 a year, minus 10 per cent delivery costs. Another pensioner had his allowance stopped in 1907 because he had a son who could provide for him; the allowance was not reinstated even after it was shown that the son was not doing so.¹⁸⁵

Was the Civil List system an equitable way of providing pensions? Clearly, there was great potential for those in need to go without, but this was true for non-Māori as well. An 1888 list of pension recipients shows that there were far more Māori than non-Māori receiving discretionary pensions, Māori entirely from the Civil List and non-Māori from a mixture of personal acts and miscellaneous provisions.¹⁸⁶ Getting a Civil List pension was difficult, but on balance harder for non-Māori, particularly if it required an Act of Parliament. The fortunate few non-Māori discretionary pensioners did however tend to be paid at a higher rate.

(b) *Old-age pensions*: The Liberal Government, first elected in 1890, recognised the need for a fairer and more reliable means of supporting the impoverished and 'deserving' elderly, and consequently passed the Old-age Pensions Act 1898. This provided a pension of £18 per annum to anyone aged 65 or over who was not 'Asiatic', was of 'good character', and had an annual income of less than £52 and property worth less than £270. Applicants had to provide satisfactory evidence of age and details of any land owned on customary title. Procedures for assessing the value of such land were laid down.¹⁸⁷ By 1902, there were 226 pensioners in the Whanganui old-age pensions district,

including 34 Māori.¹⁸⁸ Access to pensions quickly became more difficult for Māori; in 1906 the Native Department reported that Māori were experiencing ‘considerable difficulty in obtaining pensions, in securing renewals, and in receiving the quarterly payments.’¹⁸⁹ In 1915, when the publication of statistics ceased, only two of the 310 pensioners in the Whanganui pensions district were Māori. There were also three Māori recipients out of 41 in the Taumarunui district.¹⁹⁰

(c) *Pensions to Māori reduced:* In 1926 the Pensions Department reduced the pensions of Māori whose land interests could not be exactly valued. In such cases, pensions were reduced from 17s 6d per week to 12s 6d, and widows’ pensions from 10 shillings for the widow and each child to 7s 6d per person per week. The following year the under-secretary of the Native Department pointed out some of the realities of Māori land ownership: land was often held in common, owners rarely knew exactly which land was theirs, and the land often produced no revenue. No changes resulted, however. In 1930, the Minister in Charge of Pensions stated that he had no intention of introducing special legislation for Māori, and that assessments would continue to be based on the sale value of the land.¹⁹¹ The difficulties of land-owning Māori pensioners persisted until 1936, when amending legislation stated that interests in land would no longer be taken into account when assessing the value of applicants’ property.¹⁹² However, new welfare legislation introduced in 1938 did allow benefits to be paid at a lower rate if the ‘maximum benefit is not necessary for the maintenance of the beneficiary.’¹⁹³ Māori sometimes had their benefits reduced under this provision, on the grounds that their ‘communal living’ meant they had lower living costs. There appears to have been some outright discrimination as well; in 1940, member of Parliament Eruera Tirikātene told the Minister of Social Security that Europeans living at Rātana pā, near Wanganui, received full benefits, while the pensions of Māori at the pā were reduced.¹⁹⁴ These kinds of discrepancies remained until 1945.¹⁹⁵

The claimants submitted that the Crown’s old age pensions policy was in breach of its duty of equitable

treatment.¹⁹⁶ The Crown responded that it was reasonable for authorities to take land interests into account when assessing pension eligibility, but acknowledged this policy ‘may have impacted unfairly on Maori who held interests in multiply owned land, but derived little benefit from such land.’¹⁹⁷ This was not an instance of discrimination, the Crown submitted, but rather the ‘unforeseen or potentially unequal consequences’ of a policy which was fair ‘at a conceptual level.’¹⁹⁸

While we agree that fair and reasonable policies can easily have unforeseen negative consequences, we do not consider that this was what was happening here. Policy-makers at this time should have been well aware that many Māori received no benefit from land ownership; even if they were somehow ignorant in 1926, when they cut the pensions of many Māori recipients, they were soon told, yet did nothing to rectify the situation.

(3) *Unemployment relief*

Limited relief was granted to unemployed people throughout this period, particularly during the Depression of the 1930s. Unemployment was common among Whanganui Māori, particularly in rural areas, with Māori at Pipiriki and Parinui reported to be in ‘grave distress’ due to unemployment.¹⁹⁹ Official relief work was made available in the Whanganui hinterland, but only to a limited degree. The school teacher at Parinui repeatedly tried to arrange relief work for local men, but found that it was available only in distant places, such as the Mangatītī road project or the township of Raetihi, compelling the men to leave their homes in order to support their families. Only in 1935 was approval given for local relief work, in the form of scrub-cutting.²⁰⁰ Provision of relief work was not much more generous under the first Labour Government, even though it was still needed in some areas.²⁰¹

We received no information on the availability of relief work for non-Māori in rural Whanganui, so we do not know whether the provision to Māori was discriminatory. We do know, however, that payment for relief work was lower for Māori than for non-Māori: Māori were paid three shillings a week less than non-Māori living in country districts. For those living in the towns and cities, the

gap was even larger. In addition, non-Māori without work were eligible for a basic payment; Māori were not.²⁰²

In its submissions on this topic, the Crown emphasised that

there was no great pool of government largess directed at Pakeha, from which Maori were excluded. Rather, there was limited government relief and considerable hardship for both Pakeha and Maori during this period.²⁰³

It is certainly true that Government aid was minimal at this time, and that people of all ethnicities lived in poverty. This does not detract from the reality that Māori received less Crown aid than non-Māori.

21.4.2 Education

The Crown's provision of primary education to Whanganui Māori improved in the early decades of the twentieth century, with six native schools opening in our district between 1900 and 1935. Obviously the attitudes of tangata whenua to the desirability of their children's attending native schools had changed. This section looks at the Crown's response to requests for native schools, and at how easily Whanganui Māori, and especially those in isolated settlements, were able to access primary and secondary education. It will also explore the place of te reo and Māori culture in the education system, and how the Crown responded to prejudice and antagonism towards Māori from non-Māori parents.

(1) *Opportunities for formal education*

Before 1935, post-primary education was available to few Whanganui Māori, and those who lived in 'isolated' communities could not always access primary education.

(a) *Native schools*: In 1900 there were three native primary schools in our inquiry district, at Pipiriki, Karioi, and Koriniti (Pāmoana School). All three received positive reports from inspectors, particularly Pāmoana, which had a high exam pass rate.²⁰⁴

Establishing new schools often took years of campaigning. The sizeable Māori community at Parikino made

their first request for a native school in 1898, but a school did not open there until 1913.²⁰⁵ Four new native schools opened in the 1920s, at Matahiwi, Parinui, Kauangaroa, and Ōtoko. The request for a school at Matahiwi was initially declined, as the Education Department was not confident that there were enough children, nor a population that was settled enough to support a school. It acknowledged, however, that poor roads made it difficult for children to travel to either Koriniti or the mission school at Rānana. Nevertheless, the Matahiwi community found a teacher and erected a schoolhouse. Impressed by the new building and by the enthusiasm and energy of the applicants, the department decided in the end to grant their wish for a school.²⁰⁶ The next school to open was at Parinui, also after many years of local campaigning. Officials had recognised in 1906 that Parinui children could not attend the nearest school, at Pipiriki, because they would have to board, which neither the parents nor the host community could afford.²⁰⁷ After the community donated land and provided building labour, the application for a school was granted in 1926. Delays meant that the school did not open until 1928.²⁰⁸ The following year another native school opened at Ōtoko.²⁰⁹ A request for a school at Kauangaroa, in the Whangaehu Valley, was made in 1921, but there were problems securing a site.²¹⁰ It finally opened in 1929.²¹¹

Other communities never got native schools. The teacher at Pāmoana School in Koriniti, for example, commented in 1904 that his school was the only one for the string of communities downstream from Hiruhārama. 'Most of these Maoris', he told the secretary for education, 'are without the benefits of education.'²¹² Applications to reopen Parapara School were declined in 1899, and again in 1906, because the number of potential pupils had not increased since the school was closed in the 1890s.²¹³

(b) *Mission schools*: Mission schools were still helping to fill the gap in the first part of the twentieth century. The Catholic mission's educational work continued at Hiruhārama and, from the second decade of the century, at Rānana.

The Hiruhārama School gained good inspection

reports in 1918 and 1919.²¹⁴ At Pūtiki, the inspector of native schools admitted in 1901 that the Anglican mission school was not of a high standard, but said that it gave a partial education to children ‘who would probably grow up in ignorance if it did not exist’.²¹⁵ This seems extraordinary given the proximity of Pūtiki to Wanganui and its board schools. We do not know whether Māori children were unwelcome there or if there was some other reason why they could not have attended. Reports in 1914 and 1915 indicate improvement at Pūtiki.²¹⁶ The mission struggled to maintain the buildings, but the school was still functioning in the 1930s.²¹⁷

(c) *Post-primary education*: The Presbyterian Church founded Turakina Māori Girls’ School in 1905 to provide secondary education for Māori girls. Although just outside our inquiry district, it would have been accessible to some Whanganui Māori. It moved to Marton in 1928.

The Crown provided scholarships to Turakina and other Māori secondary schools, although Turakina was the only one close to Whanganui.²¹⁸ In 1923, about a quarter of students at these schools held scholarships.²¹⁹ We do not know how many were from our inquiry district, but some former pupils of Pipiriki and Karioi Native Schools did attend Turakina and Te Aute colleges.²²⁰

There were also a few tertiary and trade scholarships for Māori boys entering apprenticeships or learning to farm on Agriculture Department farms, girls training to be nurses, and Māori of either sex attending university.²²¹ Typically there seems to have been about one to three students a year holding each type of scholarship.²²² As we noted in chapter 19, one of the training farms was at Moumāhaki in south Taranaki; it had some Māori cadets, at least one of whom was from Whanganui.²²³

The Crown made some attempts at improving access to secondary school, but scholarships were the only measure targeted at Māori. From 1903, free places at secondary school were available to all children who passed the proficiency examination, and by 1928 just over half of those who completed primary education were entering secondary schools as free-place pupils.²²⁴ Secondary sections had been added to the board schools at Taumarunui and

Ōhākune, which became district high schools, and later developed into full secondary schools.²²⁵ None of this was intended specifically to increase Māori participation in secondary education, for which we have no specific data.

(2) *Māori language and culture in the education system*

Non-Māori ran the education system of the early twentieth century, with very limited Māori input. Schools were often regarded, by Māori as well as non-Māori, as a means for Māori children to learn the English language and way of life. Consequently, Māori language and culture were frequently discouraged, and sometimes denigrated. Some Māori children, particularly those in board schools, also suffered antagonism and prejudice from non-Māori parents.

(a) *Native schools designed to encourage amalgamation*: In 1930, NT Lambourne was the Director of Education. For the opening of a school at Rātana pā (not far from Wanganui, but actually just outside our inquiry district), he took the opportunity to hold forth on native school education for Māori children:

the Department, by means of its control of the education of the Native Race, seeks to bring about an improvement in the moral and physical well-being of the Maori people. With this aim in view, the Department provides in every Native Village a suitable residence for the teacher and his wife in order that the Natives [may have] before them an example of the advantages of living in decent and comfortable surroundings.²²⁶

Thinking had evidently not changed appreciably from the nineteenth century. The updated native school regulations, published in 1915, also emphasised that a crucial part of a native school teacher’s job was to ‘exercise a beneficial influence’ in their community and ‘endeavour to give the Maoris of the district such culture as may fit them to become good citizens’.²²⁷ Needless to say, the reference was not to Māori culture. In the late 1910s, Inspector of Native Schools William Bird wrote that traditional Māori arts such as weaving and carving had no use in the modern world.²²⁸ In Whanganui, however, some native schools



Teacher and pupils, Karioi Native School, 1908. Established in 1898, the school was one of only three native schools in the inquiry district. Between 1900 and 1935, a further seven opened in the area. Native schools were distinct in that Māori communities were obliged to gift land for them.

did take account of the culture of the local Māori community – which evoked a mixed response from the department. Pipiriki Native School was allowed to shift its holidays to accommodate a wharenuī opening, but Pāmoana School board elections were invalidated because they were held at the marae rather than at the school.²²⁹

(b) *Punishment for speaking Māori*: The 1915 native school regulations stipulated that corporal punishment was to

be used only as a last resort, in cases of ‘offences against morality, for gross impertinence, or for wilful and persistence disobedience’ and not for ‘trivial breaches of school discipline’.²³⁰ We heard evidence that children were corporally punished for speaking te reo Māori at Parikino Native School in the 1920s, however.²³¹ Barrington and Beaglehole stated in their book on native schools that from about the turn of the century there was a ‘hardening of policy against use of the Maori language in schools’



Teachers and pupils, Raetihi Public (or Education Board) School, 1902. As can be seen, both Māori and Pākehā children attended the school. This was despite a campaign by European parents in Raetihi for separate board and native schools in the town, so that their children would not share classes with Māori pupils.

and teachers were told of 'the necessity of encouraging the children to talk English only, even in the playground'.²³² Pupils at Karioi School were strapped for speaking Māori, with the principal at one point apologising for it.²³³ Tūrama Hāwira told us that his uncle was also strapped for speaking Māori at school in the 1920s, and when the boy's mother (Mr Hāwira's grandmother) found out that it was legal, she cried for two weeks, then decided that 'in order to survive you had to be like the Pakeha'. Mr Hāwira reported that his uncle

is today an angry man, who curses the people who denied him his inheritance. He is infuriated that he is now a kau-matua and cannot fulfil his role as a leader for his collective whanau of some 1500 descendants. He describes his loss of reo as an absolute loss of identity and mana.²³⁴

It appears that speaking Māori was punished in native schools for decades.

(c) *Pākehā parents seek segregation*: The early twentieth century saw Pākehā parents in Taumarunui, Waitōtara, and Raetihi campaigning for separate board and native schools in their towns, so that their children would not share classes with Māori pupils.²³⁵ The Education Department and its Minister consistently opposed such requests, with Education Minister George Fowlds describing ethnically segregated schooling as a 'retrograde step'.²³⁶ In Raetihi, parents complained about the poor hygiene of some Māori pupils, and probably because of this, the Education Board sometimes excluded Māori children who were not clean enough.²³⁷ After their request for a separate school was declined, the Taumarunui parents began lobbying to have the native school, which was about 50 per cent non-Māori, turned into a board school. Māori parents and the native school teacher strongly opposed this move: the teacher said that the Māori pupils were not sufficiently advanced in English to do well in a board school. Nevertheless, the native school became a board school in

1910.²³⁸ The same thing happened to Karioi Native School in 1928, but Pākehā parents' views do not seem to have influenced that decision.²³⁹

(d) *The situation at Pipiriki*: At Pipiriki, Māori parents evidently led opposition to mixed schooling. There had been a board school at the settlement until 1906. When it closed, all pupils transferred to the native school. Māori parents feared a renewal of conflicts that led to the board school being opened in the first place.²⁴⁰ Two years later, the Māori parents complained to the department because two Pākehā were on the native school committee.²⁴¹ However, the Pākehā parents were 'well satisfied' with the school.²⁴² By 1929, though, the local storekeeper was leading a move for a separate school for the Pākehā children, because he did not want his children attending school with Māori.²⁴³

(e) *Native or board schools better for Māori children*: The relative benefits of native and board schools were discussed from time to time. During the conflict over Māori pupils at Waitōtara School in 1903 that we mentioned above, the inspector of native schools wrote that, although he was opposed to taking the Māori children out of the board school, he thought they they were making slow progress there and might do better at a native school. The children's parents agreed.²⁴⁴

This might indicate two things. It could show that the native schools, despite their paternalism and monoculturalism, still managed to deliver education in a manner that was more relevant to their Māori pupils. It might also point to the greater incapacity of board schools to consider and cater for the needs of Māori children. The Education Department noted in 1919 that Māori children in board schools, unlike those in native schools, were given no special help in English. This, combined with irregular attendance, tended to make for slower progress and unsatisfactory results.²⁴⁵ In 1920, the lacklustre results of the Māori pupils of board schools were attributed to irregular attendance. The children did not go to school regularly, the report claimed, because their parents were

not interested in board schools, which had no connection with Māori communities and gave Māori pupils no special attention.²⁴⁶

21.4.3 Health

From 1900, the Crown played an increasing role in public health and the provision of health services.

In the nineteenth century, the State part-funded hospitals, subsidised doctors as native medical officers, and undertook a handful of other health initiatives, but otherwise left health care to the private sector. Towards the end of the century, politicians and officials began to consider that the State should play a larger role in disease prevention, and in generally improving overall population health, including that of Māori. A Department of Public Health was established in 1900, with a Māori section headed by Māui Pōmare, the first Māori doctor. Some steps were also taken to help Māori communities improve their own sanitation. The Crown's support for dedicated Māori health programmes vacillated in the early twentieth century: the programmes were vulnerable to cost-cutting and what we would today call mainstreaming.

The parties' positions on health, outlined earlier in this chapter, were broadly the same as for the nineteenth century. The claimants submitted that in this period Whanganui Māori were still being provided with inadequate health care, despite their serious health problems, and Crown obligations under the Treaty.²⁴⁷ The only new issue to be raised was inadequate funding of the Whanganui Māori Council, which we discuss in the relevant section below.²⁴⁸ The Crown acknowledged that there were some shortcomings in its provision of health services during this period, but also submitted that medicine remained limited in the early twentieth century, as was the provision of health care to all rural communities.²⁴⁹

(1) *Whanganui Māori health between 1900 and 1935*

Data on the health of Whanganui Māori in the early twentieth century, especially before the 1920s, is very limited. The population decline reversed around the turn of the century, probably because epidemics had become less

devastating, but disease and ill health were still commonplace.²⁵⁰ In 1911, for example, school teachers around our inquiry district reported frequent epidemics of whooping cough, influenza, measles, and other diseases.²⁵¹ It was clear that Māori suffered higher rates of ill health than non-Māori, and were particularly prone to infant and maternal mortality, tuberculosis, and typhoid.²⁵² Statistics that differentiated on the basis of ethnicity made this apparent in the late 1920s. The Māori infant mortality rate was 101 per 1,000 live births in 1929, compared to 35 for non-Māori. Māori also had high rates of maternal mortality and most infectious diseases, including typhoid, influenza, and tuberculosis.²⁵³ Between 1924 and 1937 the Māori typhoid death rate fell from 5.56 per 10,000 people to 2.35, but this lower rate was still 39 times higher than the non-Māori rate.²⁵⁴ There are few health statistics specific to Whanganui Māori for this period, but there is no reason to suppose that they would have differed markedly from national statistics.

Māori in Whanganui and elsewhere suffered disproportionately during epidemics, particularly the influenza epidemic of 1918. Geoffrey Rice estimated that the national Māori death rate was 42.3 per 1,000, seven times the non-Māori rate.²⁵⁵ In Whanganui, he estimated that the Māori death rate was somewhat lower than the national Māori rate, at 36.3.²⁵⁶ However Kaitieke County, which included Taumarunui and Piriaka, had the highest Māori death rate in the country. The estimated Māori population of 237 lost about 54 people, giving a mortality rate of 227 per 1,000.²⁵⁷ Rice conceded the possibility that all of his figures were lower than the actual rates.²⁵⁸ We heard evidence that makes the scale of the devastation clear. At Pūtiki and Piraunui, virtually every family suffered losses.²⁵⁹ Veronica Canterbury told us about the impact of the flu in the Taumarunui area:

My grandfather talked to us about the flu epidemic time and how hard it was in this area. He made his family safe and went up the road to another marae (past Kaitupeka) and brought the flu patients in. He and Hori Parete, Turu's nephew, helped during the epidemic. Because there were so

many dying, they were wrapped together in blankets and taken to Taringamotu River to an ana [cave].²⁶⁰

In other areas, mass graves were required to accommodate the number of dead. We heard of such graves at Karioi, Raketāpāuma, and Whāngaipeke.²⁶¹

The evidence available to us suggests that housing and sanitation in most communities was well below contemporary standards. The causes appear to have been a combination of pollution and lack of sanitary facilities, and insufficient money to improve the situation. Many communities lacked adequate water supplies, and some located below upstream towns suffered from river pollution from the towns.²⁶² The water supplies at Pūtiki and Hiruhārama were considered unhealthy and inadequate in the mid-1930s.²⁶³ Surveys at this time showed dilapidated, overcrowded, and generally inadequate Māori housing at Pūtiki, Kaiwhaiki, Rānana, and Hiruhārama.²⁶⁴ Authorities recognised that these conditions were a major cause of the health disparity between Māori and non-Māori, in Whanganui and elsewhere.²⁶⁵

(2) Crown assistance for Māori health and sanitation

The Crown's early twentieth century initiatives in the field of Māori health focused on educating and encouraging communities to improve their sanitation and general modes of living. Māori were appointed as native sanitary inspectors in Whanganui and elsewhere.²⁶⁶ Although not exclusively a health initiative, the Crown's main purpose for the Māori councils established under the Maori Councils Act 1900 was the improvement of hygiene and sanitation in Māori kāinga.²⁶⁷ The claimants argued that

Despite the potentially significant role that the Whanganui Maori Council could have played in the reduction of ill health and its associated causes amongst Whanganui Maori, the Crown failed to ensure that the Council was adequately funded to carry out these tasks.²⁶⁸

Pōmare and his fellow Māori doctor and Health Department employee Te Rangi Hiroa (Peter Buck) also



Whare on the banks of the Whanganui River, 1907. Housing of this kind continued well into the 1930s, with the 1936 census showing that nearly 30 per cent of Māori-occupied houses in the inquiry district were 'huts or whare', while another 5 per cent were camps or tents.

worked to improve community health by making educational tours of Māori settlements. In 1901, for example, Pōmare visited Karioi, where he gave a health lecture, with diagrams, to the adults and children. The native school teacher reported that the next day he came to the school to speak to the children about

the simplest questions of health which affect their daily lives. He spoke to them in Maori both because he found it easier to do so when we were present, & also because they would understand him more perfectly. The lesson he gave was a capital one & I don't think they will forget it.²⁶⁹

In 1904, Pōmare stated that he had visited 24 settlements in the Whanganui region, and he commented on

the 'marked improvements' in the housing and sanitary conditions, with 37 new houses built.²⁷⁰ Other officials made similar reports, generally crediting the change to the Māori councils, their marae committees, and Native Sanitary Inspector Hōri Pukehika.²⁷¹ However, all the native sanitary inspectors were laid off by 1912 as part of a general cost-cutting that eliminated many specifically Māori health services.²⁷²

The Department of Health was restructured in the wake of the 1918 influenza epidemic, leading to a revitalisation of some of the earlier Māori health initiatives. A new Division of Māori Hygiene was established and the Māori councils, most of which had gone out of existence, were re-established as Māori health councils. The councils were generally regarded as an excellent means

of improving sanitation in their communities, but were still under-funded.²⁷³ Theoretically, the Government was going to match funds raised by the councils for sanitary improvements, but the first application for a subsidy in Whanganui, for the Hiruhārama water supply, was turned down, and a similar project in Parikino received only a 25 per cent subsidy. Other water supply projects were completed in the 1920s and 1930s, but the Wanganui Māori Health Council found even basic tasks difficult due to lack of money.²⁷⁴ Whanganui Māori communities had no spare money to contribute much to improvements, especially during the Depression.²⁷⁵ Although it was recognised that unhygienic water supplies were contributing to the high disease rate, no extra funding came through.²⁷⁶

The health councils were aided by Māori inspectors of health. One such was Takiwaiora Hooper, who was based in Whanganui from 1925 to 1930 but was responsible for the whole western region from Taranaki to Horowhenua.²⁷⁷ A petition from 96 residents of the river settlements seeking a Māori inspector of health for their area led to the appointment of Te Rākaherea Pōmare, Māui Pōmare's son. He was this area's Māori inspector of health from 1932 to 1939 – a position that the Māori Purposes Fund Board funded, rather than the Government itself.²⁷⁸ The Division of Māori Hygiene was closed down in 1931, partly as a cost-cutting measure and partly as part of a wider policy of integrating Māori health care more fully into the national system.²⁷⁹ The Māori health councils were put under the authority of the regional medical officers of health, and finally abolished in 1945.

(3) *Accessibility of health services*

The Crown's provision of primary health services remained at a low level until after the passage of the Social Security Act in 1938.

Early in 1900, when there was an upriver influenza epidemic, Wī Hipango had asked the Government to send pharmacist Allan Hogg, as it had in 1896. Although there had already been several deaths, there was a considerable delay before Hogg was finally sent. He treated 47 cases of influenza and 71 other cases of illness, and he reported on the high rate of child mortality along the river.²⁸⁰

Shortly afterwards, 267 Māori petitioned the Government for Hogg to be appointed as a permanent doctor in the upriver area, emphasising his fluency in te reo and familiarity with Māori customs.²⁸¹ The petition was supported by 34 prominent settlers.²⁸² Although Hogg was willing to take the position, no action was taken until another epidemic broke out and he was sent upriver for two weeks. He reported that he had treated 184 cases but would have seen more if time had allowed, and he urged the Government to make a permanent medical appointment in the upriver area.²⁸³ No appointment was made, despite further pleas from a mission worker. In December 1900, missionaries at Pipiriki wrote to Native Minister James Carroll asking for a medical subsidy for their small hospital. The request was passed on to the Justice Department under-secretary, who declined to assist because he felt that the provision of medicine through the native schoolteacher at Pipiriki was sufficient.²⁸⁴

(a) *Few medical professionals in rural areas:* The Crown apparently saw little need for medical professionals in rural Whanganui. A petition for a doctor came from the Waitōtara area in 1901, but this too seems to have been declined.²⁸⁵ There was some discussion between the Native and Lands Departments in the 1900s about subsidising a doctor in Raetihi to treat Māori, but evidently nothing came of it.²⁸⁶ The Whanganui native medical officer position was cancelled in 1904, with Carroll telling Parliament that Whanganui Māori were 'spreading further back, and those who remained were well enough off to pay'. He acknowledged that 'the back districts would be in want of medical men' but did not appoint one.²⁸⁷ However, two years later a native medical officer was appointed to Taumarunui.²⁸⁸ In 1909, pharmacist GD McGregor asked for a subsidy to supply 'simple remedies' to Whanganui Māori who could not afford them, but the Health Department declined. Head of Māori health Māui Pōmare argued that a native medical officer would be a better solution, but none was appointed.²⁸⁹

It is difficult to discern how decisions to appoint native medical officers were made. In 1932, for example, there were no native medical officers in the Whanganui district,

but there was one in neighbouring Pātea, where few Māori lived.²⁹⁰

The Crown's reluctance to subsidise doctors' visits meant that, even when medical aid was available, it was rarely affordable. There was a doctor at Ōhākune by 1909, for example, but he was not subsidised and charged six guineas (£6 6s) to visit Karioi.²⁹¹ Health inspectors reported in 1925 that, when the mission sisters at Hiruhārama needed help with a Māori patient, the hospital board refused to send a doctor until they knew who would be paying.²⁹² Lack of medical care was a problem for everyone in 'backblocks' areas, and in the 1900s the Department of Lands subsidised settlers to form themselves into medical associations to support local doctors. Better-off Māori could presumably join such associations, but because the Māori population of rural dwellers tended to be too poor to support a doctor, a critical mass of non-Māori settlers was usually needed to sustain an association. Raetihi was briefly home to such a scheme, but in general there were too few settlers in any part of the Whanganui backblocks for the system to work there.²⁹³

It might have been because it was so difficult to attract doctors to rural areas that district nurses were provided to backblocks settlers from 1909, and then to Māori from 1911.²⁹⁴ Native health nurses, later merged into the district nursing system, were tasked with treating the sick, but also with preventing illness through education and other means. Ideally, they were 'interested in the whole family from birth to old age'.²⁹⁵ The Whanganui district's first native health nurse was appointed to Taumarunui in 1914, with responsibility for 'the upper reaches of the Whanganui River and the kaingas as far up as Te Kuiti'.²⁹⁶ This was a very large region to serve, given the transport of the time. Another nurse, based in Waanganui township, was appointed to the district in 1930. She treated hundreds of people a month, as well as supervising mission nurses and giving health and hygiene lectures.²⁹⁷

The various health services could come together in response to particularly severe epidemics. In 1910, for example, Dr Māui Pōmare, two Māori nurses, and a Māori sanitation inspector were all sent to Hiruhārama to deal

with a typhoid outbreak there.²⁹⁸ Four years later, the Whanganui Hospital Board set up an emergency hospital in Raetihi to deal with another typhoid epidemic, and the native health nurse established Māori typhoid camps near Taumarunui, at Manunui, and at Kākahi.²⁹⁹

(b) *Hospitals*: The Crown's provision of hospital services in the Whanganui area improved in the early twentieth century, as Taumarunui Hospital was founded in 1907 and expanded in 1925, and a small hospital began in Raetihi in 1922.³⁰⁰ It is difficult to know how many of their patients were Māori as hospitals did not record patients' ethnicity at this time.³⁰¹ A 1933 survey identified only 135 Māori admissions to Wanganui Hospital, out of a total of 7,000.³⁰² This statistic is supported by reports of various health workers in Whanganui, who reported that most Māori were very reluctant to go into hospital, and that some patients and their whānau actively avoided admission.³⁰³

Fees continued to deter Māori patients, as free hospital care was not introduced until 1939.³⁰⁴ Accommodation costs for outpatients and for inpatients' whānau were another problem. In one case, in 1928, a mother from Hiruhārama initially refused to admit her son to hospital to treat his measles because she could not afford any expenses. The district nurse arranged for the Health Department to pay, and so mother and child spent the night in a bedbug-infested boarding house. This was one of the few places in the city which would accept Māori guests.³⁰⁵ Often, reported the official member of the Wanganui Māori Council, when 'the patient comes to town . . . quite a number of dependents will follow to stay with some unfortunate local native who has a habitation'.³⁰⁶ Whānau had the invidious choice of leaving their whanaunga alone and unwell in an alien institution, paying for poor accommodation, or imposing on a relative.

(4) *The health system and Māori culture in the district*

The monocultural nature of early twentieth century hospitals might also have been off-putting for Whanganui Māori. Plans were made in the 1900s to set up Māori-run hospitals that would be more appealing to Māori patients,

but no funding was made available and nothing came of the idea.³⁰⁷ In 1918, Hōhepa Kānawa made an offer of land at Raetihi for a hospital for all ethnicities, with a Māori nurse on the staff, but this was not taken up.³⁰⁸

The Māori nurse would have been trained thanks to a Government scholarship scheme set up in 1898. However, many hospital boards were reluctant to accept Māori as trainee nurses.³⁰⁹ The Wanganui Hospital Board agreed to take some Māori trainees, but only if they had been educated at Turakina College and were at least 21 years old.³¹⁰ A Māori nurse from Hawke's Bay graduated from the hospital in 1911, but the following year the board was refusing to take new Māori trainees.³¹¹ In 1915, despite the protests of some of its members that it was discriminatory, the board decided that it would not take more than two Māori at a time.³¹²

In general, the Crown and the health providers it funded at this time seemed to believe that only western medicine was effective, and that medical services should not have to accommodate Māori culture or beliefs. The pharmacists McGregor and Hogg were popular with Māori patients because, unusually, they were familiar with Māori language and culture. McGregor told Ngata in 1909 that because he was himself Māori he was able 'to understand exactly their requirements and to give them advice as to sanitation, food, mode of living &c'.³¹³ As we have seen, neither McGregor nor Hogg received much Government support, which could have been because they were pharmacists rather than doctors.

(a) *Rongoā and tohunga*: To some of the claimants in this inquiry, the most obvious manifestation of the Crown's insensitivity to Māori culture in the health area was its refusal to accept the value of traditional healing beliefs and methods such as rongoā Māori, especially those associated with tohunga. 'The practices of Nga Tohunga and the use of Rongoā', said Desmond Te Ngāruru,

were looked upon by the so-called modern world of the Crown, as unscientific and unfounded and a type of witchcraft which was to be stamped out. However, within our

culture, we regard these practices as part of our customary domain and taonga which must be protected and passed on. Because of the Crown's attitude our tikanga Māori values and beliefs have been suppressed and the retention and development of mātauranga, culture and tikanga Māori have been compromised almost to the point of extinction.³¹⁴

Evidence from Whanganui and elsewhere shows that, in the early twentieth century, officials and the general public had an overwhelmingly negative perception of 'tohungaism'.³¹⁵ It was widely believed by non-Māori, and by some Māori, that tohunga were responsible for numerous Māori deaths.³¹⁶

In 1907, Parliament passed the Tohunga Suppression Act, directed against every person who

gathers Maoris around him by practising on their superstition and credulity, or who misleads or attempts to mislead any Maori by professing or pretending to possess supernatural powers in the treatment or cure of any disease, or in the foretelling of future events, or otherwise.³¹⁷

Few prosecutions were made under the Act, and not all of them succeeded.³¹⁸

(b) *Prosecution of tohunga in Whanganui*: One that did, in 1910, occurred in the Whanganui district. The tohunga concerned were Paku Maki and his wife Hera, originally from another tribal area but resident in Whanganui from about 1907. The couple made trips up the river and attracted many patients, either treating them on the spot or bringing them back to their base in Castlecliff.

It had been revealed to Hera, they claimed, that the Wanganui people had been makutu'd, and that only she and Paku had access to the atua who could counter the curse. They would heal any sick person who paid the prescribed fee. Hera obtained the diagnosis in dreams, and then called upon her spirits. The pair read the Catholic service, sprinkled the patient with water, and were guided by the spirits in the use of medical instruments and patent remedies.

Karioi

Te Karioi o Whiro, known as Karioi, is located in the northern part of the Rangiwaea block, south-west of Mount Ruapehu. Ngāti Rangi lived there seasonally from the earliest times, using it as a base for timber extraction and the summer harvest.¹ By about the 1860s, most Ngāti Rangi had settled more permanently on the Whanganui River, partly to take advantage of new trading opportunities, and partly to assert their right to land there. A smaller group were sent to live at Karioi, to keep the ahi kā burning and ensure that their rights would be recognised.² Toni Waho wrote:

The Crown through the Native Land Court destroyed Ngāti Rangi's nomadic lifestyle. The establishment of permanent kāinga on the Rangiwaea block from the fear that they would not be awarded rightful title effectively cut the Karioi Ngāti Rangi whānau off from the intimate engagement with their kin who remained on the other Ngāti Rangi lands in other parts of the Whanganui rohe. Whānau, hapū and iwi were split in order to protect their lands.³

By the 1870s, Ngāti Rangi were engaging in pastoral agriculture around Karioi.⁴ Some groups also began leasing Rangiwaea and nearby lands to European settlers. In section 12.6.4, we told the complicated story of the Crown's take-over of these leases, which occurred without the consent of many of the owners. This was followed up by the imposition of a monopoly on Māori land purchase over the area through which the main trunk railroad was to run, including Rangiwaea.⁵

Rangiwaea went through the court in 1893, and was awarded mostly to Ngāti Rangi and partly to Ngāti Pāmoana.⁶ This title investigation cost Ngāti Rangi £2,000, and partitions and related expenses another £4,200. In 1896, the Crown purchased 21,672 acres of Ngāti Rangi's 53,000-acre section for £7,200, leaving Ngāti Rangi with just £1,000 for land that Waho estimated was worth half a million pounds.⁷ By 1900, the Crown owned nearly half the block.⁸

Some owners probably sold their interests because it was the only way most Māori landowners could raise money to develop their other land.⁹

Karioi was affected by the 1905 potato blight, but seems to have missed out on Government donations of seed potatoes.¹⁰ In early January 1906, Te Whatarangi Tekā stated that Ngāti Rangi and Ngāti Uenuku 'are just existing, having no food, those who have a few shillings buy flour . . . those who have no means of subsistence eat wild cabbage, roots of Ti & C'. However, Crown officials felt that lease money and public works employment meant that Karioi Māori were 'doing well' economically and did not require Government aid.¹¹ In late February, a severe frost damaged the remaining crops at Karioi, and the teacher there reported that a famine was 'inevitable in 5 or 6 months'.¹² Vegetable seeds for 25 families were sent to Karioi that winter.¹³

In the early twentieth century, Karioi whānau still mostly lived off the land: agriculture, hunting, and fishing. Traditional-style houses were built with local timber, and roofing iron, windows, and other manufactured parts acquired through the sale of crops and labour.¹⁴ Employment came from public works, particularly the main trunk railroad, local sheep stations, market gardens, and, later, the Waiōuru army camp.¹⁵ By about 1920, farming was fully established on the vested Ōhotu block and other Māori land, with the farmers employing their relatives when needed.¹⁶ Statistics from that year show that there were five sheep farmers with Māori names in the Karioi area, three of whom owned just over 1,000 sheep each. In addition, the McDonnells, a mixed Māori and European family, owned more than 8,000 sheep.¹⁷ By 1925, however, there was only one sheep owner with a Māori name in Karioi, Teoti Peretini, and his flock had shrunk from 852 to 355. The McDonnells still owned 6,800 sheep.¹⁸ The figures were similar in 1930, although there was another Māori farmer, Marutuna Matiu, who owned 250 sheep.¹⁹ By that time, there were seven or eight Māori dairy farmers in Karioi, including Peretini.²⁰

These dairy farms struggled, mostly because of poor soil but also because a local dairy company sold unproductive cows to the inexperienced farmers.²¹

The Karioi State Forest was established in 1927 on the Rangiwaea and Murimotu blocks.²² The forest was promoted as providing local employment, both in the forest itself and in sawmills which could be kept open after the supply of indigenous timber had been exhausted.²³ We do not know how many employees of either the forest or the mills were tangata whenua. One type of tree planted in the forest was *Pinus contorta*, or lodgepole pine. This has a terrible tendency to spread viable seed, and by the 1950s it was growing wild in Tongariro National Park, Waiōuru defence lands, and Māori land north of Karioi forest.²⁴ However, it was not until 1983 that *Pinus contorta* was designated as a noxious weed, and today landowners have a major problem clearing it from their land. The cost is significant, from lowered rents as lessees pass on their costs, time and money spent attempting to eradicate the plant, and fines imposed if this is not successful.²⁵ We discuss *Pinus contorta* and its effects in our matapihi on Mere Kūao.

As in other rural areas, Karioi Māori increasingly felt pressure to leave their kāinga and move to the towns and cities, where work, education, and social services would be more readily available. To some extent, migration had

always been part of life in Karioi; the kāinga was originally a seasonal settlement, and whānau began leaving as early as 1905.²⁶ Others left when the 1930s Depression made farming too difficult.²⁷ As in other areas, however, the pressure intensified after the Second World War. Living conditions were hard and social services difficult to access; for example, Karioi Native School closed down in the 1940s.²⁸ In 1952, the local Māori Welfare Committee found a family of 11 living in a three-room house, and a family of 12 living in a four-room house. The second family had unsuccessfully applied for a Māori Affairs home loan.²⁹ Economic factors were also important. Toni Waho observed: ‘whānau in Karioi could see that they would not be able to sustain themselves from their land. They began to pursue regular paid employment in the wider area, away from Karioi.’³⁰

As the permanent population fell, the social and cultural fabric of the district became increasingly threadbare. By 1955 there were only two whānau marae in Karioi: Tiorangi and Ngā Mōkai.³¹ Tiorangi was becoming derelict, but was replaced in 1957 as whānau recognised that they would need a base for when they came home to visit.³² Ngā Mōkai was abandoned in the late 1970s, but revived from the 1980s.³³ By about the 1970s, Mr Waho commented, ‘it was clear that Karioi was no longer either an economic or domestic base for the once large Ngāti Rangī community.’³⁴

Complaints were made after the death of a young Koriniti girl in 1909. Evidence was gathered from both Māori and non-Māori, and the couple were arrested, convicted in the Supreme Court, and imprisoned.³¹⁹

In this case, the methods used by the two tohunga made them vulnerable to charges of fraudulent ‘faith healing’. Evidently, they were not practitioners of traditional rongoā Māori, though their practice did include rongoā elements.

The Wai 262 Tribunal report *Ko Aotearoa Tēnei* said that, ‘while the Act had some prejudicial impact on tohunga activities, it did not – and could not – get rid of

the practice’. The Act was ‘primarily a symbol of official rejection of the tohunga and mātauranga Māori’, and had less impact on the loss of knowledge about rongoā than the clearing of the bush and the movement of people from rural communities to town and cities.³²⁰

21.4.4 Conclusions

The Crown’s distribution of socio-economic aid and assistance before the mid-1930s was limited and ad hoc. Aid tended to be granted as a one-off response to emergencies or local agitation rather than as part of an ongoing plan to reduce poverty, inequality, or poor living conditions.

Provision of more permanent services, such as schools and hospitals, was no better planned. As a study of the establishment of Raetihi Hospital found,

Hospitals were not established through any complex social planning procedures, but as a result of pressure group politics interacting with the attitudes of government departments and an ad hoc regional authority. Local medical arguments were irretrievably mixed up with local commercial and financial interests and aspirations.³²¹

In short, getting help from the Crown often required connections and lobbying. Most Māori individuals and groups were not in a social, political, or economic position to do this effectively. Governments could usually ignore their pleas with electoral impunity.

As far as State assistance was concerned, the political system was essentially reactive, and Māori generally lacked the contacts to have their wants and needs met. Before the advent of the welfare state, provision for general welfare outside the areas of education and health was regarded as out of the ordinary.

There was some financial assistance though, and although this tended to be available to Māori, its provision was not always equitable. Different levels of payment to Māori on pensions or unemployment relief could be, and was, justified on the basis of Māori land ownership, or their more communal way of living. But it must have been evident to even a casual observer that Māori were no less needy than Pākehā who lacked the means to support themselves. Paying Māori less was simply discriminatory.

21.5 STATE ASSISTANCE, 1935–84

In New Zealand, the period from 1935 to 1984 was characterised by a massive expansion of the Crown's role. Governments attempted to manage the economy tightly, with a central aim of keeping unemployment as low as possible. The importation of manufactured goods was restricted in order to protect and promote local

manufacturing, creating many factory jobs throughout the country. Attempts were also made to strengthen the local economy in regions like Whanganui. Export profits, import tariffs, and relatively high taxes paid for a comprehensive, 'cradle to the grave' social welfare system that included unemployment and sickness benefits, universal old age pensions, free hospital care, and free education.³²² The economy relied on the export of farm products such as wool, meat, and dairy. From the 1960s, it was challenged by a series of international economic events, including the collapse of wool prices in 1966, the United Kingdom's entry into the European Economic Community, and the oil shocks of the 1970s.³²³ This led to wide-ranging reforms from 1984 onwards, in which the Crown relinquished much of its control over the economy and cut back elements of the welfare state.

Although this section looks at the years 1935 to 1984, most of the evidence focused on the years between 1935 and 1970, which means we are unable to say much about Crown activities or conditions in Whanganui in the 1970s and early 1980s. We did, however, hear about the beginnings of the kōhanga reo movement, and also first-hand claimant testimony about life in Whanganui from the 1930s onwards.

We begin our discussion of this period by talking about urbanisation and Māori employment to give context for the topics that follow: State-provided education, health, and other forms of assistance.

21.5.1 Urbanisation

For Māori in Whanganui and elsewhere, the defining change in the period from the 1930s to the 1980s was urbanisation. Between 1936 and 1971 the Māori population of the Whanganui inquiry district went from being nearly 80 per cent rural to nearly 70 per cent urban, reflecting national and international trends.³²⁴ Many Whanganui Māori left the inquiry district altogether.³²⁵ According to the 2006 census, just under a third of Te Āti Haunui-a-Pāpārangi living in New Zealand resided in the Whanganui and Ruapehu districts.³²⁶

Although the Māori population of this inquiry district was growing strongly in the mid-twentieth century, urbanisation led to a falling population in many rural areas. By 1971, the total Whanganui Māori population was more than double what it had been in 1936, but the rural population had dropped. Some rural settlements lost so many people that they came close to being deserted: in 1971, the Māori populations of Hiruhārama and Koriniti were less than a fifth of what they were in 1936. In other areas the population decline was less dramatic, but it was not unusual for the populations of small settlements to halve in the decades after the Second World War. Populations of some places, such as Pungarehu and Koriniti, fell even before the war, but in most areas migration was a post-war phenomenon.³²⁷

Johnny Tuka told us that Koriniti, a ‘vibrant whanau-filled community’ when he was a child, ‘had very few families remaining as permanent residents by the late 1960s.’³²⁸ Meanwhile, the Māori populations of Wanganui and other towns grew dramatically. Between 1936 and 1971, the Māori populations of Wanganui and Taumarunui increased about tenfold, and by 1981 nearly half of all Māori in the inquiry district lived in Wanganui.³²⁹ The 2006 census showed that 85 per cent of Māori in the district lived in urban areas.³³⁰ Even so, Māori remained a small minority in the city, and a larger minority in the towns.

(1) The parties’ positions on urbanisation

The parties in this inquiry disagreed on the causes of urbanisation. The claimants submitted that the Crown ‘facilitated’ urbanisation ‘for its own benefit’, namely the assimilation of Māori into the capitalist economy.³³¹ More specifically, they argued that Whanganui Māori had no real choice over urbanisation but were essentially forced into it by ‘the land loss, erosion of authority, social deprivation and the imposition of poverty’ which the Crown had brought about.³³² They submitted that they had received few benefits from urbanisation, which had damaged their culture and their connections to their tūrangawaewae.³³³

The Crown responded that it was not responsible for

the nature and extent of Whanganui Māori migration, which it said was part of a national and international trend which it could not have stopped or reversed.³³⁴ It added:

Whanganui Maori were not passive actors in this process . . . they chose to leave rural areas for a number of reasons. It was not the role of government to intervene and question this choice.³³⁵

The Crown rejected the idea that it had facilitated urbanisation for its own benefit, submitting that the claimants had not explained how it could have done this, or what the actual benefit was.³³⁶

The Crown acknowledged that some Whanganui Māori ‘may have lost their connection to their traditional sites’ following urbanisation.³³⁷ However, it also stated that ‘urbanisation is not some inherently evil phenomena [*sic*], which we take to mean that urbanisation had or has positive as well as negative effects.’³³⁸

(2) Social effects of urbanisation

Moving from Māori settlements in the country to towns and cities thrust whānau into a new social milieu: they had to adapt to an urban environment in which Pākehā culture predominated. This was a one-way process; Pākehā did not adapt their way of life to accommodate their new Māori neighbours.³³⁹ As they assimilated, several claimant witnesses told us, whānau became more atomistic and no longer felt responsible to the wider Māori community or hapū.³⁴⁰ As Rana Waitai put it, the move to nuclear households in town disrupted the shared intergenerational responsibility of ‘socialising, indoctrinating and conditioning the children as functional human beings.’³⁴¹ He argued that the heart of the problem was a housing policy that did not recognise the traditional extended family:

Grandparents and uncles and aunties were considered to be excess baggage in policy terms. Fathers were needed to supply the wants of industry and mothers were needed to not only keep the home running but raise the children as well

in conjunction with the father – in the manner of Pakeha domestic arrangements. Strange as it may seem neither mothers or fathers were conditioned to that new role – and there were casualties in the adjustment. There was not a wholesale parenting failure but there was a discernible shredding of the whanau fabric.³⁴²

Forcing Māori into a nuclear family arrangement ‘systematically eliminated the first line of traditional social control for the Māori family and in the process disempowered the older generation.’³⁴³ Māori children were no longer being properly socialised into society, allowing gangs to step in and take the role of family for many alienated Māori youth.³⁴⁴

Several claimants attributed the rise of gangs and other social problems of Whanganui Māori to cultural alienation.³⁴⁵ Jennifer Tamehana said that the loss of identity that occurred when people were alienated from whenua and hapū had a particular impact on youth:

When you have rangatahi that are disempowered as people then they will produce kids who are likewise disempowered and one more step removed from the solution. Our rangatahi were traditionally groomed for adulthood and taught whakapapa, kinship and accountability. Now they don’t know who they are; they don’t have role models. There is a huge following of American culture. The point being is that if you don’t provide the culture, the values and the role models, the rangatahi will find their own, good or bad.³⁴⁶

Mrs Waitokia also said that ‘our people don’t know who they are: their language, culture and way of life has been lost’. She told us that this was the biggest impact of urbanisation.³⁴⁷ Marama Dey said,

Young Māori moving to the city has not been overly positive for Whanganui Māori . . . Our people quickly went from an environment that was safe and in many respects culturally strong, to an environment where the Māori language was forbidden and being Māori was not seen as positive. Sadly too many of our Māori people in Whanganui, turned to a culture of bad language, drinking and drug dealing.³⁴⁸

Others explained that this disempowerment was the result of Whanganui Māori being cut off from their ancestral lands and rivers, which profoundly harmed their cultural and spiritual well-being.³⁴⁹ As Kereti Maniapoto said,

today’s descendants [of migrants] have little or no connection to their papakainga . . . in reality they are not ‘people of the land’ anymore. This separation contributes to feelings of helplessness and isolation.³⁵⁰

(3) *Whanganui Māori also retain links to ‘home’*

Not all urban Whanganui Māori became disconnected from their culture and tūrangawaewae, however. As the claimants noted in their closing submissions,

Nearly every witness that has stood before the Tribunal has spoken of the importance of their tūrangawaewae and the sense of identity, belonging and continuity it provides. It links the Whanganui people to their ancestors and contains the metaphysical imprints of their very being.³⁵¹

This is consistent with the view of the school teacher at Pipiriki in the late 1950s, who reported that although many people had left and had good jobs and homes elsewhere, they ‘still viewed Pipiriki as their home and the place they would return to die.’³⁵² At our hearings, Archie Taiaroa told us that rural marae experience

the constant return of our people from all parts of New Zealand, Australia and further afield. Some return to give birth, some to be baptised, confirmed or married, others to be buried within their ancestral lands and within the urupa of the whanau and hapu. Many more return each year to be with their whanau for these important life events and to replenish their spiritual and cultural wellbeing.³⁵³

However, although many retain a sense of connection to tūrangawaewae, numbers are required to keep a Māori community functioning, to manage and care for Māori land, urupā, and marae, and provide a home for those living elsewhere to come back to. As Mr Taiaroa

said, homecoming journeys reinforce and reaffirm the role 'of those of our people who remain as guardians of our turangawaewae'.³⁵⁴ Ongoing depopulation makes this a struggle.

(4) *Struggle to sustain ahi kā*

Mrs Waitokia told us:

My uncles conveyed to me how their livelihoods changed when they shifted into town looking for employment opportunities; we lost our working community at Atene as a result.

The only ones left back up on the farms were the grandparents. Large gardens and fruit orchards made chores like gardening, weeding, pruning and the harvesting of fruit a family affair, but with everyone shifting to town the mahi was left to the grandparents.

After the whanau shifted to town the gardens and orchards became no more. Some whanau in their search for employment just shifted off the lands leaving a derelict house.

Even today in the farming community they struggle to get people to go upriver and be employed as shepherds to assist on farms. People just aren't bred into that way of life anymore. We as a people have become accustomed to an urban way of life.³⁵⁵

Toni Waho told us how, at Karioi, the departure of so many people to the towns and cities meant that community facilities could not be maintained, and for a time there was only one fully functioning marae in the area.³⁵⁶ When people left Kaiwhaiki in the 1960s and 1970s, Mrs Huwyler told us, 'it made a huge impact on the community because there were fewer people to maintain the buildings and do work around the place'.³⁵⁷ Mr Ratana said that for some years he was the only kaikōrero at Parikino Marae, and also one of only three kitchen workers.³⁵⁸ In these circumstances the continuation of marae hospitality became difficult, and sometimes traditional activities could not be kept up at all.

Even in places where there was still a reasonable number of whānau remaining, they were not always the natural leaders and managers of resources. Speaking of Taumarunui, Mrs Chase told us:

The fact that we are confined to the lower socio-economic rungs means that the pool of people we can call on to be trustees, sit on the pae, or take leadership roles within our hapu and iwi is limited. For example, it's the same 8 or 10 people representing us most of the time on things like runanga . . . A lot of people are being thrown into this world of compliance that they are not really ready for'.³⁵⁹

(5) *Factors that motivated migration to urban centres*

The causes of urbanisation were varied and complex, and combined both push and pull factors – that is, rural life for Māori tended to be economically marginal (push) and urban areas offered better employment and other attractions (pull). The evidence before us tended to be anecdotal, with Tawhitopou Pātea of Ōtoko; Johnny Tuka of Koriniti; Haimona Te Iki Rzoska of Ngā Poutama; Eunice Ranginui, whose whānau came from Matahiwi; and Pōkaitara Martin Tānoa of Piriaka telling us how work declined in their areas and people left to find work elsewhere.³⁶⁰ (This evidence is quoted in chapter 19.) We learned that, with increasing mechanisation on farms and more complicated technology, the need for manual labour decreased in the 1950s and 1960s.³⁶¹

These accounts contributed to our understanding of migration from country to town in our inquiry district as a response to the concentration of paid work in towns, and the inability of the remaining Māori land resources to support the growing population. Farming continued on the relatively small areas of suitable land that Whanganui Māori still owned and controlled, but this comprised a negligible part of the economy, pursued by a small minority.

Whanganui Māori were integrated more fully into the new economy and the wider society and also improved their standard of living. This adaptation had a cost in cultural terms, as many claimants told us. Movement away from rural homelands distanced people from their communities, language, and traditions. A diminished sense of their Māori identity and their connection with Whanganuitanga arguably led to some of the significant social problems that people increasingly faced – especially young people.

(6) No findings on urbanisation

We lacked evidence that either the push or the pull came from deliberate Government policy aimed at moving Māori out of rural areas. Nor did we see evidence about urbanisation as a phenomenon in New Zealand as compared with other countries. We are aware that urbanisation was, and continues to be, a world-wide phenomenon. We consider the evidence about urbanisation in Whanganui was too fragmentary to enable us to make findings on urbanisation, but we note it as an important part of the context within which Māori experienced State assistance in this period.

21.5.2 Māori employment

There were still rural jobs in some parts of the district in the post-war years. There tended to be work in the south-west of the district (Waitōtara, Kai Iwi), although it was manual work and mostly for low pay.³⁶² This was the lot of most Māori in the Whanganui area, and many also had to make do with only seasonal and casual work.³⁶³ Even this kind of work began to dry up, though, and there was more employment in towns like Ōhākune, Taumarunui, Waiōuru, and Raetihi. Jobs were most plentiful in Wanganui, at least initially. Like the jobs Māori had in the country, these were mainly low paid and unskilled,³⁶⁴ although the pay still tended to be better.³⁶⁵ Manual labour in towns was better than no work, which was the fate of many Māori in the period of regional decline that followed.

The Crown's contribution to employment prospects mainly comprised offering jobs in Government departments such as Railways and Forestry, which sometimes employed more people than they needed, in order to keep unemployment down. It appears also that regional economic development was one of the motives behind a 1960s proposal to build at least three hydroelectric dams on the Whanganui River. These were to be located at Kaiwhaiki, Ātene, and Parikino, and would have brought increased employment, spending, and investment to the district.³⁶⁶ As we discuss in chapter 26, however, the dams would also have flooded and destroyed homes, urupā, and

marae, and the proposal had a traumatic effect on local communities.

21.5.3 Education

Perhaps the principal reason for the concentration of Māori in low paid, low skilled jobs was that, by the middle of the twentieth century, many still had only rudimentary education.³⁶⁷ In some areas, plentiful unskilled jobs encouraged young Māori to drop out of school to work. Some were obliged to get a job because their families could not support them.³⁶⁸ Tracey Waitokia explained that supporting secondary school pupils was particularly difficult for rural whānau, because parents had to pay for boarding and school costs, and also do without the youngsters' unpaid farm labour.³⁶⁹ But dropping out of school was an action that had a long tail. Those who left school without qualifications – especially boys, from the 1950s on – had available to them a much smaller range of employment options, usually limited to relatively low-paid jobs that were vulnerable in economic downturns.³⁷⁰ These constraints on progressing to higher wage scales, or managerial and decision-making roles, frequently applied for the whole of a person's working life.

After the Second World War, Whanganui Māori could much more easily access education, especially beyond primary level. This was because many more lived in towns and cities – better access to education was one of the reasons for whānau moving from the country.³⁷¹

For our claimants, one of the most important issues in this period was the place of te reo and tikanga Māori in the education system. It was in these years that levels of fluency in te reo Māori began to decline. In this inquiry, both claimants and the Crown accepted the finding of the Te Reo Tribunal that education policies of the mid-twentieth century and earlier harmed te reo Māori, and breached the Crown's duty to protect the language.³⁷²

(1) Culture, language, and the education system

The formal education that the State provided made no more space for Māori language and culture in this period

than it had in those that preceded it – but for this period we had the benefit of claimants’ first-hand accounts.

(a) *Punishment for speaking Māori at school:* A recurring theme was punishment, often physical, for speaking te reo Māori at school.³⁷³ For example, Rangitauira Te Marae told us that ‘if we ever tried to speak Māori [at school] we were told to stop. It made me feel ridiculed’. As a result, neither he nor his brother were able to speak Māori.³⁷⁴ Tahuri Te Ruruku also said that his fluency in te reo Māori declined as a result of being strapped for speaking it at school. ‘Today, I can still understand Maori, but I cannot really speak it fluently.’³⁷⁵ Julie Ranginui spoke about the long-term effects of the English-only policy:

The language is in a fragile state and there are not enough speakers. Our generation has had the tradition of korero literally beaten out of us. Or many have simply discarded their reo because of attitudes towards things Maori which to me is a direct result of the Crown’s policies to assimilate Maori.

My schooling experiences are an example of how the Crown’s education policies have threatened the ongoing survival of Ngāti Haua and its reo.

I was given the cane on my first day at school for speaking Maori. I asked the teacher in Maori: ‘*Kei te hia haere au ki te wharepaku ki te tiko?*’

I was given the cane for doing this. Two canes across my bum. I didn’t know how to speak English, it was only my first day at school so I hadn’t yet learnt English and here I was getting the cane for asking to go to the toilet in Maori.

After my first experience with asking to go to the toilet, every time I wanted to go to the toilet I had to run to my brother’s classroom to get him to ask for permission for me to go to the toilet. My brother was older than me and in another classroom which was some distance from my classroom. As soon as I needed to go to the toilet I would get up and start running out of the classroom as fast as I could before the teacher could stop me from getting out. Sometimes I would get caught before I made it out of the classroom or before I

got to my brother’s classroom and I would end up wetting myself.

When this happened the teacher made me stand in a corner facing the corner; I would have to stand here having wet myself until someone else had done something wrong to be put in the corner. I often would be standing there a long time before someone else did something wrong and before I could go off to clean myself up.

When my kids were growing up I never spoke Maori to them because I didn’t want them to be treated how I was treated when I spoke Maori at school. I deliberately did not teach my children te reo Maori. That is something I now regret. My kids have a basic level of reo but my mokopuna are better speakers than they are.³⁷⁶

Hine Stanley’s parents similarly refused to speak to her and her siblings in Māori, because ‘they thought that we would be punished like they were for speaking Maori when they were at school’.³⁷⁷ As the Te Reo Tribunal found in 1986, this policy inflicted multi-generational harm, which lasted long after the policy was lifted.³⁷⁸ By the late 1970s, it was estimated that in the entire country fewer than 100 pre-school children spoke Māori fluently.³⁷⁹

(b) *Parents lose confidence in the value of Māori knowledge:* As well as being fearful of punishment, many parents had come to believe that te reo Māori and tikanga Māori were useless knowledge, whereas familiarity with the English language and European knowledge would help their children advance.³⁸⁰ Christina Tapa, who attended Parikino School before the war, recalled that her father believed that ‘it was English that was going to, in the future, get us jobs and provide a better life. He would not let us use te reo although he was fluent, as was my mother.’³⁸¹ In like vein, Tracey Waitokia told us that her father was not taught traditional knowledge because the elders thought that it ‘wasn’t going to get us anywhere in the Pakeha world’.³⁸²

Although State schools and their teachers certainly

contributed to the general belief that Māori knowledge was not as valuable as Pākehā knowledge, the situation was not static over time. School inspector Tom Fletcher wrote that when he began work in 1931, there was

practically nothing Maori in the [native] schools except the Maori children. No Maori song was ever sung; there was no sign of Maori crafts nor any interest in Maori history as part of the curriculum. The values in their own culture were ignored.³⁸³

By the time Fletcher retired in 1947, this had changed. From the early 1930s, native school teachers were encouraged to incorporate elements of Māori arts – weaving, carving, and kapa haka – into the curriculum.³⁸⁴ These tended to be taught by older pupils or members of the wider community, as their knowledge was generally better than that of the teachers.³⁸⁵ At Pipiriki, for example, the older girls taught the younger ones to perform poi and action songs.³⁸⁶ Ex-pupils of Parikino School Veronica Baker and Carol Tyson-Rameka told us ‘we got the best of both worlds’, because the Parikino community was heavily involved with the native school.³⁸⁷ In the mid-1970s, Ōhākune Primary School developed a close relationship with Maungārongo marae, with tangata whenua teaching students waiata, kapa haka, te reo, Māori art, and tikanga. The school later hired a teacher’s aide to teach te reo.³⁸⁸

(c) *Māori children lead a double life*: However, Māori culture was still completely absent from the board schools where the majority of Whanganui Māori children went daily. Retihia Cribb told us that there was no Māori dimension at either the Ūpokongaro Board School or Ōtoko Māori School when she was a pupil in the early 1960s.³⁸⁹ Her teacher at Ōtoko recognised her potential and encouraged her to achieve, but she later realised that as a child she ‘lived a double life’, as did her parents and grandparents.

I grew up Māori when in my natural surroundings but the moment I walked through any school gate I left my indigenous suitcase there and entered a world where I was stripped of my heritage.³⁹⁰

We received some evidence that Māori children were abused and punished disproportionately in this period. Korty Wilson told us that Māori at Ruapehu College were ‘picked on and victimised’ in the 1970s.³⁹¹ Dean Hiroti said similar things happened at Raetihi School; Māori students were made to clean teachers’ offices with toothbrushes, were whistled at ‘like dogs’ and hung on coat hooks.³⁹²

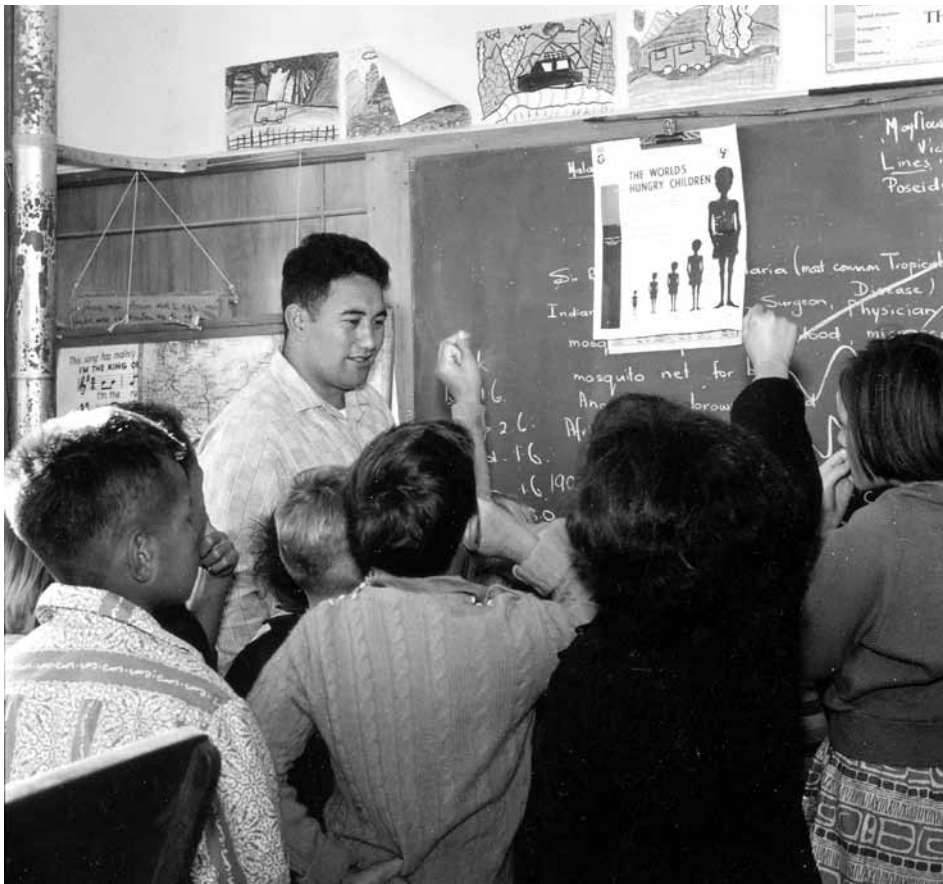
(2) *The Māori school system disestablished*

Māori (formerly native) schools were disestablished in 1969. The remaining Māori schools became general schools. The reasons for the change included the urbanisation of Māori, and misgivings about segregated education.

Even before urbanisation was fully underway, the vast majority of Whanganui Māori children were attending board, rather than native, schools. In 1940, there were 1,393 Māori children attending primary school in the Wanganui Education Board district, of which 1,150 (81.8 per cent) attended board schools. A further 161 attended native schools, while 82 went to the Catholic mission schools at Rānana and Hiruhārama.³⁹³ Native school rolls dropped further as the migration to towns got underway, and they began to close. Parinui Native School closed in 1940,³⁹⁴ and Ōtoko Māori School in 1964, with its remaining pupils moving to the board school at Kākātahi.³⁹⁵ In general, though, native (Māori from 1947) schools which could maintain their rolls were given full State support: nationally, the native school budget more than tripled between 1935 and 1938.³⁹⁶ In Whanganui, new buildings went up for the Māori Schools at Parikino in 1953 and at Pipiriki in 1959.³⁹⁷ Both schools were given very positive assessments, and by 1960 Parikino had Māori teachers.³⁹⁸

By the 1950s, though, education officials were questioning whether the separate Māori school system was necessary or appropriate. By this time, the educational view internationally was that segregated education was not a good idea, regardless of context or content. Māori schools carried on into the late 1960s only because there was widespread Māori opposition to their abolition.³⁹⁹

In 1964, a meeting at Parikino discussed a proposal that the Wanganui Education Board take over the Māori schools along the river. The District Senior Inspector



Parikino Māori school pupils in classroom with teacher George Parekōwhai, 1963. By the early 1960s, speaking Māori in school was no longer punishable, but the Tribunal was told how corporal punishment was used against children who spoke Māori at school in previous decades. The situation did begin to change. From the early 1930s, native school teachers were encouraged to incorporate elements of Māori arts, such as weaving, carving, and kapa haka, into their curriculum. Later, the community became heavily involved with Parikino School, and pupils Veronica Baker and Carol Tyson-Rameka told the Tribunal that because of this they got the best of both worlds. It was not until 1960, though, that Māori teachers were employed at the school.

of Education told the meeting that there would be no change in the functioning of the schools. Unconvinced, a kaumātua declared that the Māori Schools Service had served the district well, and there was no need to change a good system that the older people had come to understand. The meeting agreed that further consultation was necessary. Three years later, in 1967, there was a postal ballot in which the Parikino community voted decisively in favour of keeping their Māori school.⁴⁰⁰ In 1969, however, when all Māori schools merged with the general school system, the Pipiriki, Rānana, Matahiwi, and Parikino schools were transferred to the Wanganui Education Board, and Pāmoana merged with Parikino.

The Hiruhārama Catholic mission school also closed at this time.⁴⁰¹

(3) Accessibility of secondary education

Secondary school became more accessible to Whanganui Māori, but mostly because of urbanisation rather than because access from rural areas improved. Before urbanisation, the rate of enrolment in secondary school was very low for Māori: in the late 1930s there were about 21,000 Māori children attending primary school nationwide, but only around 900 at secondary school.⁴⁰² Changes to education funding had made secondary school more affordable. Secondary education was now free, and children in remote

areas were entitled to either free transport to school or a boarding allowance of 7s 6d a week. Even so, the subsidy was too low for many Māori families, because they could not find the extra funds to cover the actual costs.⁴⁰³ The 1941 Education Department report acknowledged that, because there were few rural high schools and hardly any boarding facilities for Māori, 'the general State provisions for the post-primary education . . . do not, in fact, provide for many Maori children.'⁴⁰⁴ Tawhitopou Pātea told us that most of the older children at Ōtoko in the 1940s and 1950s did not go to secondary school because their parents could not afford to pay their board.⁴⁰⁵ Scholarships were available for State and denominational secondary schools, but there were only 220 recipients in 1940, and this had not really risen since the 1920s. The number did increase to 309 in 1949, but overall Māori attendance at secondary schools continued to be disproportionately low.⁴⁰⁶

A push to provide secondary school facilities in remote Māori areas in the 1940s and 1950s resulted in the establishment of several Māori district high schools. In 1958, the Education Department proposed such a school at Matahiwi. The Māori schools officer noted that a secondary school for the Whanganui River had been needed 'for some time', since the only way the children could obtain post-primary education was by boarding. The district was isolated, had poor roads, and was 'not sufficiently strong financially to enable children to be sent out for education in any great numbers.'⁴⁰⁷ The department knew the roll would be small, perhaps approaching 40 by 1964, but publicised the project and held consultations in the river communities. Opinion among the residents was divided, with some welcoming the proposal and others expressing a preference for the existing practice of sending their children out to city high schools and church boarding schools. In the end the proposal did not proceed.⁴⁰⁸

21.5.4 Health

From 1938, the health system was overhauled. Those in need of care gained better access – especially patients who could not pay medical fees. This had a positive effect on rates of Māori mortality, especially in infancy and from

infectious diseases. It was not, however, enough to fully counter the large health disparity between Māori and non-Māori, because many of the factors that accounted for the difference were more to do with poor housing and generally deprived circumstances than health care. Most of the statistics cited in this section relate to the national population, rather than to the Whanganui area specifically. We saw no evidence that the health of Whanganui Māori differed from that of Māori elsewhere.

For the claimants, the main health issue in this period was the paucity of services in rural areas.⁴⁰⁹ The Crown acknowledged that the access of rural communities to health care was somewhat limited but submitted that this was because of their 'relative isolation, rather than positive neglect', and that health-care access was difficult for many rural communities, Māori and non-Māori.⁴¹⁰ It noted the additional expense of providing services to isolated areas, implying that this justified providing a lower level of service.⁴¹¹ The claimants contended that, even taking into account the extra cost and other difficulties, the Crown's provision of health care to rural areas was unreasonably poor.⁴¹²

This section addresses the health status of Whanganui Māori in the mid-twentieth century, and the Crown's provision of health care in the inquiry district. We pay particular attention to the level of care available outside the towns and Wanganui city, and the extent to which the care provided was appropriate.

(1) *The health status of Whanganui Māori*

In the 1940s, Whanganui Māori continued to experience high rates of infant and child mortality. The Parikino Native School teacher reported in 1940 that every family in the kāinga had lost children: in one family, six of their 13 children had died.⁴¹³ Te Aroha Waitai told us that she was the sole survivor of her mother's 18 children; the rest had died, mostly in childhood, of either influenza or tuberculosis.⁴¹⁴ This pattern would soon change.

(a) *Māori mortality drops:* Between 1945 and 1966, the national mortality rate for Māori under five years old

dropped from 41.9 deaths per 1,000 boys to 7.8, and from 33.6 per 1,000 girls to 7.3. For the Māori population as a whole, death rates dropped from 16.9 per 1,000 men and 15.5 per 1,000 women in 1945 to 5.9 and 4.4 respectively in 1966.⁴¹⁵ These were significant improvements over a period of 20 years. The gap between Māori and non-Māori life expectancy at birth was still 7.3 years for males and 10 years for women in 1966, but the gap was less than half of what it had been in 1945.⁴¹⁶

(b) *The Māori population grows*: Because of the huge drop in death rates and continued high birth rates, the Māori population grew by nearly 4 per cent a year between 1956 and 1966. By contrast, the European population grew by only about 2 per cent a year, despite the 'baby boom' and high rates of European immigration.⁴¹⁷ The drop in mortality was caused primarily by a huge drop in the incidence and fatality rates of infectious diseases, particularly tuberculosis. As a result, the Māori population in the district steadily grew, greatly outstripping the increase in the non-Māori population. The Māori population went from 3,243 in 1936, to 7,303 in 1971, to 13,164 in 2006. In the same period, the non-Māori population declined to 42,018, which was below its level in 1936.⁴¹⁸

(c) *Decline in infectious disease*: Māori susceptibility to infectious disease declined dramatically. Official statistics show that in 1939 the infectious disease death rate for Māori was 615 per 100,000 people, compared to 69 per 100,000 for non-Māori.⁴¹⁹ By 1961, the Māori rate had dropped to 44.8 per 100,000, while the non-Māori rate had dropped to 10.4 per 100,000.⁴²⁰ For respiratory tuberculosis, the Māori death rate dropped from 440 per 100,000 people to 23.3, while the non-Māori rate dropped from 39.8 to 4.2. As infectious diseases receded as a cause of Māori death, it became increasingly evident that Māori were suffering from cancer, heart disease, and other degenerative conditions at higher rates than non-Māori, and at younger ages.⁴²¹ Into the 1980s and beyond, Māori rates of illness and death from most health conditions continued to be higher than those of non-Māori.⁴²²

The two major contributors to the drop in Māori death rates seem to have been better health care and better standards of living, both of which we address below.

(2) *Access to health care under the welfare state*

In New Zealand as a whole, health care became much more accessible for many people from the late 1930s, especially those on low incomes. This was due primarily to reforms under the Social Security Act 1938. The 1966 *Encyclopaedia of New Zealand* stated that

The Social Security Act introduced a new concept – namely, that every citizen had a right to a reasonable standard of living and that it was a community responsibility to ensure that its members were safeguarded against the economic ills from which they could not protect themselves.⁴²³

The Act introduced universal pensions for over-65s, and there were also benefits for widows, orphans, invalids, the temporarily ill or incapacitated, and the unemployed. It also removed fees for hospital care, specialist treatment, and ante-natal and post-natal care.⁴²⁴ In subsequent years the scope of the Act was broadened to include a universal family benefit, and more free medical care and equipment, including outpatient hospital care, x-rays, dental care for under-16s, and prescription medication.⁴²⁵ As the Napier Hospital Tribunal found, 'the introduction of universal entitlements and benefits . . . had an immediate impact on Maori by removing the cost barriers to accessing health services, especially hospitals'.⁴²⁶ General practitioner fees were also subsidised under the Act, but general practitioners were still entitled to charge fees to patients. Some provided their services free to patients, collecting the subsidy only.⁴²⁷ It is likely that fees continued to deter some Whanganui Māori from visiting doctors. Dentistry was never fully included in the scheme, except for children.⁴²⁸

As a result of the Social Security Act, health care became much more accessible to Māori who lived in Wanganui, and, to a lesser extent, in the towns of our inquiry district. For those who remained in small rural settlements, however, access continued to be problematical, and several

claimants told us that this was one of the motivating factors behind urbanisation.⁴²⁹

(3) *The shortage of medical professionals in rural areas*

In 1922, 27 per cent of all general practitioners in New Zealand were in rural areas, but by 1941 it was only 18 per cent, and this was at a time when the Māori population was increasing and still lived mainly in rural areas.⁴³⁰ In 1940, the Health Department considered appointing full-time doctors to areas with large Māori populations. The medical officer of health for the Whanganui region, Dr Harold Turbott, suggested that such an appointment was an 'urgent necessity' there, but the demands of war meant that nothing came of the proposal.⁴³¹ Amendments to the Social Security Act allowed for doctors to be subsidised in isolated areas otherwise unable to attract general practitioners, but this did not happen in our inquiry district.⁴³² Raana Māreikura told us that in the 1940s her whānau lived 12 miles from the nearest doctor, 'which was a long way when you had no vehicle'. The whānau lost a baby in the 1940s, which she thought might not have happened if a doctor had been available.⁴³³

The lack of doctors was partly alleviated by the provision of more public health nurses, who focused their attentions on Māori. By 1939, there were 49 such nurses nationwide, who in that year treated 58,000 Māori and 2,174 non-Māori, supervised the birth of 336 Māori and 12 non-Māori babies, and made 1,398 visits to Māori schools.⁴³⁴ In 1940 Turbott wrote that there was one nurse for every 1,750 Māori, but there needed to be one for every 1,000 or fewer, since they could 'not implement their wide programmes satisfactorily with unit populations larger than this'.⁴³⁵ One of the new nurses was appointed to Pipiriki in 1936, with responsibility for the settlements further downriver, as well as Raetihi and Ōhākune.⁴³⁶ She was transferred to Raetihi in 1956 'because of the drift of population from this area and other circumstances'.⁴³⁷ The nurses' job was made more difficult by inadequate roads and general transport difficulties in rural parts of the district, which also prevented people going to the city to visit doctors or the hospital.⁴³⁸

The problem of rural access to medical care was recognised at the time. The Pipiriki branch of the Māori Women's Welfare League reported in 1958 that the bus service to Wanganui ran only twice a week. The only other ways to get to hospital were by boat with livestock, or by taxi.⁴³⁹ In 1964 the Health Department acknowledged that the lack of medical services in rural parts of the Whanganui district meant that most women did not receive ante-natal care or seek medical care for their infants and children as often as they should. In the city, by contrast, medical care was readily available and as a consequence there was little chronic illness among the children. A paper for the department's Māori Health Committee stated that medical services 'must somehow be made available' to Māori in isolated rural areas, and suggested a range of ways this could be achieved.⁴⁴⁰ Another paper explained that the Whanganui area was particularly challenging due to poor roads and lack of transport. There was also a shortage of medical professionals, and the mileage allowance for rural general practitioners was too low, compelling them to ask for extra money from patients. The paper's author noted that most Māori could not afford this.⁴⁴¹ However, although these obstacles to wellness were known about and understood, the situation did not improve, and remained a problem into the twenty-first century.

(4) *Cultural barriers to health care*

The biggest barriers between Whanganui Māori and health care in the mid-twentieth century seem to have been distance, a problem allied with the cost of paying for transport and doctors' fees.

It appears that cultural factors also deterred some people, particularly older Māori. From the 1930s, health officials in Whanganui and elsewhere noted that Māori were becoming less averse to hospitals.⁴⁴² In 1931, there were said to be more Māori patients in Wanganui Hospital 'for comparatively normal times than ever previously in its history'.⁴⁴³ However, in 1937, the medical officer of health, Harold Turbott, wrote that older Māori found hospitals and tuberculosis sanatoria alien places, especially if they

were not fluent in English. ‘The urge was always to get away home where their wants would be readily understood, and where friends could come and go as they pleased.’⁴⁴⁴ Mrs Huwyler told us that in our district in the 1950s and 1960s:

Most of our people had a profound fear and mistrust of hospitals. If one had the misfortune to be admitted this invariably meant death. People would hold off going to hospital because of this fear and by the time they did go, they were already on their death bed. The very thought of going to hospital affected them mentally and their will to live reduced drastically.⁴⁴⁵

Discrimination was also a factor. Eddie Rātana told us that, as a child in the post-war years, he was a patient in Wanganui Hospital. He said that ‘the Maori children were treated differently by hospital staff from the pakeha children. Maori children were also kept in separate wards.’⁴⁴⁶ Turbott confirmed this:

Unfortunately, some public hospital authorities are unsympathetic to Maoris, do not provide as complete a service as for Europeans, and some staff either show, or the Maori instinctively detects, racial antipathy. Such institutions hinder preventive health, for free use of base hospitals is the pivot around which health work revolves.⁴⁴⁷

We saw no evidence that anything was done to improve these deleterious attitudes, even though at least the insightful recognised that they were detrimental to health outcomes.

(a) *Māori in the medical professions*: In the period when Turbott was writing, there were few Māori working in the health system. The Crown recognised the desirability of having Māori in the health sector, and from the early twentieth century there was provision for Māori sanitary inspectors, and scholarships for Māori nurses. Underrepresentation of Māori in the medical professions persisted until at least the 1980s, though, in the Whanganui

district and elsewhere.⁴⁴⁸ A 1989 report on the subject concluded that no effective or sustained programmes had ever been put in place to rectify this situation.⁴⁴⁹ The main reason for the under-representation was probably lower levels of Māori educational achievement, but discrimination was possibly also a factor.

(b) *Traditional healing*: Some Whanganui Māori continued to use traditional Māori healing, including tohunga, as well as, or instead of, hospitals and doctors. Many witnesses spoke about the traditional herbal remedies that were still used, particularly in times and places where western medical aid was not available.⁴⁵⁰ Kurai Toura recalled that, when she was a child at Matahiwi in the 1950s, her grandmother gathered plant material for rongoā. ‘Only when it was really necessary’ would consideration be given to travelling to see the doctor or hospital in town. ‘Most families we knew at Matahiwi practised Rongoa back then,’ she said:

It was a tradition handed down by the simple means of titiro whakarongo – look and listen. My grandmother didn’t trust the Pakeha medicine, it was unfamiliar to her. Also, along with the traditional healing went karakia, which was not a practice of Pakeha medicine.

She added, ‘rongoa was still necessary in those times because it was a long way downriver to a doctor or hospital’.⁴⁵¹

21.5.5 Housing

The parties to this inquiry did not focus much on housing. We include it as a topic because of its impact on health. Poor housing persists as one of the key reasons for continued health disparity between Māori and non-Māori.

It seems that poor housing was a reality for the Māori population of this district throughout the twentieth century, and particularly in rural areas. However, it was not until the 1930s that more than anecdotal information became available. What we know indicates substandard conditions in the 1930s and 1940s, and significant

improvement thereafter – although not enough to eliminate the problem.

This section briefly investigates housing conditions for Whanganui Māori in the mid-twentieth century; what steps the Crown took to improve them, particularly in isolated rural areas; and how this assistance compared with what was provided to non-Māori.

(1) *Māori housing conditions in Whanganui*

Crown authorities began to systematically collect information on Whanganui Māori housing from the 1930s. This is difficult to compare with information on non-Māori housing, which tended to use different categories, but does indicate that some whānau were living in very poor conditions. The 1936 census showed that nearly 30 per cent of Māori-occupied houses in the inquiry district were ‘huts or whare’, while another five per cent were camps or tents.⁴⁵² The Whanganui inspector of health reported in 1937 that three Pūtiki houses were unfit for human habitation, while another two were overcrowded. One, which was home to two adults and two children, was ‘very small and low and is reached only by a plank over a tidal area’. Another house, which was in ‘fair condition’, housed nine adults and eight children.⁴⁵³ This may have been the same house that in 1949 was reported as housing 19 people. It had a leaking roof and insanitary drains, and was considered a health hazard.⁴⁵⁴ In 1938, the Native Department reported that

The conditions disclosed in some of the reports by the supervisors are shocking. A typical case is that of an old building situated at Parikino Pa, on the Wanganui River. This building was described by the building supervisor as an old shack built of slabs and patched up with old sheets of iron. It had neither flooring nor lining, and the chimney was built of old iron. This miserable abode of one room contained the applicant, his wife, and daughter, and, as stated by the supervisor, was unsuitable for human habitation.

In another case, also on the Wanganui River, it was discovered that the applicant, his wife, and three adopted children were living in a one-roomed whare with neither flooring nor lining, their beds being spread on the earth floor, with dry

fern-leaves and straw as the matting. The building supervisor stated that the occupants appeared to have no initiative, and it is not to be wondered at considering the deplorable conditions in which this family was living.⁴⁵⁵

(a) *Traditional housing not a preference:* Although traditional whare could have been a cultural choice for Māori, we do not consider that it was. The claimants’ evidence depicted the housing circumstances of their childhoods as arising from an inability to afford better alternatives. Mrs Huwlyer, for example, spoke about Kaiwhaiki:

Our living conditions were typical of all families at the pa. The house was small. It consisted of a kitchen cum living room and a couple of tiny bedrooms. We didn’t have a toilet or washing facilities. Heating and running water was a luxury that no one could afford. Owning a water tank was a big deal. Bathing and laundry needs were either done down the river or in a little shed if one had the money to erect one. There weren’t a lot of blankets to share around and in our home; it was commonplace for family members to sleep under old heavy coats. The rooms could barely accommodate two beds and there were always 2 or 3 people to a bed. Power didn’t come to the Pa until 1952.⁴⁵⁶

Tahuri Te Ruruku, who was brought up in Piriaka, described the old and dilapidated house occupied by his family. ‘The corrugated iron roof was badly rusted and leaked when it rained . . . We had no running water in that house, and no hot water cylinder.’⁴⁵⁷

Conditions like these were a legacy of poor living conditions from the past, and did not indicate how Māori wanted to live in the twentieth century. They simply too often lacked resources to make the necessary changes.

This was also the light in which officials viewed Māori housing, when it came under scrutiny in the mid-century. The Māori Affairs Department reported in 1956 on the substandard housing in Pipiriki where almost all of the 44 adults and 66 children lived. Similar reports came in for the next three years.⁴⁵⁸ Eleven dwellings were recommended for demolition, and the need to rehouse their occupants was described as urgent.⁴⁵⁹ Māori housing

was also identified as in serious need of improvement in Taumarunui, Waitōtara, Kai Iwi, and other areas.⁴⁶⁰ Some families moved to the towns and cities partly in order to improve their housing.⁴⁶¹

(b) *Comparative data for housing:* Amenities data from the census indicates that Māori housing was substantially better in Wanganui than in rural areas, while town and borough housing tended to be better than rural housing in some ways and worse in others, but never as good as city housing. In 1945, for example, the percentage of Māori homes with electric lighting was 90 per cent in the city, 54 per cent in the towns and boroughs, and 24 per cent in the rural areas.⁴⁶² However, town and borough homes were less likely to have hot water and bathrooms than rural homes, which in turn were less likely to have such amenities than city homes. By 1966, the last year in which data was collected, the percentage of Māori homes with basic amenities had improved in all areas. However in rural areas, 49 per cent of Māori homes were still without a flush toilet, and 17 per cent were without a bath or shower. At all times, Māori homes were less likely to have amenities than non-Māori homes in the same area. Sixty per cent of non-Māori homes in rural areas had electric lighting in 1945, for example, and in 1966 just 15 per cent were without a flush toilet and three per cent without a bath or shower.

Overcrowding was also more prevalent in rural areas. A 1960s survey showed that 55 per cent of Māori homes were overcrowded in Waitōtara County, 46 per cent in Waimarino County, and 40 per cent in Wanganui city.⁴⁶³ Neville Fox told us that most Māori families in Taumarunui ‘were living in crowded conditions’. He, his parents, and his eight siblings lived in a small three bedroom house, while his Māori neighbours had 10 children and extended whānau living in their house.⁴⁶⁴ Not surprisingly, most of his whānau ‘had some sort of sickness when growing up’.⁴⁶⁵

(2) *Housing assistance*

A theme of this report is the difficulty Māori experienced in borrowing money. This was an obstacle not only to the

development of Māori land, but also to the upgrading of their housing.⁴⁶⁶

(a) *The Native Housing Act:* It was not until 1935 that the Government passed the Native Housing Act to provide home loans from the State. This did nothing to help those Māori who were most in need, however, because they were unable to provide a deposit or make substantial repayments. An amendment in 1938 established a Special Native Housing Fund for the most needy. This was a departure from standard Crown housing policy, which was based on cost-recovery. Other than housing provided to pensioners and refugees, it had no parallel for other New Zealanders until the mid-1970s.⁴⁶⁷ The fund did provide new homes for some families in dire need,⁴⁶⁸ but was too small to assist many.⁴⁶⁹ As to its deployment in Whanganui we do not know much, but in 1949 Hoeroa Marumaru, a Māori identity and former Māori welfare officer, wrote to the Prime Minister telling him that only 14 houses had been built for Māori in Whanganui that year. This was

much too few to meet a demand of 25–35 houses annually for the next 4 to 5 years . . . it seems to us that the local office of the Native Department has not as yet realised that Housing for our people is a *Major* and *Urgent* necessity. [Emphasis in original.]⁴⁷⁰

There were many reasons why so few houses were built, and why progress tended to be slow. In some areas, drainage and water supplies had to be installed before houses could be built.⁴⁷¹ The Second World War slowed progress to a crawl, as material and labour were both in short supply.⁴⁷² Even after the war, shortages of tradesmen and supervisors continued to cause delays, as did the rising cost of building materials.⁴⁷³ The huge rise in the Māori population meant that resources had to be increased just to hold conditions steady.⁴⁷⁴

(b) *Raising the money to buy a house:* A constant factor in the housing shortage was that housing loans were still out of reach for many Whanganui Māori families. The 1938 special fund was only small, so most had to raise enough

money for a deposit or loan repayments. The casual and seasonal employment that was common for Māori, particularly outside the towns and cities, made servicing a housing loan difficult or impossible.⁴⁷⁵ Saving for a deposit was also difficult. In 1952, it was observed that only three out of 13 applicants for loans in Raetihi and Ōhākune had made any progress towards saving the required deposit.⁴⁷⁶ The Whanganui district Māori welfare officer commented that it generally took several years before a person needing a loan could make an application, 'because from their earnings, after providing for the needs of his dependants, they were able to put aside only a small amount towards a deposit for a house.'⁴⁷⁷ Some officials thought Māori too apathetic to put in the effort required for a loan, but others observed that would-be applicants faced economic obstacles that not only made it pointless for them to apply, but also sapped their morale and thus their ability to find solutions.⁴⁷⁸

(c) *The particular problems associated with rural housing:* Although the Department of Māori Affairs acknowledged the urgent need to improve rural Māori housing, it was reluctant to encourage Māori to build new houses in out-of-the-way kāinga (settlements) because of the limited employment prospects there.⁴⁷⁹ At the end of 1959, the Board of Māori Affairs decided 'it could not prudently consider loans for housing' at Pipiriki because of the town's uncertain economic future, and because of its isolation and lack of amenities.⁴⁸⁰ The department's 1960 report stated that applicants 'who live in remote areas and are unwilling to accept urgently needed houses in more suitable localities present one of the greatest problems in Maori housing'.⁴⁸¹ As rural employment declined, families with young children especially were encouraged 'to move to more developed areas in order that they may take advantage of improvements in housing and modern hygienic standards of living'.⁴⁸² Eunice Ranginui told us that this policy affected the population of Matahiwi, because residents 'had to move to town to get housing assistance'.⁴⁸³

Even when finance was not a problem, planning

restrictions under the Town and Country Planning Act 1953 often prohibited people from building houses on rural land.⁴⁸⁴ 'My whanau were required to leave Kaiwhaiki in the early 1960s', said Gregory Rātana, because

my parents were unable to build on a two-acre block of land at Te Mahoe, just past Kakawai towards Arakuhu . . . The Whanganui County Council told my parents that they were not allowed to build on their land because it was not zoned residential.⁴⁸⁵

Even in Pūtiki, across the river from Wanganui, planning regulations meant that each house had to be on five acres of land. Some families left as a result.⁴⁸⁶

Although local authorities were never 'the Crown', they were created by legislation, and the rules they followed as far as planning was concerned were those laid out in the Town and Country Planning Act. Thus, the Crown set the framework within which local authorities prohibited Māori from using their land for a family home.

(d) *The family benefit enables Māori home ownership:* Housing loans became somewhat more accessible in 1958, when family benefit recipients were allowed to 'capitalise' their benefits. This meant that the benefit, which had been universal since 1946, could be paid in advance and used for a mortgage deposit or to purchase land.⁴⁸⁷ Capitalisation put home ownership within the reach of many families, including Māori, for the first time.⁴⁸⁸ The Ōhākune Borough Council observed in 1962 that:

Without doubt the greatest single factor enabling this record of achievement [improving Māori housing] has been the ability to capitalise on the Family Benefit. Gone now are the days of despair and frustration at trying to bridge the gap between the limited loan available and the cost of the house.⁴⁸⁹

While this policy was not directed specifically at Māori, it was probably one of the most important in terms of improving Māori rates of home ownership.

(3) *A major gap persists*

By about the 1960s, Māori housing conditions in Whanganui and elsewhere had improved significantly. However, some Māori continued to live in substandard conditions.⁴⁹⁰ Even in 1982, the Māori Affairs Department noted that there was still 'a major gap' between Māori and non-Māori housing.⁴⁹¹ This situation was unlikely to improve, because the department, and the Crown generally, was withdrawing from involvement in the housing market; in the 1980s the Māori Affairs Department's housing programme was disestablished.⁴⁹² The Department of Housing's focus was low cost urban housing, rather than better housing for people in rural areas.⁴⁹³

Another option, State-owned rental housing, became important to Māori in the late 1950s. Although the Crown began a large-scale scheme for building rental houses for low to middle-income earners in the late 1930s, the State houses that resulted were in suburban locations and of little use to most Whanganui Māori until they moved to the cities a decade later. Even then, it took some time for Māori to gain full access to State housing. By September 1950, Māori had made 30 applications to the Māori Affairs Department for State houses in Wanganui. Of the 22 cases investigated, 18 were considered urgent. But only one applicant had been allocated a house by the end of the year, and no further houses were under construction.⁴⁹⁴ There were also known to be eight Māori families occupying State houses made available by the State Advances Corporation.⁴⁹⁵ The shortage of State houses appears to have continued for some years, although many were allocated to Māori later. We do not have the information to take our commentary further.

21.5.6 Conclusions on the mid-twentieth century

As we noted earlier, the New Zealand State underwent massive expansion after the election of the first Labour Government in 1935. The ad hoc and uneven distribution of socio-economic aid which characterised previous eras was replaced by a systematic and all encompassing 'cradle to grave' social welfare system. In 1935, Whanganui Māori were in great need of help to improve their socio-economic

status, but lacked the social and political power to obtain it. The welfare state, as it became known, delivered more and fairer income support for the elderly, sick, and unemployed; made health care much more affordable; provided more money for Māori education and made it somewhat easier to get; and helped some Māori to buy their own homes. Partly as a result, Whanganui Māori experienced a substantial improvement in health and living conditions in this period. They still tended to live in worse conditions than their non-Māori neighbours; were more likely to have serious health problems; tended to live in worse housing; were less likely to be educated at secondary school; and were generally poorer.⁴⁹⁶ But their situation was less vulnerable. An event like a potato shortage was not going to affect them dramatically, like it did in the past.

The Crown cannot take credit for all of the improvement in Whanganui Māori lives. Some was due to the booming post-war economy, which created full employment in most parts of New Zealand, including some parts of rural Whanganui. Urbanisation also led to improved living conditions for many Whanganui Māori migrants; housing was better in towns and cities, jobs paid better and were more readily available, and health care and education were both much more accessible. The improvements in health were attributable mainly to new technologies and knowledge, particularly antibiotics and an increased range of vaccinations. Needless to say, improvements also came about because Whanganui Māori took the opportunities available to them, and worked hard to improve their own lives and those of their whānau.

Although this was a time when the lives of Whanganui Māori generally improved, the effect was uneven, and sometimes came at a cost.

All the Crown's assistance was delivered in a monocultural way and, with rare exceptions, Māori language and culture were neither supported nor respected. The fall-off in use of te reo Māori was a feature of these years, and the Crown's policies did nothing to help and much to hinder its retention as the language of communication everywhere that Māori people gathered.

Perhaps most importantly, health and education were still very difficult to access from rural parts of our inquiry district. That was certainly one of the drivers for people to relocate to towns and cities, but principally urbanisation was about Māori seeking better employment options in areas of higher population. Most were better off financially as a result, but there have been social costs. Depopulation made rural kāinga less viable, and many of them struggle to maintain their functions as tūrangawaewae for the urban diaspora. Movement away from traditional rohe (territories) has also meant that Māori – especially rangatahi (adolescents) – move through life without a sense of cultural identity. That disconnection with who they are and where they come from has been linked to a host of social ills, including membership in gangs, criminality, mental illness, and low self-esteem and under-performance of young Māori, especially males.

21.6 INTO THE PRESENT DAY

The fourth Labour Government elected in 1984 brought in fundamental changes to the role of government. Its involvement in the economy was greatly reduced, and the welfare state shrank too. At the same time, it elevated the place of the Treaty of Waitangi in public discourse, and in government policy and practice. One outcome of these changes was that delivery of some social services was devolved to Māori and iwi organisations. The Crown also gave more support to the kōhanga reo movement, which Māori began and funded.

Although some things were different from 1984 onwards, many remained the same. Life in rural papakāinga was still hard. Access to social services was really no better; jobs were few; finance and planning regulations created barriers to building houses on rural Māori land; and Work and Income policies militated against being able to live in the country and draw a benefit. Another ongoing concern was the failure of the education system to provide a learning environment in which young Māori could succeed and learn to speak Māori – especially te reo o Whanganui (the local dialect). Many claimants were also

unhappy with the Māori incorporations that controlled about half the Māori land in our district.

In this section, we look first at education, focusing in this period on the education system's relationship with the iwi education authority Te Puna Mātauranga o Whanganui, and how it caters for the desire of Māori in this region for education in te reo Māori and te reo o Whanganui. Then we look at health care and the related issue of housing. In this period, the focus is on the ability of Whanganui Māori to develop and live on their rural landholdings.

21.6.1 Education

The issues that the claimants raised in this inquiry about the present and recent times fell broadly under three headings:

- ▶ the education system is failing young Māori, resulting in low levels of Māori achievement compared to non-Māori;
- ▶ the education system does not adequately support learning in te reo Māori in general, and te reo o Whanganui in particular; and
- ▶ the Crown has failed to build positive and meaningful partnerships with Māori education providers and authorities.⁴⁹⁷

Earlier in this chapter, we showed that Whanganui Māori tended to have fewer educational qualifications than their non-Māori counterparts, and were more likely to leave school early or be otherwise disengaged from education. On a positive note, their participation in early childhood education was very high.

Crown and claimant witnesses both acknowledged that educational outcomes are dependent on numerous factors, many of which sit outside the education system. Claimant witness Ms Tamehana said that 'While the education system still has much to answer for in the under-achievement of our children, this also needs to be seen in a much broader context'. She gave the nurturing role of the children's homes as an example.⁴⁹⁸ Secretary for Education Karen Sewell, who spoke on behalf of the Ministry of Education, made a similar point.⁴⁹⁹ We agree; like most

socio-economic markers, educational achievement is interconnected with children's whole lives. No matter how good a school is, it will struggle to teach a child who is inadequately fed, lives in a damp and overcrowded house, or whose parents cannot afford suitable clothes and learning materials like books or computers. Nevertheless, the Crown's role in shaping and administering the school experience is also critical.

This section will focus first on the state of te reo Māori and how the education system provides for its acquisition and retention. This involves looking at the level of Crown support for kōhanga reo and kura kaupapa, and the impact of education policy and practice on te reo o Whanganui. We then explore the Crown's relationship with the Whanganui iwi education authority, Te Puna Mātauranga o Whanganui.

(1) Te reo Māori: e ora ana, kāore rānei?

Te reo Māori: e ora ana, kāore rānei? (Is the Māori language surviving or not?) In 2006, Māori made up only a quarter of the population in our inquiry district. However, the Māori population is not evenly spread. For example, they comprise 54.5 per cent of the population of Raetihi, and 4.7 per cent of the population of Ōtamatea. Statistics New Zealand has Te Āti Haunui-ā-Pāpārangi as the iwi in this inquiry district with most members (3,291 people), followed by Ngāti Tūwharetoa (2,106 people).⁵⁰⁰ However more than two thirds of Te Āti Haunui-ā-Pāpārangi lived outside the inquiry district, as did more than 90 per cent of Ngāti Tūwharetoa. The iwi with the highest percentage of members living in our inquiry district was Ngāti Apa, of whom nearly half resided here.⁵⁰¹ Statistics New Zealand does not separately list all local iwi. Ngāti Hikairo, for example, is not differentiated, so people who identify as Ngāti Hikairo are not captured in this data.

During our hearings it was clear that many Whanganui Māori have made considerable efforts to preserve and nurture their culture and language. Despite this, the majority cannot speak or understand te reo Māori, and many have little or no understanding of tikanga such as marae protocol. According to Census data from 2006, 15.8 per

cent of Māori in the inquiry district did not know their iwi.⁵⁰² We heard numerous claimant witnesses speak of their efforts to educate themselves and others in te reo and Whanganuitanga; many talked about how difficult this was, and how marginalised their language and culture had become. For example, Tracey Waitokia told us that many of her whānau do not know how to act on marae; 'we feel a sense of alienation and at times whakama'.⁵⁰³

Rates of fluency in te reo were highest in older age groups (see chapter 27).⁵⁰⁴ There is a serious risk that, as these pāhake (older persons) pass away, the kaumātua and kuia of the next generation will have less ability to carry out their functions in the Māori language. Indeed, several claimant witnesses said that there was already a dire shortage of fluent kaumātua and kuia, and that a small number of people have had to take on kaikōrero (formal speaker) and kaikaranga (person who calls visitors on to the marae) roles for multiple marae.⁵⁰⁵

We saw positive signs in the relatively high number of young Whanganui Māori being educated in te reo. In 2006, kōhanga reo enrolment figures for Māori children aged four and under were 37 per cent in Whanganui district and 29 per cent in Ruapehu district. This compares to just 11 per cent of Māori children nationwide.⁵⁰⁶ In the late 2000s, there were at least six kura kaupapa Māori in the Ruapehu and Whanganui districts, and a third of all Māori secondary students in our inquiry district took te reo as a school subject, compared to a quarter of Māori secondary students nationwide.⁵⁰⁷ The Māori rate of te reo fluency, as measured by the 2006 census, was also higher in this district than elsewhere, although by a small margin.⁵⁰⁸ While this is better than it could be, and indeed much better than the situation in most other parts of the country, it is not sufficient to return the situation to one where Māori people carry out their lives in their own language.

(2) Te reo Māori and te reo o Whanganui in the education system

Claimants focused attention on Māori-medium education, contending that the Crown was not adequately supporting te reo Māori in the education system. They told

us that kura kaupapa Māori, kōhanga reo, and whare wānanga did not receive adequate or equitable support, compared to their mainstream equivalents. The Crown and claimants agreed that the Crown was obliged to take 'all reasonable steps' to support the revitalisation of te reo Māori; their disagreement was over whether the Crown had done this.⁵⁰⁹

(a) *Kōhanga reo*: Kōhanga reo, community-led Māori language preschool centres, are a key part of the revitalisation of te reo. The first kōhanga reo in the Whanganui district opened in Ōhākune in 1983, followed quickly by many others throughout the area. Raana Māreikura told us that, although establishing and maintaining the Ōhākune centre was a long and difficult struggle without much government financial support, she and others remained enthusiastic about the value of their efforts.⁵¹⁰ We noted earlier that Whanganui Māori participation in kōhanga reo is significantly higher than for Māori in the rest of the country, although most Māori children of the district still attend other forms of early childhood education.

In relation to kōhanga reo, the claimants focussed primarily on the Crown's funding regime, which they submitted was inequitable, and failed to recognise the particular kaupapa of the kōhanga system. They also mentioned problems with the kōhanga establishment process, and said that the Crown had failed to adequately recognise specialised kōhanga reo qualifications.⁵¹¹ Some claimants also felt that Crown regulation was stifling and changing the kōhanga.⁵¹²

Ms Māreikura explained that kōhanga reo are more than just providers of early childhood education:

The most respected repositories of knowledge, wisdom and expertise are the pahake, the respected elders . . . The beginning of kōhanga reo bought back all the pahake who believed they had nothing to offer to the mokopuna anymore, they at once came back to life. They had something to wake up for each day. They were all targeted as fluent Māori speakers to come home to our Marae and our newly established kōhanga reo to awhi our mokopuna and their parents as well, with the reo me ana tikanga. We can teach our tamariki and our

mokopuna our reo and our own mita. They can learn in an environment that is both safe and comfortable in the warmth of the pahake.⁵¹³

The Kōhanga Reo Tribunal addressed these issues, and found that the Crown's funding regime for kōhanga reo was 'inequitable and unfair', as it did not provide them with the same level of support as other services providing early childhood education.⁵¹⁴ Kōhanga reo suffered significant prejudice from the Crown's imposition of

a funding regime that incentivises teacher-led ECE [early childhood education] models and does not provide equitable arrangements for kaiako holding the degree qualification designed for kōhanga reo.⁵¹⁵

The Tribunal also found that the kōhanga reo movement did not have sufficient autonomy to pursue its kaupapa.⁵¹⁶ On the basis of our own much more limited inquiry into the matter, we endorse the findings of the Kōhanga Reo Tribunal and find that they apply to the Whanganui inquiry district.

(b) *Claimant evidence about Māori-language education in schools*: Claimants told us of similar problems with kura kaupapa Māori, schools grounded in Māori education philosophies and using te reo as the principal medium of instruction. Ms Māreikura and Toni Waho both told us about the long struggle to get the Ōhākune kura established in the late 1990s, and Korty Wilson told us that it did not receive the same level of resourcing as mainstream schools.⁵¹⁷ Ms Wilson also said that the kura was pressured to take children who had been stood down from mainstream schools, and did not understand te reo.⁵¹⁸ Kataraina Millin and Te Kenehi Mair told us about the difficulties they faced trying to set up a kura in Wanganui. The idea of a kura arose in the 1980s from a belief that the existing bilingual units in some of the city schools were inadequate.⁵¹⁹ Supporters found that they would not be able to get funding for at least two years, and most of the initial costs had to be met through the parents' and supporters' own efforts.⁵²⁰ There were also problems

finding a suitable site, because the council and the public in Wanganui did not want a kura there, its advocates found. Te Kura Kaupapa o Te Ātihaunui-ā-Pāpārangi was eventually established alongside the Pūtiki marae in 1993. Although that location had its advantages, supporters still felt that a town site would have been better.⁵²¹ It was too small, and Pūtiki is not served by public transport.

As of late 2014, there were ten schools in the Whanganui and Ruapehu districts providing some education in te reo Māori.⁵²² Six of these were kura kaupapa Māori, of which four were primary schools and two provided both primary and secondary education. The other four, all primary schools, involved all or some of their pupils in immersion or bilingual units or classes for up to 25 hours a week.⁵²³ A large majority of schools in the Whanganui and Ruapehu districts offered no Māori-medium education, although some of the secondary schools offered te reo as a language option. Claimant witnesses said it was difficult to maintain te reo classes in mainstream schools. Ōhākune Primary School took some positive steps in the 1970s when it formed a close relationship with the local marae, taught some te reo, and when pupils were taught in te reo at the marae for two hours a day. In the early 1990s, the school set up bilingual and total immersion classes.⁵²⁴ However, these do not seem to have been properly funded or supported, and were closed down later in the decade without any consultation with iwi or parents.⁵²⁵ At the time of our hearings, the senior bilingual class at Raetihi School had also been closed, leaving only the junior class.⁵²⁶ Garth Hiroti, whose daughters were moved out of the bilingual class into mainstream classes, said that they were suffering as a result of being taught in an alien system.⁵²⁷ Some parents had sent their children out of Raetihi 'so that they can learn in a Maori environment'.⁵²⁸

We also heard about attempts to found a whare wānanga in our district. In the late 1980s, the Whanganui Whare Wānanga Trust approached the Minister of Corrections about taking over the recently vacated Waikune Prison for conversion to a wānanga.⁵²⁹ Ultimately, the Government embarked instead on demolishing the prison, and no wānanga eventuated. We tell this story in a matapihi on pages 1093 to 1107. In the early 1990s, the marae that was

established at Tieke Hut in the Whanganui National Park functioned as a kind of whare wānanga.⁵³⁰ Te Wānanga o Aotearoa eventually established a Whanganui branch in the early 2000s, and Ms Dey has said that the wānanga is

having huge successes in our people turning away from drugs and crime to education and a career . . . Courses such as Mahiora have been very positive particularly for our young parents who have gained life and employment skills. More importantly our young wahine have learnt parenting skills and how to deal with violence in the home.⁵³¹

The Wānanga Capital Establishment Tribunal found in 1999 that wānanga should be funded and supported on an equitable basis with other tertiary institutions.⁵³² However, the information we received on wānanga in this inquiry district, and the decisions the Crown made about their establishment and funding, was too fragmentary to enable us to make findings.

(c) *Evidence on behalf of the Ministry of Education:* In her evidence for the Ministry of Education, Karen Sewell affirmed that the Ministry's goal was to support 'the provision of high quality kaupapa Maori education', and emphasised the need to ensure that 'the academic, cultural and linguistic aspirations are met as the sector develops'.⁵³³

Regarding the process for establishing kura kaupapa, she explained that the Minister of Education had the discretion to establish a kura whenever the parents of 21 prospective students wanted one. Although communities often expected that a kura would be established if they applied for one, in fact the Minister of Education decided on a case by case basis.⁵³⁴ Ms Sewell stated that the Ministry had reviewed the process of setting up kura. As a result, Cabinet had recently approved changes to bring the process into line with that for mainstream schools, which required an expected roll of 35 or more students. Where there were 18 to 34 students, satellite units could be attached to established high performing kura.⁵³⁵

The Crown, Ms Sewell told us, was fully committed to promoting te reo Māori. She referred to the memorandum of understanding between the Ministry of Education

and Whanganui iwi, which aims amongst other things to increase the number and proficiency of Māori language speakers.⁵³⁶ She also pointed to the Ministry's *Statement of Intent and Maori Education Strategy – Ka Hikitia* (2008), in which one of four 'focus areas for Maori education' was 'Maori language in education – high quality opportunities to learn te reo and then the entire curriculum in te reo Maori in formal education settings'.⁵³⁷ Ms Sewell also spoke about the obligation of school boards to prepare and maintain a school charter that gives effect to the Government's national education guidelines. Each school charter must, among other things, contain a section ensuring that all reasonable steps are taken to provide instruction in te reo Māori and tikanga Māori for full-time students whose parents ask for it.⁵³⁸ In addition, the Ministry gave substantial financial support to the development of Māori language teaching and resources, including professional development and support for Māori-medium teachers and principals, and the creation of teaching materials for Māori language learning and all other parts of the curriculum.⁵³⁹ In its closing submissions, the Crown admitted that the shortage of high quality Māori language teachers remained an obstacle, but described the measures being taken to address the shortage and attract and retain teachers.⁵⁴⁰

(3) *Te reo o Whanganui and education policy and practice*

Che Wilson told us that the revitalisation of te reo Māori has had the unfortunate side effect of marginalising te reo o Whanganui, and replacing the local dialect (vocabulary and idiom specific to the region) and mita (pronunciation, rhythm, and intonation) with a standardised form of te reo Māori.⁵⁴¹ He stated that Whanganui Māori, including elders, have been marked down for using te reo o Whanganui in te reo Māori exams and assessments.⁵⁴² Korty Wilson also stated that there are very few resources in te mita o Ngāti Rangī me Whanganui, and suggested that funding is made available to produce them.⁵⁴³

The claimants submitted:

it appears that since the release of the Reo Māori report the Crown and its officials have been working under the

assumption that protection of te reo Māori at a generic level is sufficient to fulfil its Treaty duties.⁵⁴⁴

In response, Ms Sewell talked about the Community Based Language Initiative, which has provided funding for Whanganui iwi language projects. The initiative aims to encourage whānau to use te reo at home by 'enhancing parent and caregiver Māori language skills'. It also 'provides for the development of iwi specific high quality Māori language teaching and learning material'.⁵⁴⁵ From 2005 to 2009, Ms Sewell said, Whanganui iwi received \$782,903 through the initiative.⁵⁴⁶

It is well established that te reo Māori is a taonga entitled to the Crown's active protection under the Treaty. The status of regional, iwi, or hapū variations, dialects, or mita is less secure, and this seems to be reflected in Crown policy. We understand the appeal, and to some extent the necessity, of using standardised rather than iwi-specific Māori language in educational resources and broadcasting. We also note with approval the Crown's Community Based Language Initiative, which appears to support regional dialects and mita. However, it did not appear that, at the time of our hearings, the Crown was giving its full support to the nurturing and preservation of dialects.

We note that, although standardised Māori might seem intuitively easier to teach and promote, it might be that iwi-specific language would gain momentum locally in a way that a generic form of the language would not. This is an area that the Crown or iwi might profitably research.

(4) *The Crown and Te Puna Mātauranga o Whanganui*

The claimants raised a number of issues concerning the Crown's relationship with Te Puna Mātauranga o Whanganui, the Whanganui Iwi Education Authority. Te Puna was founded in 2004 as a result of long-term concerns among Whanganui iwi about their children's educational outcomes, and in order to implement Ngā Kai o Te Puku Tūpuna, the Whanganui Iwi Education Plan and Strategy adopted by Whanganui iwi in 2000.⁵⁴⁷ In 2002, Whanganui Māori agreed to work with the Ministry of Education and signed a memorandum of understanding with the Minister of Education to that effect.⁵⁴⁸

Te Puna is not an education provider, but it works closely with the Ministry of Education and other agencies and providers to improve Whanganui Māori education outcomes, monitoring and measuring the effectiveness of steps taken in that direction.⁵⁴⁹ In seeking to give effect to the iwi education plan, it uses a cultural standards model that ‘provides schools with a set of standards by which they can understand and measure culturally-responsive teaching and culturally balanced learning’. Te Puna has been working with the Ministry of Education since 2005 to integrate the cultural standards model into Whanganui primary schools and would like to see it introduced into the whole sector, from early childhood to tertiary.⁵⁵⁰ Ms Sewell told us that the Ministry is working to support the implementation of the iwi education plan, ‘in accordance with the Whanganui iwi tikanga’.⁵⁵¹

The claimants submitted that the iwi’s desire for a more active role in education is threatened by the Crown’s wish to control the education system and that there is no real partnership between the iwi and the Crown.⁵⁵² The manager of Te Puna, Esther Tinirau, said that, rather than being viewed as a partner, sharing the responsibility for delivering outcomes, the Whanganui iwi have been reduced to ‘a stakeholder, a group to be consulted with’, and ‘a deliverer of outputs in a contractual arrangement’.⁵⁵³ Ms Tinirau told us that, because the education system was failing Whanganui Māori children, iwi wanted Te Puna to ‘respond to the full spectrum of education issues in our region’. The Crown was not resourcing it sufficiently, however, to fulfil those expectations or to function in a partnership role.⁵⁵⁴ Ms Tinirau explained that the Ministry of Education did not fund initiatives that were viewed as duplicating its own work – for instance, in areas such as early childhood education, compulsory schooling, and tertiary education – ‘Yet these are the areas that our constituent tribal collectives are telling us where we need to be involved’.⁵⁵⁵

Ms Sewell responded that the Ministry had a statutory responsibility to administer education on behalf of the Crown. In order to achieve better outcomes in education, it sought to foster community engagement and thus worked actively with organisations such as Te Puna. This

did not mean, however, that the Crown’s obligations and responsibilities could be devolved to Te Puna, or that Te Puna could be expected, as the claimants put it, to respond to the full spectrum of education issues in the district. The partnership between the Crown and Te Puna was directed towards responding appropriately to the needs of the iwi, with coordination and support provided by the Ministry’s Iwi Māori Education Relationship Team and staff based in the Whanganui regional office.⁵⁵⁶ In regard to funding, Ms Sewell stated that the Ministry’s contracts with Te Puna were for ‘the provision of specific activities based on the shared outcomes’.⁵⁵⁷ Ms Sewell also indicated that in 2008 the Ministry had agreed, ‘in response to a shift in priorities and focus by Te Puna’, to develop ‘a longer term and more responsive shared investment plan for the Whanganui region’, in an effort to ‘provide better coordination to fund and support educational priorities in a more sustainable and long term manner’.⁵⁵⁸

The claimants did not feel that the Crown’s evidence sufficiently addressed their concerns. In their closing submissions they asserted that the Crown’s statement about devolving full responsibility to Te Puna missed the point they were making. They explained that their wish was to engage with the Ministry of Education ‘at a Treaty partner level’, and felt that the Crown was dismissive of their desire to achieve better education outcomes by utilising hapū and iwi resources.⁵⁵⁹

21.6.2 Health

In our inquiry, most of the claims about health were historical. On the whole, claimants focused less on the adequacy of health services since 1984 and more on whether they were sufficiently oriented to Māori concerns.

One exception was access to services in rural areas. Speaking for Ngāti Hau, Ronald Hough stated that getting to a doctor from Hiruhārama took an hour and a half.⁵⁶⁰ This problem was not confined to very small settlements but was also an issue in small towns like Ōhākune and Raetihi, particularly those dependent on public transport.⁵⁶¹ Waimarino Hospital in Raetihi was closed down in the 1990s.⁵⁶² Ms Māreikura told us: ‘We had to go all the way to Whanganui for just an x-ray. Getting to Whanganui

was a big effort, you had to own a car. It would take you all day to get there and back.⁵⁶³

Ms Chase said that the biggest contemporary health issue for Ngāti Hāua was having to travel long distances for many health services, including scans and births. 'For some of our people this is a huge burden', she told us:

Many don't even have cars let alone the money to pay for the petrol to travel to Hamilton . . . The opportunity for people from here to have their child born here on their own land cannot happen. These are just basic things that you should be able to do in your own town.⁵⁶⁴

There is a travel assistance policy, but Ngāti Rangi Community Health Centre manager Yvonne Sue told us that it was too limited and therefore difficult for many of her clients to use.⁵⁶⁵ We also heard criticism of the treatment of Māori and Māori culture in the mental health system.⁵⁶⁶

Since the early 1980s, the Crown has shown an increasing willingness to take a more Māori-oriented approach to health in order to close the gaps between Māori and non-Māori health. It began working with emerging Māori-run health providers, and in 1984 the Department of Health formally acknowledged Māori health as a key priority. It also accepted the need to recognise 'different cultural perceptions of health and sickness' and increase the cultural literacy of health workers.⁵⁶⁷ The 1992 policy document *Whaia te Ora mo te Iwi* spoke of greater Māori participation, resource allocation priorities that took account of Māori needs and perspectives, and the development of culturally appropriate services and procedures.⁵⁶⁸ The following year, the Health and Disability Services Act required the Crown to notify health purchasing agencies of Crown objectives relating to 'the special needs of Maori and other particular communities or people' for health services. Providers should seek to meet those objectives.⁵⁶⁹ Section 4 of the New Zealand Public Health and Disability Act 2000 formally recognised Treaty obligations in relation to Māori health, and set up mechanisms 'to enable Maori to contribute to decision-making on, and to participate in the delivery of, health and disability services'.⁵⁷⁰ It also states that District Health Boards should try 'to

reduce health disparities by improving health outcomes for Maori and other population groups'.⁵⁷¹

Māori-focused health services are now prominent in Whanganui, with the District Health Board and Māori organisations involved. The Crown referred to the commitment of the Whanganui District Health Board to providing services responsive to Māori, and it listed the mechanisms for ensuring that there was Māori input into the Board's decision-making, and that the needs of Māori users were understood and addressed.⁵⁷² The Board employed a Director of Māori Health and other staff to administer its Māori health programmes. It had a Māori Health Outcomes Group, which brought iwi providers together to advise and support the board to develop appropriate services.⁵⁷³ However, there were ongoing staffing problems, with important Māori health leadership positions remaining vacant for up to a year on several occasions.⁵⁷⁴ The northern part of the Whanganui inquiry district, around Taumarunui, comes under the Waikato District Health Board. Its Māori health division, Te Puna Oranga, was charged with addressing health disparities and developing culturally responsive services.⁵⁷⁵

Whanganui Māori have acquired some control over their own health services through devolution of some provision to Māori organisations. But the transition was not without its problems. In general, the claimants felt that funding authorities and the Whanganui District Health Board did not allow them enough autonomy, and the Māori organisations providing services felt vulnerable to changes in policy or funding, over which they had little or no control.⁵⁷⁶

Ms Tamehana of the Te Oranganui Iwi Health Authority told us that there was too much interference and bureaucracy:

This is not to be confused with accountability. . . . What we have a problem with is the highly prescriptive approach adopted by Crown agencies around what the outputs are for each service.

Ms Tamehana said that the Crown expected deep-rooted problems to be solved quickly, rather than having

Māori Health Providers in the Whanganui Inquiry District

In the Whanganui inquiry district were the following Māori health providers:

- ▶ *Te Oranganui Iwi Health Authority*: Te Oranganui was the largest Māori health provider in the district. Chief Executive Officer Jennifer Tamehana told us that ‘We wanted to take control of our own health and wellbeing because the mainstream was not working for us. This was a Maori proposal, for Maori and by Maori.’¹ Te Oranganui recognised that health issues are intertwined with social and economic problems, and needed to be tackled in a holistic way, with iwi and hapū given the freedom and resources to make their own decisions about their health and wellbeing.
At the time of our hearings, Te Oranganui had 120 staff and covered the Whanganui District Health Board region from Pātea to Bulls and up to Raetihi and Ōhākune, managing 35 contract lines and an annual budget of about \$6.5 million. Among its programmes were Te Puāwai Whānau (family services), Te Waipuna (a medical centre), Hinengaro Hauora (mental health services), Te Korimako (health education services), Hāpai Mauri Tāngata (alcohol and drug treatment and education services), and Te Ara Toiora (disability health and support services).²
- ▶ *Ngāti Rangi Community Health Centre*: This health centre was set up in Ōhākune in 1996. At the time of our hearings, it had 740 enrolled patients, of whom 78 per cent were Māori. Its contracts with regional health authorities and the Ministry of Health for services included assessment and referral, Whānau Ora, and Tamariki Ora.³
- ▶ *Te Puke Karanga Hauora*: This organisation was based in Raetihi and delivered services to Māori living in the middle reaches of the Whanganui River. In 2012, its website stated that a key objective was ‘to ensure that the activities of existing health professionals are coordinated and effectively targeted for Māori, and that Māori are assisted to better utilise those services’.⁴
- ▶ *Taumarunui Community Kōkiri Trust*: The trust emerged in 1989 from a public meeting held at Wharauora Marae to discuss the poor health status of Māori. It was established to ‘advance the holistic development and wellbeing of whanau, hapu and iwi’. The first project, conducted as a joint venture with Health Waikato, addressed the problem of glue ear in children. As at 2012, the trust was delivering ‘comprehensive health & social support services to the communities of central and rural Taumarunui and Te Kuiti’, and employed 80 full-time and 10 part-time staff. Between 70 and 80 per cent of its clients were Māori.⁵

faith in iwi and hapū over the long term.⁵⁷⁷ Ms Sue of the Ngāti Rangi Community Health Centre also reported that the Crown set national standards and the content of provider contracts without consultation with providers, essentially adopting a ‘take it or leave it’ approach.⁵⁷⁸

The claimants questioned the Crown’s true commitment to the Treaty of Waitangi in health policy, and were disappointed that it did not directly address many of the health issues they raised.⁵⁷⁹ The Crown did not call witnesses to speak about its policy and practice, which denied claimants the opportunity to examine or test the Crown on these issues.⁵⁸⁰

21.6.3 Housing

The main focus of claimants’ issues here was the difficulty they experienced in finding ways to dwell on their ancestral land. We had the impression that their wish to do this sprang from a number of different impulses: those steeped in cultural identity and those searching for it had in common a desire to live where their tūpuna lived before them. There was also a sense from some that living in the Pākehā world did not suit them, and had not been good for them. They wanted to retreat to places imbued with authenticity and wairua Māori (a Māori spirit).

In the subject period, Māori landowners had more

control over the use and management of their land than was the case for most of the twentieth century, although some land remained under lease. At the time of our hearings, incorporations owned around half the Māori land in our inquiry district, with beneficiaries owning shares in the incorporation. This system probably allowed more effective management of multiply owned land, but claimants told us that they no longer felt like owners in any meaningful sense, for they were disconnected from their land. Even when Whanganui Māori owned land directly, rather than through an incorporation, they often had difficulty living on it. Local authority planning rules made building new houses in rural areas difficult, and adequate finance was still hard to come by.

Another difficult aspect of living on tūrangawaewae is that their rural and isolated locations mean there are fewer jobs. The State's provision of the unemployment benefit through Work and Income New Zealand has long been limited to those living in places where they might plausibly find employment.

Claimants saw these practical difficulties – and also the difficulty of accessing health and education services from rural kāinga – as evidence of the Crown's failure to meet its obligation to protect their tino rangatiratanga.⁵⁸¹

(1) Incorporations and living on ancestral land

At the time of our hearings, the five Māori land incorporations active in our inquiry district between them owned 120,226 acres, or 51 per cent, of the Māori-owned land in our inquiry district.⁵⁸² Of this, 83.6 per cent (100,580 acres) was owned by the Ātihaui–Whanganui Incorporation, which controlled much of the land originally vested in the Aotea Māori Land Council.⁵⁸³ Elsewhere, we detail claimants' dissatisfaction about various aspects of incorporations managing and controlling their land interests (see section 18.5). Here, though, we focus on how incorporations can thwart claimants' desire to reside on ancestral land.

Claimants told us that one of the most upsetting products of incorporations is that they prevent owners from returning to their traditional homes.⁵⁸⁴ In chapter 18 we outlined the story of the Ōruakūkuru kāinga, which is

now part of the Ātihaui–Whanganui lands. The former residents and their whānau no longer have the right to live on or visit this land, which includes two landlocked urupā.⁵⁸⁵ Other claimants spoke similarly.⁵⁸⁶ Mr Rzoska explained:

The land works well in an economic sense, and we have no problem with that or the people who are running the Incorporation. The farm that won the Māori Excellence in Farming Award this year was Pah Hill Station, part of the Incorporation. This shows that, as businesses, the lands seem to be being well managed and we congratulate the Incorporation Board on doing so well. But our point as tangata whenua is that we don't have access to our own lands, our tūrangawaewae, to either live on them or support ourselves from them.

It might be said that we have retained our lands at Ohotu and that it has not been sold off to the general public. But in fact we lost the land to a commercial organisation, even if it is a Māori organisation. And we also lost our ability to sustain ourselves from the land. Our whenua, which we owned ourselves and could control, and on which we could live and support ourselves, was substituted for shares paying what were often only tiny dividends.⁵⁸⁷

The message of these witnesses was that the small dividend that most shareholders get annually is no exchange for being able to go on the land, and perhaps even live there.⁵⁸⁸ Mrs Waitokia said:

a year of dividends as a shareholder is equivalent to the price of a couple of packets of chips. Why worry about something that is nearly worthless. This means that in people's minds the land is not worth anything so we become disinterested, despondent and even more disconnected.⁵⁸⁹

Rāmari Ranginui told us, 'I personally would rather have the land back than receive the dividend.'⁵⁹⁰

(2) Policy affecting housing on rural Māori land

Claimants told us that obtaining finance to build a house on multiply owned Māori land is as difficult as ever. They

also have to negotiate the planning rules that local authorities make pursuant to legislation to regulate the construction of new dwellings on papakāinga land, and have experienced ongoing problems getting finance and consent to build houses on rural land.

Pou Pātea addressed these barriers to building new homes on rural land, telling us that ‘There is a desire for people to come back to Otoko to build’, but ‘permits, resource consents and financial criteria have been obstacles which have prevented progress.’⁵⁹¹ Ms Chase told us that rehousing schemes could not be accessed by some people because they could not get credit, or lacked motivation.⁵⁹² One way around the problem of getting a mortgage on a multiply owned block is to partition to get separate title. The Tauranga Tribunal found that this was ‘unsatisfactory – not only did it often lead to alienation of the land but it was also difficult to arrange. Consequently, many Māori simply remained in substandard houses.’⁵⁹³

Ben Pōtaka of Ngāti Hinearo and Ngāti Tuera addressed this issue in evidence before us:

Another significant issue of concern to the hapu is further fragmentation of our lands. In many of our blocks, they are all divided and cut up into relatively small pieces with multiple owners. The main concern we have is that unless a papakāinga development is enabled by either legislation, regulation or policy, then people will seek to partition their share of the block to enable them to access finance for building purposes. While we support the kaupapa of people building houses on and utilising our whenua, our experience shows us that the breaking up of the land and vesting in smaller or individual owners means that it is more susceptible to alienation particularly where mortgages are involved. It also further reduces the control we have over the whenua.⁵⁹⁴

(a) *Loan programmes:* In the 1980s, the Māori Affairs Department developed a new lending programme for houses on multiply owned land. Houses would be removable, so that in the event of default the lender had no recourse to the land but could take the house away.⁵⁹⁵ Loans initially required a 15 per cent deposit, but in 1995 this was reduced to just 3 per cent in certain areas.⁵⁹⁶

Between 2000 and 30 June 2007, Housing New Zealand approved 962 loans under the scheme, of which 161 were for housing on multiply owned Māori land.⁵⁹⁷ Lending through this programme, now called Kāinga Whenua Loans, was still available as of 2014,⁵⁹⁸ but Ms Māreikura said that borrowers were required to be debt free, which was too big a barrier for many young Māori.⁵⁹⁹

Housing New Zealand’s Housing Innovation Fund also provides lending to non-government organisations to provide housing for people on low incomes.⁶⁰⁰ Mr Pōtaka recounted the Whare Kōhatu Housing Project’s attempts to get an Innovation Fund loan.⁶⁰¹ Part of the project’s kaupapa was using raw materials from the land itself. With the aid of professional brickmakers, Mr Pōtaka and his whānau developed bricks using local materials that were twice the required strength. But because brick houses are not easily movable, Housing New Zealand would not grant a loan unless the land and other assets, as well as the houses, were used as security.⁶⁰² Mr Pōtaka provided evidence that, as of 2007, only five Māori groups had been able to access loans under the Housing Innovation Fund, of which only one was intending to build on multiply owned land.⁶⁰³ He said that it is ‘a cruel joke that we have this land sitting here but our people are renting in town.’⁶⁰⁴

(b) *Māori initiatives:* Other groups have also spent considerable time, energy and money on housing projects with mixed success.⁶⁰⁵ The Hinengākau Development Trust was able to build houses in various parts of the district with the help of the Housing Corporation.⁶⁰⁶ However, Hera Peina of Ngā Paerangi told us about the Kaiwhaiki Pā Trust, which was set up in the 1970s to utilise, develop and manage the hapū’s papakāinga land. Since that time the Trust had made considerable progress towards overcoming financial, planning and tenure difficulties, but at the time of our hearings it was still facing obstacles such as development costs, including roading, drainage, and sewerage.⁶⁰⁷ Infrastructure is another problem for rural communities; for example, Piriaka does not have a reliable and safe water supply for existing houses, let alone any new ones; and Maungārongo Marae was connected to the local sewage system only relatively recently.⁶⁰⁸

The Tauranga Tribunal studied this matter closely. Its report, published in 2010, included an assessment of the situation as it was then:

Cultural differences in landholding have been recognised in the development of papakāinga housing schemes and the like, but the progress made has not ended the legal, financial, and planning problems experienced by Māori wishing to house themselves in a Māori setting and with consideration for Māori community values. Much of the responsibility for managing housing development lies with the local authorities, and many advances have been made. But the Crown has not yet fully met its obligation to see that Māori wishes to build on their own land are respected.⁶⁰⁹

Our discussion of contemporary housing matters is constrained by the fact that, apart from what the claimants told us of their personal experiences, we had little information on the topic. In its closing submissions, for example, the Crown devoted two short paragraphs to contemporary housing policy.⁶¹⁰ It was apparent that efforts have been made to make finance more accessible for those building homes on Māori land, but it was also clear that the problem is by no means sorted. Claimants' evidence gives us a glimpse into some of the reasons. Some of them have to do with the approach of local authorities rather than the Crown, but of course the Crown constructed the framework within which local authorities operate, and the Crown created the legislation that allowed local authorities to make the rules for rural housing that Māori and their communities in the country find it difficult to negotiate. As a result, we heard evidence like that of Jennifer Tamehana, who said, 'Housing is nothing but a dream for many of our people. Most can't afford property and will remain tenants for most of their lives.'⁶¹¹

(3) Barriers to returning to tūrangawaewae

When discussing migration from rural kāinga to the cities and towns, the motivator our claimants cited most commonly was the need for work. There was very little employment in rural areas, and the job market became

even worse from about the 1970s. We have already heard that mechanisation and other factors reduced the need for farm labour around this time. Until 1984 the Crown attempted to reduce regional unemployment by employing more people than was economical in commercial government departments such as railways and forestry. As we have seen, Māori tended to leave school early, and low levels of educational achievement saw a disproportionate number employed in low-skilled State jobs. When many of these jobs were abolished in the late 1980s, large numbers of rural and small town Māori, in Whanganui and elsewhere, found themselves unemployed, with little prospect of finding other work.⁶¹²

In an effort to counter the rise in unemployment, the Crown initiated the Māori Access scheme, commonly known as Maccess. In our district, the delivery of Maccess was devolved to the Whanganui River Māori Trust Board in the late 1980s.⁶¹³ Whanganui Maccess schemes included a carving school, tourism operations, and Hinengākau Tech Print, which trained people in new photocopying and electronic print technologies as well as providing commercial printing and photocopying services.⁶¹⁴ The Government wound up Maccess, along with the business loans programme Mana Enterprises, in the early 1990s.⁶¹⁵ The carving school continued under a related programme, but closed in 2003.⁶¹⁶ Peter McBurney criticised these schemes:

Firstly, the government maintained a tight control over all aspects of the programmes, begging the question as to how devolutionary the process actually was; secondly, the break up of the Maori Affairs Department was part of the Lange-Douglas [fourth Labour] Government's privatisation/cost-cutting regime, which, far from representing a significant investment in the delivery of government services to Maori, was in fact a means of reducing the Maori Affairs Vote; and thirdly, on many levels the Mana and Maccess programmes introduced a competitive ethos for gaining access to the limited resources provided by the programmes, which had the effect of setting Maori against Maori, a classic divide and rule tactic.⁶¹⁷

(a) *Unemployment an ongoing issue*: Rural and small town unemployment was still high at the time of our hearings, despite the relatively good state of the national economy. Frana Chase told us of the dispiriting effect that this had on Whanganui Māori individuals and communities, saying:

In order to receive the benefit, people have to go out and look for work, but here in Taumarunui there is just no work. The reality is that people know there is no work here in Taumarunui so it feeds this culture of people feeling useless and oppressed. It has nothing to do with the fact that they aren't trying. The opportunities just aren't there. Since I was a child we've had the sawmills, the freezing works and the railways and all of those other prominent sources of income and productive industries that supported families taken out of Taumarunui. These industries that provided employment for and sustained the whanau here are gone and have not been replaced.⁶¹⁸

There was some Crown employment in the Whanganui National Park, but although by the late 1990s the majority of park employees were tangata whenua, there were never that many jobs involved.⁶¹⁹ Of approximately 20 private businesses using the park, only one was iwi-connected.⁶²⁰

(b) *'Limited employment locations'*: Because of the scarcity of work in many rural areas, Work and Income New Zealand initiated a policy to deny unemployment benefits to people who moved to 'limited employment locations', including Hiruhārama and Pipiriki, unless they could commute to an area with better job opportunities.⁶²¹ New beneficiaries were also required to attend a six week programme in Wanganui.⁶²² According to Wai Southen,

WINZ [Work and Income New Zealand] now say that if you live in Pipiriki, Matahiwi, Atene, Jerusalem, or Parikino you have to take a trip in to town twice a week to report and attend a works seminar. It never used to be that way; it only just came in as a policy last year [2007]. This is basically forcing them to move in to town rather than to drive that distance

twice a week just to report. This would cost them their unemployment benefit to travel that distance.⁶²³

Frana Chase said that her aunt wanted to move back from town to Kākahi but could not, 'because that is an area where you cannot get your [unemployment] benefit'. She added: 'What this basically was saying was that you couldn't move home to live on your papakainga, and this is forcing people away from their papakainga.'⁶²⁴ 'Our rangatahi cannot return' to their home communities, said Mr Rzoska, 'because WINZ asks why they are at Matahiwi when there is no work'. He recognised that this policy might make sense on a purely economic level, but it had

the effect of separating Ngā Poutama from their tūrangawae. The effects of that separation will only get worse with each passing generation, who will end up with no memory of a connection with their whenua.⁶²⁵

The Ministry of Social Development identified 'limited employment locations' according to criteria like availability of permanent and seasonal work, public transport access, and the number of unemployed people already in the area.⁶²⁶ Although the policy was presented mostly in terms of preventing long-term unemployment, another factor was ensuring that there was an adequate supply of labour available to employers at a time of labour shortages.⁶²⁷ The 'limited employment location' policy made explicit an informal policy that was in place from 1982. Previously, though, the policy did not apply to people who had 'returned to a remote area because of family connections or family land'.⁶²⁸ The new policy recognised that Māori might move to such areas because of hapū and iwi connections, but made no exceptions in these cases.⁶²⁹

21.6.4 Conclusions on the period to the present day

The Treaty of Waitangi has assumed new prominence in New Zealand public life and policy-making in the period since the mid-1980s. During this time, though, the role of government has shrunk, and there has been a move towards delegated authority and community-based

Pipiriki

When European settlement began in our inquiry district, Pipiriki was one of the biggest kāinga on the river. Nearly 300 people lived there in a cluster of eight pā. Many identified as Ngāti Kurawhatia.¹ Residents traded goods to Wellington and, later, Petre/Wanganui, and by 1847 it had become a centre for wheat growing.² In the early 1850s Governor Grey contributed funding for the construction of a mill, and by 1857 the area had at least 1,200 acres in wheat.³

Pipiriki's economic capability was damaged first by the wheat price crash of the 1850s, and then by a siege and

occupation during the New Zealand Wars.⁴ By 1878, the estimated population had dropped to just 77.⁵ Disease and general social disruption, as well as the wars, took their toll. Still, in 1872 a group from Pipiriki was able to sell large quantities of wheat and potatoes to raise money for flour mill repairs. Te Keepa donated £100, hoping to restore the kāinga to 'its former size and importance'.⁶

Occupying a spot on the last easily navigable stretch of river, Pipiriki became something of a travel and tourism hub, with steamer routes and the road from Lake Taupō both

Kaukore Mill, Pipiriki, 1861. The mill was built in the early 1850s with financial aid from Governor Grey. By 1857, at least 1,200 acres had been given over to wheat in the Pipiriki area. By the turn of the century, however, fortunes for local Māori had changed – they had lost control of their land and their economic future was uncertain.



ending there.⁷ Local Māori had jobs at the hotel that was built in 1892, and on the steamers.⁸ Then the settlement got a native school, which opened in 1896.⁹ By 1901, the population of the area had risen to 233, which would have included some Europeans.¹⁰ As usual, 'progress' was not without a cost. The steamer service led to the destruction of eel weirs and alterations to the river, and the growing population meant the river was polluted.¹¹ The potato crop failed due to blight at the turn of the twentieth century, and Māori at Pīpīriki were so dependent on that crop that it was reported in 1905 some were living solely on boiled pūhā.¹² A district nurse was based in Pīpīriki from the late 1930s.¹³

In 1896, the kāinga was proclaimed a Native Township under control of the commissioner of Crown lands. Pīpīriki was a native township for more than 60 years, and during this time owners were without the ability to control their land – and for this loss of autonomy they did not accrue the expected economic benefit. Te Whetūrere Grey told us that 'people ended up renting land that they had lived on for centuries'.¹⁴

In the early years of the twentieth century, large areas of the surrounding Waharangi block were vested in the Aotea District Māori Land Board, or leased to settlers, some of whom later had difficulty developing their land and paying rent. Parts of the block were sold.¹⁵ The land was not supporting the community, and by the time of the Depression, 38 Māori adults (and nine Europeans) were reported to be in 'grave distress' due to unemployment.¹⁶

By the middle of the century, the pull of work and better living conditions elsewhere had become very strong. Pīpīriki's position as a tourist and freight centre had been in decline since the opening of the river road in 1934, removing the steamer monopoly on travel through the district.¹⁷ By 1957 it was estimated that 90 per cent of the settlement's income came from social security benefits.¹⁸ The hotel burnt down in 1959 – shortly before its lease expired – and was not rebuilt.¹⁹ Horticulture was investigated as a way forward (there is a microclimate at Pīpīriki), but high freight costs meant that it was not viable.²⁰ The population remained

at about 100 into the 1960s, probably because high birth rates counterbalanced the departure of young people and adults.²¹ In 1956, for example, there were 66 children but only 44 adults.²² With the declining population, living conditions and public services declined. The district nurse was transferred to Raetihi in 1956.²³ There was little in the way of public transport, and the Board of Māori Affairs refused to help the residents to improve their substandard housing because the economic future of Pīpīriki was uncertain.²⁴ The Crown did continue to support the school, replacing its building in 1959.²⁵ By 1971, the population was just 51, although many of those who left retained strong connections to Pīpīriki.²⁶ The school closed in 2006.²⁷

Kupenga Te Huia told us:

At the time I was growing up most families could stay in Pīpīriki, there was work on the boats and at the hotel. The housing was a bit rundown, but no one was going hungry or anything. Life was good.

When the work ran out that was when people started to move away. When the hotel got burnt that didn't help and then the boats closed down and there were no jobs, only the odd bit of farm work.

People didn't have their own farms down in Pīpīriki, there were only two farms down here and they were only just surviving. There just wasn't enough land for farming – it had all gone back to gorse and it had just been left. You need a bit of money to start up a farm as well.

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The thing that I noticed when I came back to Pīpīriki after being away was that all the people had gone. All the people that I had grown up with had left. Most had gone to town, mostly to Whanganui.

When I grew up we had a shop and it was quite a busy place, there is nothing like that now. There are plenty of tourists around but not many people who actually live there.²⁸

Today, Geraldine Taurerewa said, Pīpīriki is 'merely a shadow of its former self'.²⁹

services. This combination has seen the Crown begin to work more closely with Māori organisations. In general, though, the relationships do not look or feel like true partnerships, because the Māori parties have nothing like equal standing with the Crown – particularly as regards decisions about funding, which the Crown always controls. The Māori parties find the structure of these arrangements disempowering, and complain that the Crown does not seem to trust them to solve their own problems.

We heard that the Crown's relationships with Whanganui Māori organisations, such as kōhanga reo, Māori health organisations, and Te Puna Mātauranga, were frequently rocky. We make findings about kōhanga reo, but not about other organisations, for which the evidence before us was too sparse. We did observe, though, that the claimants' complaints about the Crown's processes, attitudes and structures were common to a range of organisations in both the education and health sectors, and we address what the Crown needs to do about this in our findings.

Some of the problems we heard about in historical evidence remain a feature of Whanganui Māori life. The provision of social services to most rural areas is patchy at best, and at least some te reo based education providers are not equitably funded. Moreover, it is still quite difficult for Whanganui Māori to live on, or return to, their tūrangawaewae. Building a house on rural Māori land is a real challenge, for reasons that nearly always include how hard it is to obtain finance, and generally restrictive local planning regulations.

The responsibility of the Crown in these situations is to facilitate the continued presence of tangata whenua on their ancestral land where it can. This should include openness to supporting business ventures that Māori or others initiate that could create opportunities for economic activity and employment close to areas of traditional Māori kāinga. More regional development is a goal for the whole country, and Māori communities could play a vibrant and important role here. Also, efforts to facilitate housing on papakāinga should continue, and extend into more creative options that tangata whenua can realistically pursue. It should also look closely at the legislative

obstacles to Māori building on their ancestral land, and work with local authorities to make this path easier to walk.

However, we do not believe that the Crown's responsibility can extend to facilitating the residence of communities in the country where individuals have no reasonable prospect of employment. That would be a recipe, we think, for all kinds of problems.

Recognition and promotion of te reo Māori in the education system still has a long way to go, and the Crown should not cease in its efforts to work with tangata whenua to find solutions to the intractable problem of the decline in competence and numbers of those speaking Māori. The situation has certainly improved from earlier periods – as indeed it needed to – but issues of funding and preservation of local dialects and mita warrant more attention.

21.7 FINDINGS

We have explored in this chapter the assistance that the State provided to Whanganui Māori to improve their situation generally, but especially as regards education, health, and housing. We ask whether the assistance that the Crown provided was reasonable and appropriate, and whether the assistance it provided to Māori was fair and equitable in the context of the assistance available to other citizens at the time.

21.7.1 Education, and te reo Māori

The questions here were whether the Crown provided Whanganui Māori with adequate access to education, and whether the education system properly respected and provided for the language and culture of Whanganui Māori, including te reo o Whanganui.

(1) Access to schooling

The Crown's first attempt to provide education to Whanganui Māori was through support for church schools, including the endowed school that became Wanganui Collegiate. We heard that, after the school was reopened, its pupils were primarily the sons of those wealthy enough to afford its fees, and few Māori attended.

Since Wanganui Collegiate has been a private school for most of its existence, its historical activities are outside our jurisdiction. However its establishment was made possible by a Crown grant of about a third of the original Wanganui township, the rents from which were intended to fund the free education of Māori and impoverished children of all ethnic groups.⁶³⁰ It appears that the endowment land did not deliver the expected income, and as a result the school could not afford to provide free places. Rather than step in to ensure that the institution fulfilled its founding principles, the Crown took a hands-off approach, and allowed it to transmute into a private school playing a negligible role in Māori education. Had there been other secondary schools in the region, this might have mattered less, but until the late nineteenth century, Wanganui Collegiate was the only provider of secondary education in the district.

The few Whanganui Māori who received a European education in the nineteenth century usually received it from mission schools that functioned independently of the Crown.

The Crown did make some efforts to provide native schools in the 1870s, but then closed them because the rolls were unstable. We do not consider that the failure of Māori children to attend school regularly was because they or their communities did not seek Pākehā education. Rather, it was because communities were distracted by the demands of dealing with their land through the Native Land Court, and coping with the changing circumstances of their lives. Also, it seems likely that the pedagogical style of the teachers did not adapt sufficiently to the needs of Māori children. Their disinclination to attend must partly have been because the schools' cultural 'improvement' agenda was irrelevant to them. Some communities were also antipathetical to the Crown. However, given the importance of Māori children learning to read and write in order for them to participate in the new society – an importance that was appreciated at the time – the Crown should have done more to find other ways of making education work for them. We find that the Crown did not sufficiently focus on how it could provide effective education to the children of Whanganui pre-1890. We find that this was inequitable, because even though the State was then

embryonic compared with the State of today, we are confident that if the education services provided to Pākehā children had been failing in the same way, the authorities would have taken measures to ensure that the problem was addressed. The Crown breached the Treaty principles of good government and active protection.

Māori communities increasingly wanted their children to receive a formal education as the nineteenth century neared its end, but there were sometimes many years between the first request for a school and the school's opening. Some communities did not get a school at all, and some got one only very briefly. Secondary education was practically out of the reach of many Whanganui Māori children well into the twentieth century, and whānau moved to town partly to procure access to schooling. This should not have been necessary.

The Crown should have done considerably more to ensure that Whanganui Māori children had continuous access to good schooling. It should have built schools sooner, if not on its own initiative then as soon as Māori communities sought them. It should have taken steps to manage fluctuating rolls – including ensuring that teachers were equipped to respond to the pedagogical needs of their pupils by understanding and accommodating their language and culture. It should have ensured that children could actually access transport to attend primary and secondary school, prioritising funding for all purposes that ensured that Māori children of this district were reliably able to access education even if their communities were not close to town. It might sometimes have been necessary to improve the roads for this purpose. Where required, the Crown should also have offered better subsidies for attending boarding schools.

On the whole, we consider that the Crown was insufficiently concerned about how difficult it was for rural Māori children to gain education at both primary and secondary levels for significant periods and in many parts of this district. In a significant number of instances, moving to town was the only way for them to guarantee ready access. We discern in the Crown's approach a different attitude to that which we think would have applied to a similarly low level of provision to Pākehā children in the same

period. This observation applies to the tardy response to some Māori communities' requests for schools, and the low subsidies paid to children who had to attend boarding school to receive secondary school education. The Crown should consistently have regarded education for Māori children as a high priority, and on every occasion that it did not, it failed to provide for them as it should have under article 3, and acted inconsistently with the principle of active protection.

(2) *Te reo Māori*

It is difficult to know how much the English-only policy in schools contributed to the decline of *te reo Māori*. The policy was certainly wrong-headed and regrettable in all sorts of ways, not least because of how it made Māori children feel about themselves and the experience of learning in school. However, the policy did not operate alone. It occurred in a context where the dominant society's messages to Māori consistently lacked respect for their language and culture. Parents imbibed these messages, and lost confidence themselves in the ability of *mātauranga Māori* (Māori knowledge) to enrich and advance their children's lives.

Certainly, the suppression of *te reo Māori* in schools was a factor in the decline of the language, and we reiterate the findings of the *Te Reo Māori Tribunal* that 'the education system [was] being operated in breach of the Treaty'.⁶³¹

Even before the *Te Reo Tribunal* issued its report in 1986, many changes occurred in the education system. There is now a network of early childhood centres and schools (*kōhanga reo* and *kura kaupapa*), and tertiary institutions too, that teach *te reo Māori* and teach in *te reo Māori*. The Crown and *Te Puna Mātauranga o Whanganui* entered into a formal relationship that has as its focus providing high quality and appropriate education to the Māori people of this region. All of these were moves in the right direction. However, there is still much work to be done. We support the findings of the *Kōhanga Reo Tribunal* that the funding of *kōhanga reo* was inequitable at the time of our hearings, and that *kōhanga* were not sufficiently autonomous. We did not have enough

information to make findings about the relationships between the Crown and other organisations such as *kura kaupapa* and *Te Puna*. We did observe, though, that the claimants' complaints about the Crown's processes, attitudes and structures were common to a range of organisations in both the education and health sectors. We think that in order for Māori education providers to maximise their success with Māori students, it will be important for the Crown to increase its efforts to create constructive and supportive partnerships in which there is a positive interchange about pedagogy and culture. Funding for Māori organisations that enables them to plan properly will be an important aspect of this partnership. We strongly encourage the Crown to continue its progress in these directions.

Crown support for local dialect and *mita* is a complex matter in a period when the numbers of competent speakers of Māori continue to decline, and emphasis has understandably gone on creating fluency in standard Māori. At the same time, part of the vibrancy and *mauri* (essential life force) of *te reo Māori* is its diversity and tribal variation. The *Wai 262 Tribunal* found that

tribal dialects must be considered *iwi taonga* in the same way that *te reo Māori* is a *taonga* to Māori generally . . . for individual *iwi*, dialects are *taonga* of the utmost importance; they are the traditional media for transmitting the unique knowledge and culture of those *iwi* and are bound up with their very identity.⁶³²

We concur, and in the context of the many years when the Crown failed to comply with its Treaty duty to foster Māori language and culture, and in light of its complicity in their decline, we recommend that the Crown takes positive steps to work with *tangata whenua* of this region to find and develop ways of building into education ways of maintaining and promoting *te reo o Whanganui*, *iwi* culture, and *te tino rangatiratanga*.

21.7.2 Health care

In all the periods we covered, access to health care was difficult for people living in rural parts of the inquiry district, and often in the small towns as well. Around the middle

of the twentieth century, some communities had reasonable access to district nurse services, but we received no evidence that doctors were ever regularly available outside Wanganui and the larger towns. The lack of medical professionals in small towns and rural areas was exacerbated by poor and expensive transport links in many areas, especially before the mid-twentieth century.

We accept that people living in rural areas will never enjoy the same access to health care as city dwellers, particularly if they cannot afford to run a car. While this causes significant hardship for such people, the costs of providing medical services are such that it is not practical to provide hospitals or even clinics in every community. There can be legitimate disagreement over the level of service which the Crown should provide, but it is entitled to concentrate its health funding in large centres of population, where it will be most effective. However, Māori people have a right to live in their traditional tribal areas, and it should not be impossible to obtain good health services in places where there is an otherwise viable and functioning community of reasonable size. Ways to improve access could include free or easily affordable ambulances and other medical transport, more and better trained district nurses and paramedics, and mobile medical clinics.

Another barrier between Whanganui Māori and effective health care, especially in the nineteenth and early twentieth centuries, was the monocultural nature of the health-care system. We have seen that Māori had ceased to use Wanganui Hospital by about the 1870s, and saw no evidence that the Crown was concerned about this. It neither investigated nor ameliorated the situation, so we can only surmise that Māori people came to shun the hospital because it did not meet their needs, and it is likely that cultural factors played a part. We accept that in some cases conformity with tikanga Māori would have been impractical, or incompatible with western concepts of clinical safety. However, we endorse the approach of the Napier Hospital Tribunal, which found that the Crown should have encouraged Wanganui Hospital to adapt its procedures to Māori tikanga where it was practical and safe to do so, and explain those procedures where it was not.⁶³³ From the 1980s, health professionals were trained

in tikanga, which should have improved their ability to provide services in a way that was culturally appropriate and therefore more efficacious.

As we have noted, the causes of ill health and of health disparities are many and complex. Some, such as lack of immunity and genetic factors, were and are beyond the Crown's control, while others, such as personal decisions to smoke or to abuse alcohol, are difficult, though not impossible, for the State to influence. We also acknowledge that the Crown at times provided health services to Whanganui Māori that were not available to non-Māori, such as the native medical officers and the free medicines distributed by native school teachers. We do think, however, that the Crown had a duty over the whole period to provide for Māori citizens by doing what it reasonably could to ensure that their health was on par with that of non-Māori.⁶³⁴ In the early colonial period, and taking into account the limited activities of the State at that time, its health initiatives were for the most part reasonable. Later, though, it should have done more to increase the number and range of services that were accessible locally to people whose access to transport has consistently been limited. Overall, the Crown did not fulfil its duty of active protection. It remains a challenge but an imperative for the Crown to continue to work creatively and respectfully with Māori health providers to deploy their experience, knowledge and connections to devise programmes that will, over time, close the gap between Māori and non-Māori health status in this region.

21.7.3 Housing and social welfare

The evidence we heard on housing and social welfare was fragmentary, limited to the early twentieth century for welfare, and the mid-twentieth century and later for housing.

We heard that, under the pension system in operation between 1898 and 1935, pensions were often denied to elderly Māori who owned land, even if they did not get any income from it. We also heard that Māori were, as a matter of policy, given less money than non-Māori, even if their circumstances were identical. Similarly, Māori on relief work were paid less than non-Māori doing the same

work, and Māori were ineligible for maintenance payments. We find that these policies were in breach of the principle of equity.

With regard to housing, it is not clear to us that there is a general Treaty duty for the Crown to help improve Māori housing. There is, however, a clear duty to provide housing assistance to Māori at least equal to that provided to non-Māori. If (as was generally the case) Māori housing was worse than non-Māori housing, fairness would usually oblige the Crown to spend more assisting Māori. The twentieth century saw significant improvements in Māori housing, but not enough to fix a very serious problem, especially in rural areas.

In the latter half of the twentieth century the Crown used policy incentives to motivate people to move from farflung locations that Māori traditionally occupied to towns where they could more reliably access jobs and services. On balance, we find this approach difficult to criticise. If Māori remained in out-of-the-way kāinga where they could not support themselves and had to rely on benefits, there would be a real danger of rural ghettos where children grew up without access to the services they need. At the same time, though, Māori need to retain their presence in and connections with papakāinga, and that involves renewing the housing stock over time. We find that the network of rules around this has impeded Māori from building or living on their tūrangawaewae, and the Crown has breached its duty of active protection by allowing this to happen.

21.8 RECOMMENDATIONS

- We encourage the Crown to ensure that its relationships with all Whanganui Māori organisations are fair and equitable, that these organisations have sufficient autonomy, and that funding is both adequate, and equitable with comparable non-Māori organisations. This encouragement applies, but is not limited to, Te Puna Mātauranga o Whanganui and kura kaupapa. As regards kōhanga reo and Māori health organisations, it is a formal recommendation.
- We recommend that the Crown continues to work

creatively and respectfully with Māori health providers to deploy their experience, knowledge and connections to devise programmes that will, over time, close the gap between Māori and non-Māori health status in this region.

- We recommend that the Crown reviews the Resource Management Act and other planning legislation, policy, and practice, to ensure that Whanganui Māori are not unduly prevented from building houses on, or developing, their own land. It should work with local authorities to ensure that they have proper regard to the importance of Māori being able to maintain their papakāinga. It should also engage with iwi Māori on the kaupapa of regional development, with a view to creating opportunities for people to participate in economic ventures that make it viable for them to occupy their ancestral kāinga.

Notes

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2. Submission 3.3.181, pp 3–4
3. Submission 3.3.65(a), p 83
4. Ibid, pp 85–86, 91
5. Ibid, pp 55, 61–62
6. Ibid, pp 62, 73
7. Ibid, pp 68–72, 75–79
8. Ibid, p 73
9. Submission 3.3.133, p 2
10. Ibid; submission 3.3.181, p 3
11. Submission 3.3.181, pp 3–4
12. Submission 3.3.133, p 2
13. Ibid, p 38
14. Ibid, p 2
15. Ibid, p 25
16. Ibid
17. Ibid, pp 25–26
18. Document A66 (Mitchell and Innes), p 61
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22. Document A61 (Rose), p 216
23. Ibid, p 215
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30. Document A100 (Macky), pp 9, 285. See also, submission 3.3.118, p 56.

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32. Document A65 (Stirling), p 645

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35. ‘Te Aute and Wanganui School Trusts (Report and Evidence of the Royal Commission on the)’, AJHR, 1906, vol 2, G-5, pp vi, viii; doc A61 (Rose), pp 67–68

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37. Document A100 (Macky), pp 336–337

38. Document A65 (Stirling), p 647

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40. ‘Te Aute and Wanganui School Trusts (Report and Evidence of the Royal Commission on the)’, AJHR, 1906, vol 2, G-5, p vii

41. ‘Report of Wanganui Endowed School Bill Committee’, 18 November 1879, AJHR, 1879, vol 2, I-4, p 5

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43. ‘Te Aute and Wanganui School Trusts (Report and Evidence of the Royal Commission on the)’, AJHR, 1906, vol 2, G-5, pp 112, 114

44. Ibid, p 109

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CHAPTER 22

THE WHANGANUI NATIONAL PARK

22.1 INTRODUCTION

This chapter discusses the establishment of the Whanganui National Park and claims by Whanganui Māori that the Crown has excluded them from governance and management of the park, in breach of the principles of the Treaty of Waitangi.

When the Crown founded the park in 1987, the land in it comprised 183,000 acres. The park land lies around the Whanganui River but does not include the river itself. Nor is it a single block of land: it is split into three major sections: northern; southern; and the central section, which is by far the largest of the three.¹ As discussed earlier (see chapters 12, 13, 15, 16, and 17), descendants of the former owners of the land challenge the process by which the Crown acquired the land from them.

In chapter 16, we inquired into how, in the late nineteenth and early twentieth centuries, the Crown embarked upon a policy programme to preserve scenery along the Whanganui River. Some land was compulsorily acquired from Māori specifically for this purpose, but the Crown originally purchased most of the land that it later sought to preserve as scenery for farming settlement. However, it was largely unsuitable for farming: too isolated, too steep, and too densely forested. Settlers typically walked off the land, and by the late twentieth century large areas were abandoned and uninhabited. By then the Crown conceived the land around the Whanganui River as both beautiful and scientifically significant. More land was put into scenic reserves, and then many scenic reserves were incorporated into the new Whanganui National Park. This conferred on the land the State's highest degree of protection.

Governor-General Sir Paul Reeves opened Whanganui National Park at Pīpīriki marae on 7 February 1987, the day after Waitangi Day. Whanganui Māori warmly welcomed their manuhiri (guests).²

Beneath their manaakitanga (hospitality), though, lay anxiety. Whanganui Maori had held hui to discuss the Crown's proposal for a national park. Unanimously, they sought protection for the waters of the Whanganui River and its tributaries; the land and its resources; and their sacred values. But they had misgivings about what role they would be able to play in this new national park centred on their awa tupuna (ancestral river). Their river claim remained unsettled, and their grievances about how the Crown had acquired their land along the river had yet to be addressed.

Against this background, Whanganui Māori agreed to the park's establishment reluctantly, and only after repeated assurances that the Whanganui River would be excluded

from the park; that their claims involving the river and the park land would not be prejudiced; and that they would be involved in running the park. In their view, few of their hopes, and more of their fears, have been realised.

In this chapter, we consider the interests of Whanganui Māori in relation to the park and the land comprised in it, and examine the extent to which those interests were provided for in the establishment and management of the park. How were Whanganui Māori first told about the proposal to establish a park? How did they respond? To what extent did the Crown respond to their concerns? How has the park been managed, and what role have Whanganui Māori played in the park's governance, management, and day-to-day operation? To answer these questions, we have examined both historical and contemporary evidence from many of those directly involved in the establishment and management of the park. The themes at the heart of this chapter are partnership and protection. We conclude with our findings on Treaty breach, and recommendations.

This is how we have organised the material in this chapter:

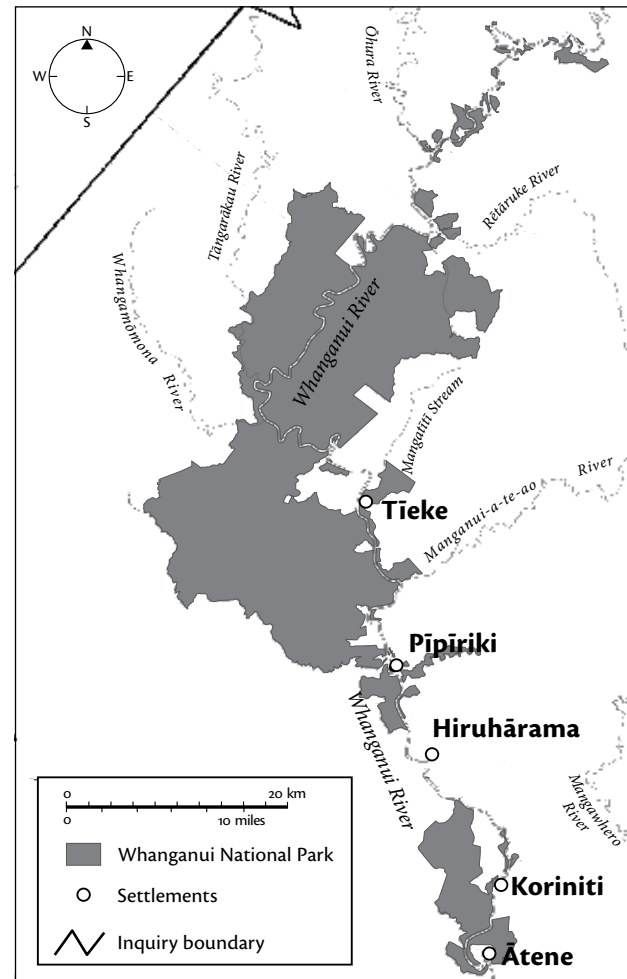
- In section 22.2, we set out the claimants' and the Crown's submissions and expectations.
- In section 22.3, we investigate the claimants' interests in and traditional relationships with the land that became the park by the 1980s. We also briefly recount the history of the Crown's relationship and dealings with the park land.
- In section 22.4, we relate the history of how the national park came into being. We inquire into how the Crown dealt with Whanganui Māori in that context, and what was said to them about their role in managing the park.
- In section 22.5, we look into how Whanganui Māori have participated in the governance and management of the park, and into their relationship with the Department of Conservation.
- In section 22.6, we discuss the relationships comprised in the Treaty, and how the Treaty principles apply to conservation land.
- In section 22.7, we give our findings and recommendations.

22.2 THE PARTIES' POSITIONS

22.2.1 What the claimants said

Joan Akapita lodged the Wai 48 claim on behalf of the descendants of Tamaūpoko with the Waitangi Tribunal on 26 March 1987. It was the first about Whanganui land generally. It addressed the land the Crown bought from Māori within the North Island main trunk railway zone, especially the Waimarino block; and the Aotea District Māori Land Board's purchases, particularly '[a]ll

Map 22.1: Whanganui National Park





"I AM related to every plant, every particle of dirt. My whakapapa and my history connects me to it all. These connections have never been extinguished. We still belong to it all, and therefore we are still "owners in it all".

—Rufus Bristol, a DOC ranger of Uenuku hapū¹

Whakaihuwaka c subdivisions now contained within the Whanganui National Park'. (Wai 48 was later re-registered as Wai 221.)

By 1990, Whanganui Māori and the Crown were attempting direct negotiation of all Treaty claims in the area, which the Minister of Conservation, Denis Marshall, understood by 1991 to include 'Crown owned land around the river, the waters of it and the whole of the Whanganui National Park'.³

Whanganui Māori said they agreed to the national park only after receiving assurances that its establishment would not prejudice their claims involving the Whanganui

River and land claims; that the river would be excluded from the park; and that they would be fully involved in day-to-day park management.⁴

They said that they had hopes and expectations for the new park and their relationship with it that have substantially been dashed.

Whanganui Māori wanted:

- ▶ to manage the park themselves with the Crown's help, or at least as an equal partner with the Crown;
- ▶ to shape a new conservation ethic that incorporated Māori values as well as Pākehā ones, and to make the park something new and different: a 'Maori National Park';⁵
- ▶ the Crown to recognise their ancestral relationship with the land in the park by establishing the park's headquarters at Pipiriki,⁶ and by giving them training and employment opportunities in the park.

They believed that:

- ▶ regardless of who the legal owners might be, it remained their responsibility as kaitiaki to protect the park's lands, waters, plants, and animals; and
- ▶ the Crown's Ministers and officials, at various times, promised to help them substantially realise their vision: that Whanganui Māori and the Crown would work together to create a Māori national park.⁷

Whanganui Māori said that few of their hopes or expectations for the park have been met. Instead, some of their worst fears have been realised. Their Treaty claims to the lands in this inquiry are still unsettled. The Department of Conservation (DOC) has remained in control of the day-to-day management of the park ever since it opened. Under DOC management, the park has not become the Māori national park that Whanganui Māori envisioned. And, they said, they are still prevented from acting as kaitiaki over the taonga of their ancestral lands and waters.⁸

Whanganui Māori argued that the current governance and management structure for the park is inconsistent with the Treaty and its principles. They believe that the Crown missed an opportunity to develop a new relationship with them in the management of their ancestral lands and waters. The late Sir Archie Taiaroa spoke for the wider claimant community when he said:

There is no substitute in protecting Maori spiritual and customary concerns, for real authority. They are one. The many attempts to fence off the spiritual things from real authority and rangatiratanga denies our Maori approach, and the Treaty. It cannot be done honestly.⁹

There was a real sense of betrayal amongst Whanganui Māori over how the Crown went about establishing the park. Partly as a consequence, their relationship with DOC had been marked by periods of high tension, and even breakdown. The Tieke occupation in the early 1990s was the most famous protest, but land at Mangapāpapa, and the DOC ranger headquarters at Pipiriki, had also been occupied for months at a time.

22.2.2 What the claimants wanted

The redress that Whanganui Māori claimed the Crown should provide in relation to Whanganui National Park proceeded from three main arguments.

First, Whanganui Māori emphasised that the park contains their ancestral maunga, many important awa, and ancestral taonga such as their former pā, kāinga, wāhi tapu, and urupā. They particularly stressed the significance to them of the Whanganui River, which – formally included or not – is the heart of the park, and is, in the claimants' view, inseparable from the whenua and from the iwi.¹⁰ They argued that these customary associations remain intact despite the fact that they have lost ownership of the land.

Secondly, Whanganui Māori argued that the Crown's acquisition of their land now in the park breached the Treaty. The Crown must now redress that Treaty breach by returning significant sites, and partnering with them to manage the park.¹¹

Thirdly, Whanganui Māori claimed that when the Crown was in the process of establishing the park, they made their desire to partner with the Crown very clear. But the Crown either ignored their arguments, or through Ministers and officials made promises about representation in park management, or levels of employment, which it then did not honour. The consequence, claimants said,

has been prejudice to them from a park management regime that is not Treaty compliant.¹²

The claimants said that the current regime constrains their relationships with these taonga and does not allow them to fulfil their roles as kaitiaki of their ancestral taonga.¹³

Many of the claimant groups sought the return of title to some or all of the conservation land in their rohe.¹⁴ They sought once more to exercise rangatiratanga over and act as kaitiaki of land now part of the conservation estate. Whanganui Māori said that Māori should partner the Crown in managing the environment in general, and the Whanganui National Park in particular.¹⁵ This would endorse both the Crown's right to govern, and their right to exercise te tino rangatiratanga and kaitiakitanga.¹⁶ Whanganui Māori values could reshape the park's guiding purposes to make it a 'living heritage', rather than a 'natural museum'.¹⁷

Tamahaki is the group whose rohe overlaps with much of the park, and its counsel put forward the most well-developed vision of what such a partnership would entail. Tamahaki argued for the return of title to specific sites of particular cultural and historical significance to Whanganui Māori, such as wāhi tapu, urupā, and mahinga kai,¹⁸ and, for the rest of the park, a co-governance agreement between Whanganui Māori and DOC. Under the agreement, a governing body would comprise at least half tangata whenua, and iwi and hapū of Whanganui Māori would have equal decision-making powers with DOC in terms of governance and strategic planning. They would exercise kaitiakitanga in the park's lands within their rohe and would have the right to veto concession grants.¹⁹

Whanganui Māori acknowledged that in recent years their relationship with DOC had improved. However, they said that their role was still not that of Treaty partner, and current law and policy made that impossible. Their exclusion from their rightful role in managing the park constituted a breach of the Treaty; a breach which could not be healed until the Crown changed law and policy for managing the conservation estate in general, and Whanganui National Park in particular.

22.2.3 What the Crown said

The Crown argued that it did adequately consult Whanganui Māori when the park was established, and that the current regime for the governance and management of Whanganui National Park is Treaty compliant. It said that the Treaty gives it the right to govern and to make final decisions. The Crown must retain that right to fulfil its duty to the environment and to the wider public.²⁰ The Crown acknowledged that it must also provide for 'ongoing and meaningful relationships' with Māori. But it did not accept that the Treaty relationship should be seen as a partnership where the Crown and Māori have equal rights. In the Crown's view, 'partnership' is best seen as an analogy that is helpful in describing the Treaty obligations of the Crown and Māori to act in good faith, fairly, reasonably, and honourably.²¹

The Crown acknowledged that Māori have a relationship of kaitiakitanga with their taonga in the environment. However, the Crown argued that the importance of Māori interests in sustaining relationships with their taonga must be decided case by case, depending on factors such as

the relative importance of the taonga to Maori, any environmental threat to the taonga, available research, other extant interests in respect of it, the human and monetary resources required for effecting Maori interests . . .²²

The Crown saw it as its task to balance these interests.²³

As evidence that current law and policy is Treaty compliant, the Crown pointed to section 4 of the Conservation Act 1987, which requires DOC to give effect to the principles of the Treaty in administering all the statutes under its jurisdiction, including the National Parks Act 1980 – at least to the extent that those statutes are clearly not inconsistent with the principles of the Treaty.²⁴

The Crown stressed to us the significant influence that Whanganui Māori have on how DOC runs the park. The Crown also highlighted the statutory provisions that ensure that Whanganui Māori have a place on the Taranaki-Whanganui Conservation Board.²⁵ This board

provides a wider community voice in park management. It approves some of DOC's core planning and policy documents, including the Whanganui National Park management plan, and more generally it advises DOC on its strategic direction. In carrying out its functions, the board must:

- have regard to the spiritual, historical, and cultural significance of the Whanganui River to the Whanganui iwi; and
- seek and have regard to the advice of the Whanganui River Māori Trust Board on any matter that involves the spiritual, historical, and cultural significance of the park to the Whanganui iwi.²⁶

The Crown said that DOC has already been working with Whanganui Māori to explore what a Māori national park might mean in practical terms. The Crown described a number of recent DOC initiatives intended to make progress towards 'the spirit of partnership' and a 'more collaborative working relationship' in Whanganui.²⁷ These include memoranda of understanding between DOC and some Whanganui Māori groups, an effort to develop a wider forum for engagement with all Whanganui Māori in park management planning, and the close involvement of Whanganui Māori in developing a new Whanganui National Park management plan.²⁸

Certainly, in recent years the relationships between Whanganui Māori and DOC have greatly improved. DOC has been more willing to engage with Whanganui Māori across a wide range of issues. DOC staff attended our hearings, and claimants welcomed DOC's efforts to build relationships and to accommodate their concerns as best they can under the current legislative and policy regime. However, Whanganui Māori felt that some key underlying issues remain unresolved. As Whanganui Regional Conservator Damien Coutts frankly admitted to us:

The relationship with Whanganui iwi has been troubled since DOC's inception in 1987. As a result there has been a lack of trust between the parties, and there has been no real or meaningful collaboration in the management of the Whanganui National Park.²⁹

Occupations of Department of Conservation Lands

In the 1960s, several huts were built near the rivers in the National Park, including at Tieke and Puketapu.¹ The John Coull hut at Puketapu was erected near or on an urupā, and although the commissioner of Crown lands in New Plymouth was vaguely aware of the urupā, he seems to have done nothing to prevent the hut being erected on it.² In the 1980s tāngata whenua informed the Department of Conservation (DOC) about the urupā and, after some delays, the hut was moved at DOC's expense but with mostly tāngata whenua labour.³ Tensions continued, however, over the location of toilets and whether anywhere at Puketapu was an appropriate camping site.⁴

From the late 1980s, DOC began introducing 'user pays' fees for its huts. This resulted in some river users 'freedom camping' near the river, causing environmental damage and in some instances camping on urupā. In response, DOC proposed a ban on camping outside of official sites, and a system of pre-paid 'Facility User Passes' or FUPs.⁵ The FUP concept was widely opposed by Māori with connections to the Whanganui River, who saw it as a Crown charge for using

their river and lands which had been illegally taken from them.⁶ They were also frustrated at the lack of progress on their Treaty claims.⁷ Tāngata whenua groups refused to pay hut fees, and consideration was given to occupying the John Coull hut. However the Minister of Justice threatened to withdraw the Crown from negotiations over the Waimarino claim if the occupation went ahead.⁸

In September 1993, Te Whānau o Tieke began occupying the Tieke hut.⁹ The occupiers re-established the marae and provided hospitality to tourists and other visitors, including DOC staff.¹⁰ We heard that most manuhiri appreciated the welcome, with some regarding it as a highlight of their journey.¹¹ Over November and December, Te Whānau o Tieke negotiated with various Crown representatives, but the two groups were unable to come to agreement over whether Te Whānau o Tieke should be allowed to stay at Tieke.¹² The Minister of Justice again threatened to end discussions over the Waimarino claim if the occupation continued.¹³ In February 1994, Te Whānau o Tieke stopped the occupation, having been promised that the marae would remain, kaitiaki

Mr Coutts went on to say that 'the grievances articulated at the time of the park's establishment remain the central issues to the relationship'.³⁰ He also acknowledged that Whanganui Māori have issues about how the park is to be managed, especially given commitments the Crown made about how things would be done on the ground.

The Crown maintained that current law and policy for managing the Whanganui National Park satisfies its Treaty obligations. It argued that aspirations by Whanganui Māori for any greater role in governance and management of the park are properly matters for settlement negotiation. It emphasised that:

Redress packages negotiated are political decisions, and redress over National Parks in particular raise complex policy

considerations which will be considered and weighed up by Ministers in the course of negotiations.³¹

The Crown did not want to rule out any options for future consideration.³²

22.3 WHAT INTERESTS WERE THERE IN THE LANDS THAT BECAME THE PARK?

The Whanganui National Park was formed wholly from Crown land, much of which had been set aside as reserves of various kinds in previous decades. So why do Whanganui Māori claim present-day interests in the land, and in the management of the national park? In this section we look at the traditional relationships between

would be acknowledged, and DOC would consult with iwi, kaitiaki, and Te Whānau o Tīeke over concerns such as the FUP and location of campsites.¹⁴

DOC's decision to allow Tīeke marae to remain in the National Park was a hugely significant one, going against the 'wilderness' ethos which had for decades underpinned national park legislation, policy, and practice.¹⁵ However, tension remained between DOC and the marae kaitiaki, with each side considering the other was asserting too much power over the marae. DOC was concerned about the unauthorised activities such as erection of buildings, modification of a gas line, and bringing dogs into the area.¹⁶ Meanwhile, kaitiaki considered that DOC was treating the marae as if it were a DOC campsite.¹⁷ Rangi Bristol told us during hearings that, while the relationship between tāngata whenua and DOC was better than it had been before the occupation,

they still control things and we are still not adequately involved in park management – not by a long shot. On a day to day level whilst we do have a good personal relationship with the

people at the Whanganui Conservancy . . . the big decisions and the policy is still made without our input and influence.¹⁸

Mr Bristol said the kaitiaki wanted 'complete management, or at the very least joint management with iwi having at least 52% of the control'.¹⁹

The next National Park site to be occupied was the former pā site of Mangapāpapa, in 1996.²⁰ According to Mini Haitana, the kaupapa of this occupation was less political than Tīeke, and more to do with traditional learning and the spiritual connection with the land.²¹ A wharepuni (sleeping house or guest house) was built, which remained at Mangapāpapa at the time of our hearings.²² Since then, the Mangapāpapa marae has hosted whare wananga and a programme for street kids.²³ At various times DOC has tried, with little success, to prevent the tāngata whenua from hosting manuhiri and otherwise using the site.²⁴ In his evidence for this inquiry, DOC area manager Nicholas Peet said that DOC's concerns mostly involved health and safety risks.²⁵

Whanganui Māori and the land that became the park. We also look briefly at relevant Crown purchasing, and its interests in the park land.

22.3.1 The land

Whanganui National Park comprises discrete pieces of land strung along the Whanganui River and its major tributaries, covering in total 183,428 acres.³³ Beginning 17 kilometres downstream from Taumarunui, old scenic reserves form an almost continuous chain along the river south to Whakahoro. The park's large 'central core' area extends south from this point along the river's middle reaches to Pipiriki, and its third major section is land on the river between Rānana and Ātene.

Its primary purpose is to protect and conserve the land and waterways of the Whanganui River catchment. Encompassing 170 kilometres of the Whanganui River's

flow as it winds its long way from Tongariro to the sea,³⁴ the park captures a unique forest sequence that spans the mountains of the interior and the coastal lowlands. Within it is one of the largest unbroken expanses of lowland forest left in the North Island, and there are many rare and precious plants and animals.

There are also quantities of land surrounding the official boundaries that are, to all intents and purposes, part of the park. In 1993, DOC invited submissions on a public discussion paper about adding to the park a number of these areas that the department administers as conservation areas or other reserves.³⁵ However, the Crown put this proposal on hold pending settlement of relevant Treaty claims.

Much of the remaining Māori land in Whanganui is adjacent to – and even in a few cases landlocked within – the park. For Whanganui Māori it is often unclear just

where their land ends and the park begins. Many of the places key to the identity of Whanganui Māori lie within the park's boundaries. It is concentrated on the middle reaches of the river, so the connections of hapū there are especially strong. Don Robinson reminded us that all Whanganui Māori have a stake in the park: 'we all belong to Whanganui and we all have interests in those particular lands where the National Park has been set up'.³⁶

22.3.2 The river

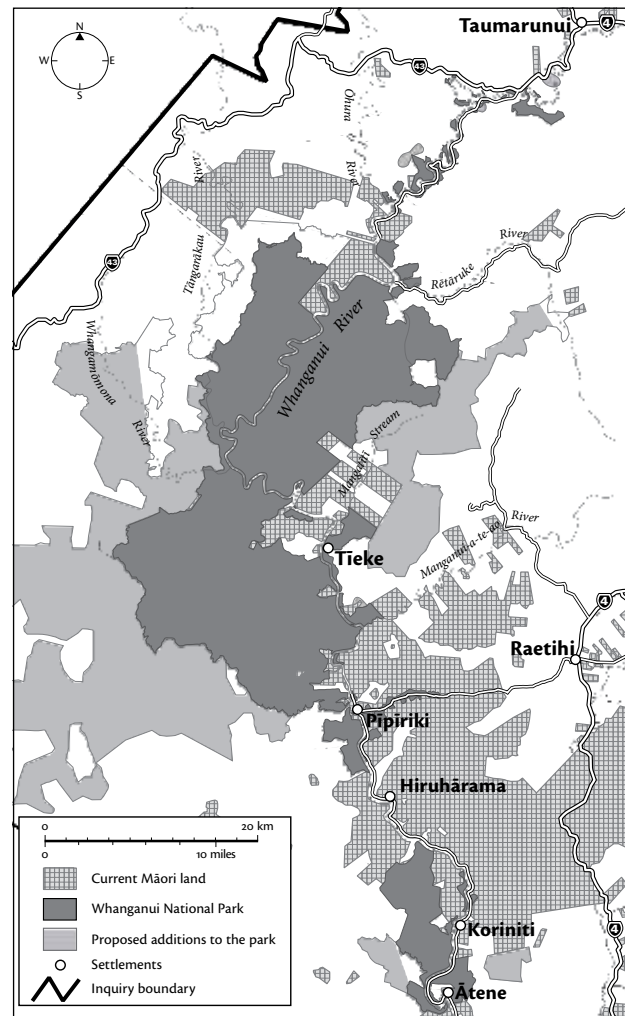
Hapū and iwi of the Whanganui River and its tributaries are symbiotically connected with the awa and the land along its banks. In the 'deeply entrenched valleys separated by sharp-crested ridges'³⁷ that characterise this region, the terraces of fertile and flat land in the more open valleys were where tangata whenua lived and cultivated good crops, using rivers for transport.³⁸ As the *Whanganui River Report* said, the awa was their 'pathway to the sea, and the roadway that knitted the people spread along its banks into a single entity'.³⁹

On the theme of connectedness, that Tribunal noticed that when claimants referred to 'the mana, wairua (spirit), or mauri' of the river they referred to 'the whole river system', so that the Whanganui River itself included all the things to which it was related: 'the tributaries, the land catchment area, or the silt once deposited on what is now dry land'.⁴⁰ And:

The river, like the land, was transmitted from ancestors, from the original ancestress, Papatuanuku, the earth mother, through the first people to the current occupying tribes, and was bound to pass to the tribes' future generations. For the same reason, the river, like the land, was not a tradeable item.⁴¹

Whānau, hapū, and iwi did not see themselves as the owners of lands and waters. Rather,

whether with regard to the land or the river, Māori saw themselves as permitted users of ancestral resources . . . their use of resources was always conditional on obligations to ancestral values and future generations . . .⁴²



Map 22.2: Proposed additions to Whanganui National Park

Throughout our hearings, Whanganui Māori demonstrated to us through whakapapa (genealogy), waiata (song), kōrero (speech), and pepeha (tribal sayings) that they are the proud possessors of their own culture, which they call Whanganuitanga. Universal Māori precepts like whanaungatanga (kinship) and kaitiakitanga (guardianship) shaped that culture, and its relationships to the environment. But as a result of centuries of settlement on

'As a people, we were able to live by our important cultural values of kotahitanga, manaakitanga, aroha, kaitiakitanga and whanaungatanga. As an example, the river drove and dictated our lives which are enshrined in the expression 'ko au te awa, ko te awa ko au.' Importantly, it was this kotahitanga that bound us to each other and to the environment in a holistic way. These values and this world view are important in terms of assessing the intention of our people in entering into Te Tiriti.'

—Te Hemopo Bryan Michael Kora, of Ngāti Tūwharetoa,
Te Āti Haunui a Pāpārangi, Ngā Paerangi,
Ngāti Tūmango, and Ngāti Tuera²

'THE relationship between Maori and their land is a symbiotic one. To be a landless person, is to be like a tree without a root system, whereby you now become the flotsam unrestrained on the winds of adversity, without control and without purpose.'

—Tūrama Hāwira³

the banks of the Whanganui River and its major tributaries like Manganui-a-te-ao, Whanganuitanga evolved as a distinct and unique riverine culture.

22.3.3 Whanaungatanga and kaitiakitanga

In te ao Māori (the Māori world), all things are kin connected by whakapapa. Caring for kin is an overriding cultural imperative. All of the iwi and hapū of Whanganui Māori, therefore, were able to tell us of places, animals, or plants in the environment that are their particular whanaunga, their ancestral kin, and which they see as taonga that they are obliged to protect and conserve:

'I am anxious that the Tangata Whenua of the Middle Reaches are restored to their true authority as guardians of the mauri of our tupuna. A lot of people are sceptical about whether we can look after our waters and our lands.'

'I think this scepticism is unfounded . . . We have always looked after and welcomed manuhiri in our rohe when they have come in peace.'

'We have always searched for peaceful solutions in our dealings with each other as the Treaty promised. I hope the visions of my tupuna, Taumatamahoe, can be fulfilled in our lifetime. I urge the Tribunal to give careful consideration to a recommendation that brings the Middle Reaches back within the embrace of Tamahaki and his descendants in the Middle Reaches.'

—Rosita Rauhina Dixon⁴

Based on their conception of the creation, all things in the universe, animate or inanimate, have their own genealogy, genealogies that were popularly remembered in detail. These each go back to Papatuanuku, the mother earth, through her offspring gods. Accordingly, for Maori the works of nature – the animals, plants, rivers, mountains, and lakes – are either kin, ancestors, or primeval parents, according to the case, with each requiring the same respect as one would accord a fellow human being.⁴³

Kaitiakitanga is the Māori concept that expresses the responsibility to nurture, care for, or conserve something or someone. It is one of the kaupapa, or first principles, that orders te ao Māori. Everything of any importance in te ao Māori has a kaitiaki, a guardian tasked with the responsibility of protecting its mauri, or spiritual health. Many such kaitiaki are spiritual beings, taniwha, or atua. But people, too, are kaitiaki.

The significance of whakapapa links to ancestral lands was a core reason why, as the Tribunal in the *Whanganui*

‘LAND is the essence of life, history, whakapapa, korero, waahi tapu, waiata, te reo as well as being one of sustenance for those who reside on it. It sustains crops through water that comes from Ranginui. It sustains us as a people, and in my view the water and the land are not commodities that can just be bought and sold. These taonga give us life.’

—Wiparaki Allen Pākau⁵

River Report emphasised, land could not be permanently alienated in traditional Māori society.

And it was evident in our hearings that even today Whanganui Māori cannot conceive of completely severing their connections to their ancestral lands and waters.

The Tira Hoe Waka has strengthened whanaungatanga and kaitiakitanga. It began in 1988, and is a kind of annual pilgrimage. Each January, Whanganui Māori gather at Taumarunui to travel together by waka down the river to the sea. For many, the Tira Hoe has rekindled connections to ancestral places along the Whanganui River, and to their whanaunga.

22.3.4 The wider public interest in the park

From a conservation point of view, the value of Whanganui National Park is exceptional. The large area of North Island lowland forest extends from the mountains to the sea. Very rare and precious bird and animal species find sanctuary in the park, of which the most important are the whio (blue duck) and brown kiwi.⁴⁴ But other endangered species such as kākā, yellow-crowned kākārīki, fernbirds, the long-tailed cuckoo, New Zealand falcon, and the long-tailed bat are also present. The park is also a reservoir for many more common (but perhaps declining) species.

Nicholas Peet, area manager for DOC, reminded us that, beyond species protection, the forests of the Whanganui National Park benefit New Zealanders by ‘storing carbon, protecting water quality, reducing flood impacts and

Tira Hoe Waka

Raana Virginia Māreikura described to us the significance of the Tira Hoe Waka:

It was important for those on the Tira Hoe to bring the history of the Awa from the Mountain to the Sea. It is about learning our history, about the forests, what kind of food there is and about the tūpuna that lived along the river region and to keep alive the whānau connections even though some have moved on. Whānau need to know today who lived on the land and how they lived. Their history had to be recaptured, the whakapapa needed to be passed on and the many korero need to be repeated for every generation to know.

To me, the Tira Hoe Waka was the start of uniting and bringing the people of the river back to the river. No matter where they live in New Zealand they all return for the Tira Hoe Waka. They learn about their people and about themselves on the Tira Hoe Waka. That is the part that unites the people of the awa, from the mountain to the sea. The Tira Hoe Waka plays an important role in that it confirms the connection of our maunga to our awa and keeps our histories alive.¹

protecting a unique and living cultural landscape associated with the long Māori habitation of the park.⁴⁵

The wider public engages with Whanganui National Park in many ways. It is a centre for the activities of organisations like the Friends of the Whanganui River, Forest and Bird, tramping clubs, and historical societies. Nature is not the only drawcard. The park preserves and protects a great deal of history too. As well as the rich Māori cultural landscape, sites there tell stories of early contact between Māori and European settlers, of tourism and trade during Hatrick’s river boat era, and of the doomed struggle by settlers to farm the rugged hills.⁴⁶



The Whio or blue duck. Whanganui National Park is a sanctuary for very rare birds. One of the most important is the whio, which is classified by the Department of Conservation as 'nationally vulnerable'. Indeed, the total number of whio in New Zealand is believed to be fewer than 3,000.

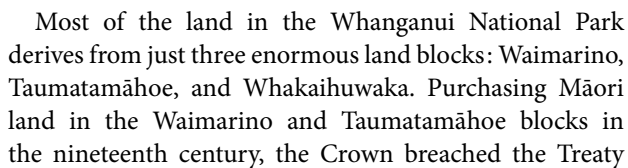
The park's tracks are becoming increasingly popular with trampers, but by far the greatest attraction is the journey down the river by canoe or kayak. The 'Whanganui Journey' between Taumarunui and Pipiriki is one of DOC's famous 'Great Walks', and thousands do it each year. According to DOC's management plan, the river landscape provides 'a strong sense of remoteness, isolation, and dominance of the natural elements'.⁴⁷

We confidently conclude that the public's interest in this national park is quite as high as any in New Zealand.

22.3.5 How the Crown acquired the park's land

We inquired into the Crown's land purchases, and its compulsory acquisition of scenic reserves, earlier, in chapters 12, 15, and 16. The claimants' arguments about Whanganui National Park are premised on the Crown's acquisition from them of the land in the park being unfair and contrary to the Treaty. We therefore summarise our findings about that land before proceeding further.

The Crown purchased most of the land in the park by conduct that breached the principles of the Treaty.



principles of good faith, active protection, partnership, equity, and equal treatment. Its land purchases in the Whanganui district after 1905 focused on remaining Māori interests in Taumatamāhoe and Whakaihūwaka.⁴⁸ The Stout–Ngata commission advised the Crown to cease



Canoeists on the Whanganui River. One of the Whanganui National Park's most popular attractions, drawing tourists from New Zealand and overseas, is the journey down the river.

purchasing in these blocks immediately,⁴⁹ because it recognised their importance as land specifically reserved from earlier sales in order for Māori to live on and to cultivate. But, as we have seen in chapter 14, the Crown instead purchased a further 20,000 or so acres in Taumatamāhoe and well over 10,000 acres in Whakaihuwaka.⁵⁰ Virtually all this land was later included in the Whanganui National Park (see chapter 15).⁵¹

The rest of the park's core area derives from Crown purchases in the early 1880s of whole blocks west of the Whanganui River such as Aratawa (4,207 acres), Raoraomouku (8,697 acres), and Mangapukutea (2,817

acres), as well as a significant portion of the Whitianga block. Crown land that formed the park's northern section was scenic reserves along the river banks downriver from Taumarunui. Some of these were compulsorily acquired – especially those in the Ōpatu and Kirikau blocks. Crown land in the park's southern section comes from parts of the Ahuahu, Te Tuhi, and Tauakirā blocks, mostly bought around the turn of the twentieth century.⁵²

(1) *Waimarino*

The Crown in our inquiry conceded that it paid too little for the Waimarino block, and said this is 'arguably one of

the most significant acknowledgements made in respect of a single purchase, [which] given the size of the block, amounts to a major concession.⁵³

We found in chapter 13, however, that the Crown's Treaty breaches in respect of Waimarino extended far beyond the low prices paid. It breached the Treaty in virtually every aspect of its dealings with the owners of the Waimarino block.

To summarise the position, the Crown failed in its Treaty duty to protect the interests of the Waimarino block's customary owners – and in doing so breached articles 2 and 3 of the Treaty, and also the Treaty principles of good faith, active protection, partnership, equity, and equal treatment – in that:

- ▶ The two court hearings to establish title to Waimarino and to partition it were compromised by the absence of large numbers of customary owners. The boundaries on the court sketch plan were incomplete, and there was no plan available to enable consultation and objections before the hearing (see chapter 13).
- ▶ It failed to identify at least a third of the owners, immediately prejudicing them and also their descendants.
- ▶ It purchased the block with undue haste and pressure, using dubious methods that included bribery, 'special arrangements', and buying the interests of minors. It also allocated inadequate reserves to those who sold interests, and set aside inadequate areas to represent the shares of owners who did not sell their interests (see chapter 12).
- ▶ There were no effective methods of redress. All requests for rehearing were refused, and all petitions to Parliament concerning Waimarino were dismissed. None of the many complaints made directly to the Native Minister or to officials produced a result satisfactory to Waimarino owners.

(2) *Taumatamāhoe*

The way the Crown went about acquiring land in the large Taumatamāhoe block (155,300 acres) was a particular focus of claimant concern (see chapters 12 and 13). Between 1889 and 1922, it purchased almost 98 per cent of Taumatamāhoe, to open the land to Pākehā settlement.⁵⁴

The Crown acquired its first interests in the land in 1879 through 'secret dealings' (by making advance payments) on what was then called the Tāngarākau block. Even though widespread Kingitanga opposition led to cancellation of the proposed purchase, the Crown later treated the money it had paid in the secret dealings as down-payments. In 1886, the Native Land Court determined title to the block,⁵⁵ recognising as owners 472 Whanganui Māori descended from Tamahaki, including 26 minors.⁵⁶

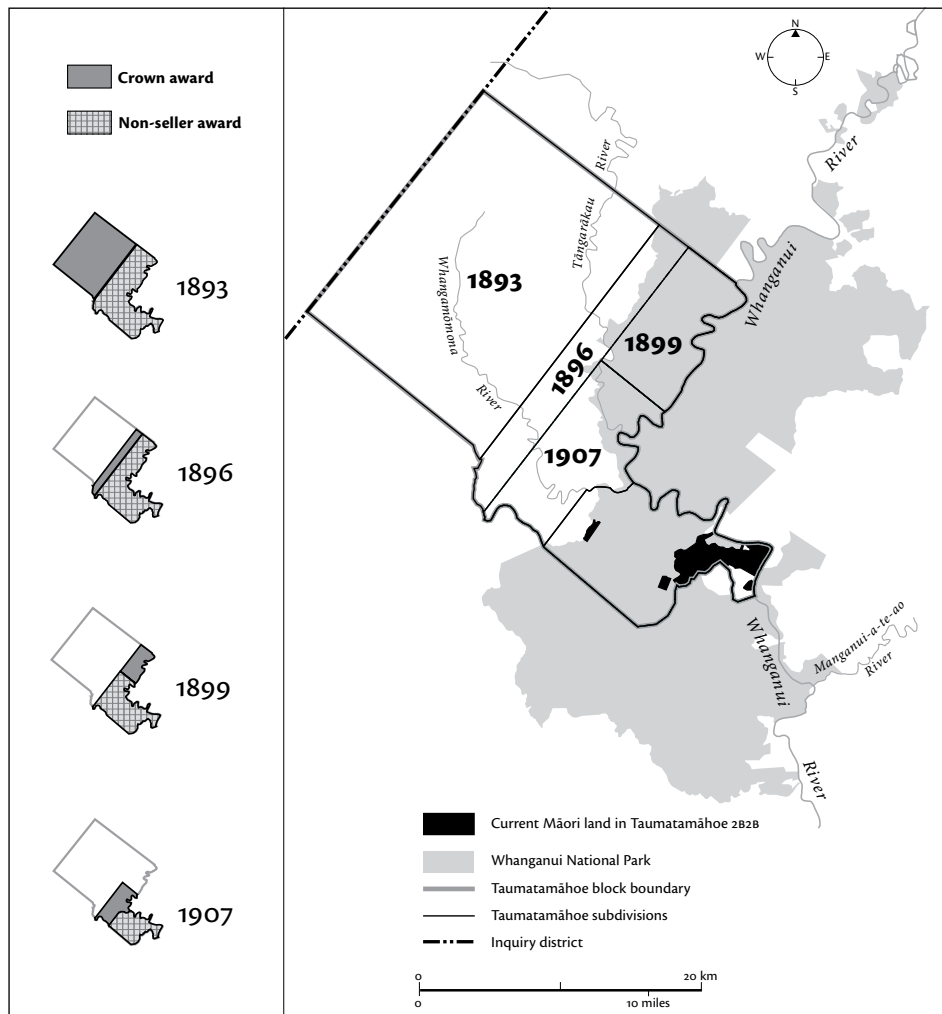
The owners did not want to sell Taumatamāhoe. In accordance with their wishes the Native Land Court in 1886 made the block inalienable except for leasing.⁵⁷ But the Crown overrode this provision and purchased almost three-quarters of the block during the nineteenth century.⁵⁸ Whanganui Māori complained to the Minister and Crown officials,⁵⁹ telling them how the Crown was

- ▶ riding roughshod over the arrangements made between the owners and the Native Land Court that should have protected the block from alienations;
- ▶ buying up undivided shares before the owners' relative interests had been determined;
- ▶ paying less than two shillings an acre; and
- ▶ failing to make any reserves.⁶⁰

Crown purchase of land in Taumatamāhoe continued into the twentieth century. We noted in chapter 15 how in 1907 the Stout–Ngata commission explicitly recommended that the Crown cease buying land in this block (see section 15.4.3). The commission stated in its report that the block's owners were 'unanimous and emphatic in urging that the Crown cease purchasing'.⁶¹ The Crown took no notice, and acquired most of the remaining Māori land between 1911 and 1922. It made proclamations prohibiting the owners from selling to private parties:⁶² this made the Crown the only legal purchaser and therefore able to dictate the price.⁶³ By 1922, the Crown had bought all but about 4,000 acres of Taumatamāhoe 2B2B, which is what remains in Māori ownership today.⁶⁴

(3) *Whakaihūwaka*

In 1886, the Native Land Court determined that this 67,210-acre block belonged to 523 descendants of Tararoa and Tamahaki.⁶⁵ Complaints in 1898 led to the recognition



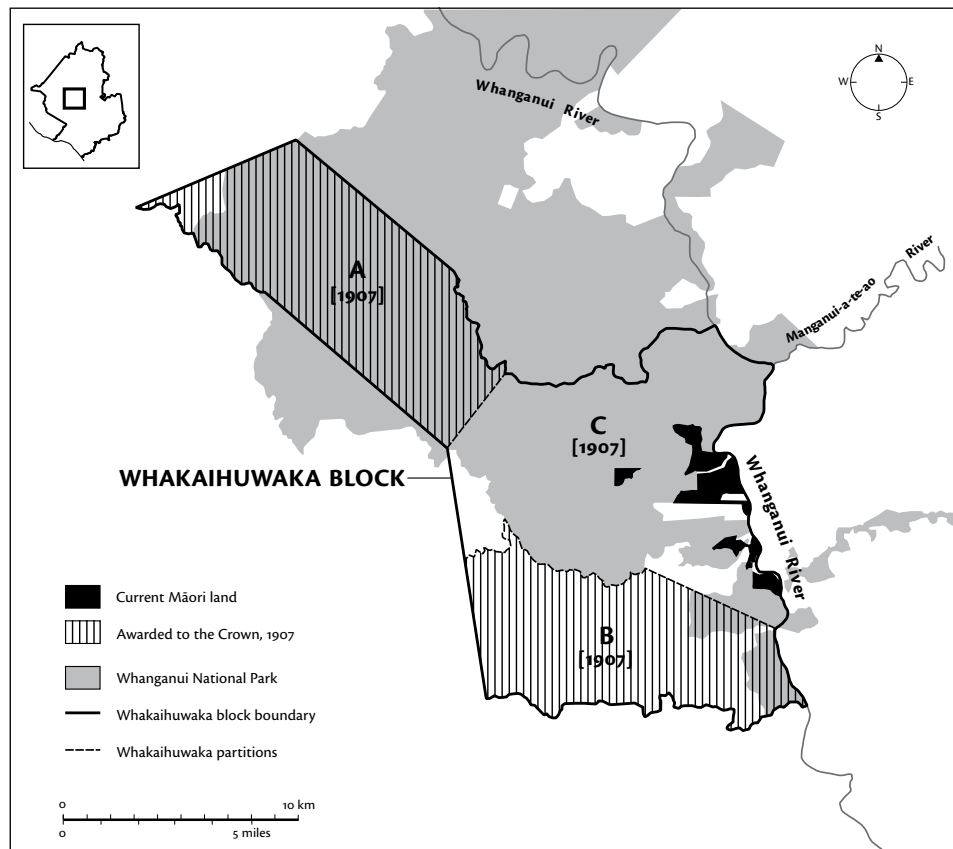
Map 22.4: The Taumatamāhoe block and current Māori land in relation to the Whanganui National Park. A total of 20,000 acres of the block was purchased after 1907, despite the Stout–Ngata commission having recommended that no more land in the block should be bought. Later, the land was added to the park.

of more owners, and the owners then also agreed the allocation of shares.⁶⁶

The Crown's purchases in Whakaihuwaka began in 1906,⁶⁷ and proceeded rapidly. Commissioners Stout and Ngata reported in 1907 that the Crown had acquired the equivalent of 53,899 acres in one year, paying 7s 6d an acre,⁶⁸ and leaving Māori with the equivalent in undivided shares of only 13,311 acres.⁶⁹ Their calculations appear to have overestimated the extent of Crown purchasing,

however, since other evidence confirms that the 497 remaining Māori owners retained Whakaihuwaka C, of 25,456 acres.⁷⁰ The Stout–Ngata Commission found the remaining owners of Whakaihuwaka – like the owners of Taumatamāhoe – 'unanimous and emphatic' in their opposition to further Crown purchases.⁷¹ Many owners said they had no other lands, or had sold on the understanding that reserves would be made for them. They complained about the low prices. They proposed that

Map 22.5: The Whakaihuwaka block and current Māori land in relation to the Whanganui National Park. Over 10,000 acres of the block was purchased after 1907, despite the Stout–Ngata commission having recommended that no more land in the block should be bought. Later, the land went into the park.



papakāinga reserves be made around four kāinga. They wanted to retain and farm 4000 acres themselves, and were prepared to lease the remaining 9000 acres. They preferred to organise the leasing themselves.⁷² Stout and Ngata recommended the Crown agree to these proposals.⁷³

Instead, and directly contrary to Stout and Ngata's recommendations, the Crown bought most of the remaining Māori land in the block (see section 15.4.6(1)). Crown purchases continued into the 1920s, and around 1970 some Māori land was 'Europeanised' (its title was converted from Māori to general land) under the Maori Affairs Amendment Act 1967. Today, some 1,250 acres of Whakaihuwaka remains in Māori ownership.⁷⁴ It therefore appears that at least 20,000 acres of land in

Whakaihuwaka c was purchased after 1907, contrary to Stout and Ngata's recommendations that the Crown buy no more land in the block, and most of this land was later put into the Whanganui National Park.

22.3.6 Why did the Crown want the land in these blocks?

When the Crown began buying up the Whanganui hinterland in the late nineteenth century, it intended to use the land for Pākehā farms. The settlers' lives and livelihoods would be enhanced by proposed transport routes between Wellington and Taranaki.⁷⁵

The Crown purchased land in Taumatamāhoe for both rail and road: in the nineteenth century, for a possible route for the North Island main trunk railway, and in the

twentieth century for a potential road from Wellington to Taranaki, with a bridge to cross the Whanganui River at Parinui.⁷⁶ Neither of these plans came to fruition.

The Crown's settlement objectives in this region were simply unrealistic. When Nicholas Bayley presented his evidence, he told us that the Crown's plan for transforming the environment into farmland failed 'to appreciate the extent to which it was unsuited to the type of economic activity envisaged for it'.⁷⁷ As if the difficult terrain, high rainfall, poor soils, erosion, and rapid reversion to scrub were not enough, economic conditions were poor from 1920 on – and of course the road and rail never came. Farming was never even attempted in many areas; where it was, it often failed. Large areas were eventually abandoned, and ownership reverted to the Crown.⁷⁸ In the meantime, great tracts of forest were cleared, largely through burning – a wholesale transformation that Māori were powerless to influence.⁷⁹

Settlers began walking off their land in the mid-1920s – in fact, just after the Crown called off its programme of purchasing Māori land in Taumatamāhoe and Whakaihūwaka.⁸⁰

The best-known settlement failures are those that resulted from the Crown offering land in remote areas to returning First World War servicemen for the establishment of farms. In this district, soldiers took up land in central parts of the Taumatamāhoe block, at Whangamōmona, Kōhuratahi, and Aotuhia; and in the Waimarino block in the Kaiwhakauka Valley and Mangapūrua Valley.⁸¹ By the 1940s, much of this hill country was 'characterised by slip-scarred slopes, large areas of secondary growth, and abandoned holdings'.⁸²

22.3.7 What were the effects of these failed attempts?

The environment paid a high price. The wholesale destruction of the virgin forest to make way for farms brought with it species loss (plants and animals), erosion, and siltation of waterways.⁸³ On the western side of the Taumatamāhoe block and on the eastern side of the Waimarino block, some farming remains. However, the population dwindled considerably in the twentieth century.⁸⁴ The Crown had to find alternative uses for large

Living off the Land

Eunice Ranginui of Ngā Poutama nui a Awa, described to us her life with her husband Te Hiringa (Cyril) Ranginui, whom she married in 1952:

We had nothing at Ohui, but we were able to live off the land and didn't lack for anything. Cyril was a man of the ngahere, and used to hunt for wild pork, venison, young goats, wild geese, ducks, and pheasants on our land. There was plenty of ngahere on Ohui, so Cyril didn't need to go anywhere else to catch what we needed. However, we did go possum shooting on the scenic reserve at the southern end of the land. He would take me and our son out to pick pikopiko, pitau, kiekie fruit and komata (the white flower from the middle of a cabbage tree) to cook with eels or put into a boil up. We also used to eat karaka berries, which must be soaked for six weeks and then have the skin removed. The inside is like peanuts. Puha, watercress, toetaka and poroporo were all plentiful. We had a massive garden, with vegetables of all varieties.

I spent most of my time preserving vegetables because we had no refrigerator, and we were never out of vegetables all year round. In fact, we had enough to share with others. I used to preserve the pork that Cyril caught in hot fat, and it would keep for months. We also used to put corn into running water for six weeks when it was hard, and then mash and cook it in water. That was our porridge (kaanga wai). We cooked bang-bang bread, made from scone mixture, outside in a camp oven – this was the only oven we had.¹

areas, so it designated them as scenic reserves, and as State forests. Of the park land gazetted in 1986, about half was scenic reserves (89,452 acres), while the other half was just abandoned and unused apart from some 5,200 acres of former State forest or timber reserves.⁸⁵

Whanganui Māori continued to roam through the area,

The Bridge to Nowhere: The Settlement for Returned Servicemen at Mangapūrua

When soldiers came back from the First World War, the Government offered land at Mangapūrua for the establishment of farms. Unwittingly, it was leading those hapless men down a long and troubled path to nowhere.

The 30 farms in the isolated valley had none of the characteristics required for successful agriculture. Access and transport were the headline problem. A wooden swing bridge over the Mangapūrua Stream was all that connected the valley to the outside world. A proper bridge was always in prospect, to form part of a road from Raetihi to Taranaki. That road never eventuated, and by 1936, when a large concrete bridge was finally completed, it was too late. Most had already abandoned their farms. The final nail in the coffin was when, in 1942, a huge downpour washed out the road, and the Government said it would no longer maintain it. By then, only three families still lived in the valley, and they were forced to leave. By 1944, the settlers were all gone.

Only the bridge remains – a symbol of the failure of the settlement.



and make use of it, even though they no longer owned it. The environmental changes meant that resources on the land were, as Cathy Marr noted, ‘considerably diminished’, and urban drift occurred through the latter half of the twentieth century. However, some traditional connections with the land were maintained, helping to sustain iwi and hapū identity and mana.⁸⁶ Te Whetūre Poope Robert Gray of Ngāti Kurawhatia said of growing up around Pipiriki: ‘We wandered over these other lands; we used them and hunted on them without hassle.’⁸⁷

This was a theme in our hearings: kaumātua told us how for a good part of the twentieth century communities lived by hunting, harvesting, fishing, and gardening, and never went to a shop. The close relationship between the people, and between the people and the land, made the memories largely happy ones. Traditions continued. Tangata whenua still harvested kererū – but also hunted pigs, goats, and deer; they trapped eels and whitebait, but fished for trout too.⁸⁸

Today, few Whanganui Māori retain this degree of intimacy with their environment. Witnesses told us how, on the whole, people no longer know how to find and prepare rongoā, or properly harvest the now-rare kererū. They are uncertain whether they should even try.⁸⁹ And, of course, as the Crown supervised the forest land in scenic reserves and the national park more closely, Whanganui Māori could undertake mahinga kai (food gathering) only with special permission.

22.3.8 Conclusion

When the Crown purchased the land that it later put into Whanganui National Park, it breached the Treaty and its principles. Like Te Urewera National Park, this park ‘rests on a defective foundation.’⁹⁰ Whether purchased misguidedly for settlers to farm, or for transport projects that never came to pass, or for scenery by compulsory acquisition, this land was wrongfully bought from its Māori owners. Whanganui Māori will struggle to accept Whanganui National Park as legitimate until the wrongs of the past are acknowledged, and means are sought to right them.

The fundamental relationship between Whanganui Māori and the land and waterways in Whanganui

National Park are such that loss of ownership has not severed their connection. The ancestral ties remain, and the emotional ones too – perhaps stronger here because feelings about loss of mana are intensified by the prevailing sense of injustice. Whether or not they own the land, they are still tangata whenua, still kaitiaki, still rangatira.

22.4 THE ESTABLISHMENT OF THE NATIONAL PARK

22.4.1 How the Crown engaged with Māori interests

The idea for a national park based on the Whanganui River was first seriously considered in 1980. The Whanganui National Park was gazetted in 1986, and opened in 1987, but its governance and management structures were finalised only in 1990.

We have inquired closely into how the Crown engaged with Whanganui Māori in establishing the park. Whanganui Māori consider that the Crown made commitments to them during this time that were not honoured. DOC’s current conservator for the region gave us his view that the anger that tangata whenua still feel about the park dates from their treatment at that time.

The 1980s, when the idea of the Whanganui National Park was planted and took root, was a dynamic period in Crown–Māori relations nationally. This was the time when the status and meaning of the Treaty of Waitangi, and the nature of the relationship between the Crown and Māori, were being re-defined as potent political and moral questions. Locally, the idea of the park was backlit by Whanganui Māori’s longstanding claim that they had always owned the bed of the Whanganui River, and their ancestral riverlands had been wrongfully taken. The Crown, for its part, was juggling the establishment of the park with a wholesale reorganisation of environmental and conservation law, management, and administration.

The Conservation Act was passed in March 1987, only months after Whanganui National Park was gazetted. DOC came into being, and assumed control over the park. Section 4 of the Conservation Act charged DOC with interpreting and administering the Act so ‘as to give effect to the principles of the Treaty of Waitangi’. This is one of the strongest Treaty directives ever legislated. The Act

does not say what the Treaty principles are, though, nor indicate how to give effect to them. Happily, the full bench of the Court of Appeal addressed these very questions in June 1987, in their unanimous judgment in the seminal *Lands* case. The court held that the Treaty principles ‘signified a partnership between Pakeha and Maori requiring each to act towards the other reasonably and with the utmost good faith’. It stressed that the Crown’s duty is

not merely passive but extends to active protection of Maori people in the use of their lands and waters to the fullest extent practicable. That duty is no light one and is infinitely more than a formality.⁹¹

In this same period, Whanganui Māori started dealing with Ministers of the Crown and officials about their claims to the Whanganui River. These discussions inevitably became entangled with the question of the role Whanganui Māori would play in the park,⁹² and their views did have some influence over the development of the park proposal.⁹³

The following sections look at how the Crown told Whanganui Māori about the park proposal, how they responded and how the Crown established the park. We are particularly concerned to test here whether, as Whanganui Māori claim, Ministers of the Crown and other Crown officials made particular commitments to them about the role they would play in the park. Whanganui Māori gave evidence to us, for example, that they were promised a ‘Māori national park’, that they would be fully involved in park management, gain preferential access to employment, and that their claims to the land would not be prejudiced in any way by the formation of the Whanganui National Park.

22.4.2 The beginnings of the park proposal

The idea of creating a national park around the scenic reserves of the Whanganui River was first raised in the 1950s, but gained no momentum.⁹⁴ It was not until 1980 that Crown officials in the Lands Department began to develop such a proposal.⁹⁵ That same year a new National

Parks Act was passed. The purpose of that Act (still in force) is to preserve,

for their intrinsic worth and for the benefit, use, and enjoyment of the public, areas of New Zealand that contain scenery of such distinctive quality, ecological systems, or natural features so beautiful, unique, or scientifically important that their preservation is in the national interest.⁹⁶

No one may harm a single indigenous plant or animal anywhere in a national park without written ministerial consent.⁹⁷ The National Parks Act did not mention Māori interests at all.

Lands and Survey Department officials examined the Whanganui River scenic reserves to assess their suitability for national park status, and noted ‘outstanding visual qualities’ that were not represented in other national parks. Distinctive Māori history was a particular feature. They proposed including some Māori land in the park.⁹⁸

At this stage, officials were not consulting with anyone about the park proposal. Even so, there were compelling reasons why they should have been talking with Whanganui Māori:

- ▶ they wanted to include Whanganui River in the park, and the relationship between tangata whenua and the river was known to be intense, and complicated by a troubled history with the Crown;
- ▶ as recently as 1979, Whanganui Māori had petitioned the Crown claiming ownership of the Whanganui River bed;⁹⁹ and
- ▶ Crown officials wanted to include Māori land in the park.¹⁰⁰

The one Māori representative in scenic reserves administration was Rangi Mete Kīngi, whose attention was at that time focused on opposing the Government’s decision to shift control over the Whanganui River scenic reserves – which up until then had been local – to the Wellington National Parks and Reserves Board.¹⁰¹ In August 1981 Mete Kīngi conveyed to the director general of lands his ‘strongest possible objection’ to the change.¹⁰²

It was not until 25 September 1981 that the director

general of lands suggested that Rangi Mete Kīngi should be told about the possible national park. He wrote in a letter that this was just ‘a public relations move aimed at possibly defusing Maori objection at a later date.’¹⁰³ A note attached to this letter states that Mete Kīngi did not then know about the proposed national park.¹⁰⁴ The meeting probably never occurred, since Mete Kīngi died very soon after. But Mete Kīngi’s opposition to the changes in scenic reserve management did prompt officials to remove all Māori land from the national park proposal.¹⁰⁵

Crown officials decided to consult the public formally about the park proposal in November 1982. They specifically recommended discussion with Māori, and it appears that informal discussions took place,¹⁰⁶ because officials wrote about how Whanganui Māori alerted to the proposal had expressed misgivings. A decision was made to allow four rather than two months for responses to the proposal, and to research how the Crown had acquired from Māori the proposed park land.¹⁰⁷

As late as January 1983, Crown officials doubted that even Hikaia Amohia, a noted rangatira by this time Chairman of the Whanganui River Reserve Trust, knew of the proposal. Astonishingly, officials committed to paper the contempt and duplicity of their dealings with Amohia: ‘Our approach has been to murmur concurrence, and to nod occasionally in mock agreement, but by and large to ignore him.’¹⁰⁸

It was not until February 1983 that Crown officials from the Lands Department met formally with Whanganui Māori on marae to discuss the park. The hui were at Hiruhārama, Parikino, Taumarunui, and Raetihi, and public meetings were also held in Whanganui.¹⁰⁹ Some Whanganui Māori, though, did not find out about the park until it was established.

22.4.3 Māori respond to the park proposal, 1983–84

When Whanganui Māori learned about the national park proposal, their reaction was mixed. Many were cautiously in favour. But there was also widespread concern about the legitimacy of Crown title to the land, their own role in park management, the potential for employment, the

‘I DIDN’T attend any meetings about the proposed national park – I wasn’t even aware that meetings were going on. And this would have been the same for many of the people up here. If we knew we would have done something about it. . . . It felt like it just happened over night – one minute there was no national park, and the next minute there it was. At the time I was angry but I didn’t feel like I could do anything about it and it wasn’t going to stop me doing what I always did.’

—Rangi Bristol⁶

possible disturbance of wāhi tapu, effects on their fishing rights, and, most of all, on their claim to the Whanganui River.¹¹⁰

Titi Tihu, Hikaia Amohia, and Archie Te Atawhai Taiaroa went to Wellington to deliver these concerns to Minister of Lands Jonathan Elworthy in March 1983. They said that the main issues for Whanganui Māori were threefold:

- the effect the park might have on their river claim;
- the legitimacy of Crown title to the park land; and
- their involvement in running the park, especially given the lack of Māori input into previous national parks.¹¹¹

Archie Taiaroa suggested to the Minister that ‘this is one great chance for the Government to take some note of Maori input and encourage such.’¹¹²

(1) Was the Crown’s title to the park land valid?

Whanganui Māori asked the Crown for an explanation of how it gained title to their land. The Department of Lands prepared a document called *Crown Land Acquisitions (Whanganui River Region), 1881–1916*.¹¹³ This claimed to be the result of considerable research undertaken to ‘dispel any doubts’ over the Crown’s right of ownership, and ‘to confirm that all lands within the national park proposal were acquired by the Crown from willing sellers either by



way of purchase or exchange.¹¹⁴ It set out which Māori land blocks were involved in the proposed park, which parts of the blocks the Crown had bought, when the Crown had bought them, and for what price. It also detailed takings under the Public Works Act for scenery preservation.

But Whanganui Māori remained unconvinced about the validity of Crown title. A hui in August 1983 resolved upon further investigation: did all those who had sold land have the right to sell?¹¹⁵ and what about the compulsory purchases for scenery?¹¹⁶

(2) *Whanganui Māori respond to the Crown's 'assessment'*

Meanwhile, in June 1983 the Lands Department had released an expanded version of the *Whanganui River National Park Assessment* for public comment and submissions. This identified the Whanganui River as the 'dominating' feature that 'provides the unifying link for the recreational activities throughout the proposed park.'¹¹⁷ The assessment acknowledged the large number of Māori sacred and traditional sites in the proposed park, and argued that inclusion in the park would provide them with a very high level of protection. Otherwise, the document said little about Māori.¹¹⁸

Whanganui Māori held a series of hui to decide how to respond to the assessment. They formed the Aotea Research Committee to make a submission on behalf of all the people. The committee comprised three representatives for each of the three tūpuna, Hinengākau, Tamaūpoko, and Tūpoho, who represented the upper, middle, and lower reaches of the Whanganui River.¹¹⁹ The submission said that Whanganui Māori were unanimous in wanting the waters, soils, trees, landscapes, and sacred Māori values of the environment protected. The people were divided over the park proposal, however, because of

uncertainty about how fully Māori would be involved in the park's management and administration.¹²⁰

To allay their concerns, Whanganui Māori proposed a board to manage the park. Its members would include six Whanganui Māori (two from each of the three reaches of the river), who would oversee management of Māori historical sites, wāhi tapu, and urupā; protect traditional hunting, fishing, and gathering rights; and ensure Māori participation, employment, and training.¹²¹

(3) *Search for compromise*

In November 1983, the commissioner of Crown lands met Whanganui Māori representatives to try to find a way forward. Whanganui Māori took great heart from this meeting. In particular, they thought there was hope their requests for a "Maori" national park might be granted. A transcript of the meeting documents the commissioner's comments that it would be a 'very "[M]aori" national park', with 'a very large influence of maoriness in the management of the park'.¹²²

The commissioner explained that Whanganui Māori could be represented on the regional Wellington National Parks and Reserves Board, which would set park policy.¹²³ He indicated that, because this would be a regional board, Whanganui Māori might expect to gain only three of 10 board members. But he also proposed that Whanganui Māori form a committee, which would have a statutory function to advise the board, and would be consulted before any decisions were made that affected 'the maoriness of the river and valley'. The commissioner said that, if the board did not accept the committee's advice, Māori would have the right to go directly to the Minister. These arrangements would afford Whanganui Māori 'a full participation into the management of this area and into the setting up of policies over it'.¹²⁴

This was an important meeting. Both sides went away believing that agreement was possible. However, Whanganui Māori and Crown officials saw differently what had been discussed.

After the meeting, Archie Taiaroa reported to the Aotea Research Committee that while they needed to 'proceed with caution' he felt they had 'gained some ground'.¹²⁵

◀ Titi Tihu at the official opening of Te Taura-whiri a Hinengākau, Ngāpūwaiwaha marae, Taumarunui, December 1975. Titi Tihu, together with Hikaia Amohia and Archie Taiaroa, met with the Minister of Lands, Jonathan Elworthy, in March 1983 to discuss concerns about the establishment of Whanganui National Park. These concerns included the legitimacy of the Crown's title to the park, Māori involvement in the running of the park, and the effect of the park on the river claim.

Taiaroa thought Whanganui Māori would have equal status with the Wellington National Parks and Reserves Board: their advisory committee would have statutory authority, have its expenses paid, formulate the management plan, and ensure that the recommendations Whanganui Māori had made in their submissions – which Taiaroa said were now agreed to – were followed. If they were not satisfied, the committee could work directly with the Minister of Lands. The same structure would control the Whanganui River.¹²⁶

Crown officials, meanwhile, did not think that any agreements at all had been reached regarding Whanganui Māori's recommendations. In a memorandum of 24 November 1983 to the Minister of Lands, the director general advised that the idea of including the river in the park had been floated by the commissioner for Crown lands 'without prejudice' to Māori representatives. It was suggested that Māori would secure 'a certain level' of Māori representation on the Wellington National Parks and Reserves Board as a result of the river's inclusion. The idea was said to have received 'a very positive response' particularly if it was supported by recognition of Māori links with the river.¹²⁷

In January 1984 Lands Department officials summarised the November meeting. They told the Minister of Lands that the question of title to the river could be left aside if iwi were given sufficient input into control and management of the park.¹²⁸ As a basis for further 'without prejudice' discussions they proposed that special legislation be promoted to establish the national park, including the river. This legislation would provide for Whanganui Māori to nominate three members on the Wellington National Parks and Reserves Board for appointment by the Minister and the creation of an advisory committee proposed by the commissioner. The nine-member committee would provide advice to the board on all matters relating to Māori, particularly on the park's management plan, as well as matters Whanganui Māori had stressed in their submission, like protection of wāhi tapu and urupā, traditional hunting and fishing rights, use of natural materials, and employment in the park.¹²⁹

Then, in February 1984, Whanganui Māori met the commissioner of Crown lands again, this time in a large hui attended by most of the kaumātua of the Whanganui River. This hui again suggested that a compromise could be reached that would satisfy both parties. Whanganui Māori resolved that they were willing, in principle, for the park to proceed, so long as special legislation provided for management of the river, three Whanganui Māori representatives on the Wellington National Parks and Reserves Board, and a committee of Whanganui Māori with power to advise that board. They also stipulated that these agreements were in no way to prejudice their claims to the Whanganui River or to any land in the park.¹³⁰

(4) The park proposal crystallises

In March 1984, the Department of Lands issued its 'Report on the Proposed Wanganui River National Park' to the National Parks and Reserves Authority.¹³¹ The report found that the proposal met the criteria for a national park, especially since if 'the Wanganui River itself were added, the proposed park would contain a river ecosystem unparalleled in any national park in New Zealand'.¹³² Whanganui Māori concerns were noted, but were marginal to the report's conclusions.¹³³

There was, however, one very significant concession: the Whanganui River was not included in the proposal, in recognition of the fact that negotiations over the claim to the river were ongoing. The National Parks and Reserves Authority in June recommended to the Minister of Lands that he (together with the Minister of Forests) establish the park, excluding the river, the future of which Government departments were still debating.¹³⁴

The fourth Labour Government took office in July 1984, and Koro Wētere became both Minister of Lands and Minister of Māori Affairs. For the rest of that year, discussions continued among officials, and with Whanganui Māori, about how best to proceed with the national park while the claim to the Whanganui River remained unsettled. The year concluded with little decided, other than a consensus among officials to proceed with the national park.¹³⁵

22.4.4 How the Crown established the park

The incoming Government, and in particular Koro Wētere, were under intense public pressure to establish the park, and to include in it the Whanganui River.¹³⁶ Mr Wētere fought hard to advance the river claims of Whanganui Māori alongside the park proposal. But other Government departments refused point blank to transfer to Māori any real authority over the river. And, after more than a year of debate, Mr Wētere failed to gain Cabinet approval for Whanganui Māori to have more than one representative on the Wellington National Parks and Reserves Board.¹³⁷

Eventually, in November 1985, even though nothing had been resolved with Whanganui Māori, Mr Wētere announced that the park was approved in principle. Only after this did he meet Whanganui Māori to discuss, as he put it, ‘all matters which impinge on the Maori people and their centuries long involvement with [the river]’.¹³⁸ Whanganui Māori had meanwhile been finalising their own position in preparation for meeting with Mr Wētere. They had decided, in particular, that to recognise the Māori history and relationship with the land and waterways, legislation should constitute the park as a Māori national park.¹³⁹

(1) *Whanganui Māori meet Minister Wētere*

On 6 December 1985, Whanganui Māori assembled at Ngāpūwaiwaha marae to meet with Koro Wētere. This was the meeting at which, according to some claimants, Koro Wētere made promises to them as a Minister of the Crown which have not been honoured. The meeting opened with an impassioned speech to the Minister:

We seek the rights which the Queen of England guaranteed us under the Second Article of the Treaty of Waitangi, which other men of England took away from us: ‘... the full exclusive and undisturbed possession of our land and estates, forests, fisheries and other properties.’

Mr Minister, you come here today to bring us word of the new National Park project, under which our River and our ancestors’ land will finally pass into the public domain.

Before the people give any consideration to this proposal of the Crown, there are matters of great importance which must first be accepted and honoured by the Crown.¹⁴⁰

Whanganui Māori presented to the Minister a series of resolutions. One said that the Crown must not establish the park before settling all claims to the Whanganui River and to their ancestral lands. If a park were established, they wanted ‘total administrative responsibility’ for it. They would not name the park until assured on these matters.¹⁴¹ Whanganui Māori told the Minister:

we sense the mighty spirits of the past coming back to this Historic Marae. We feel the weight of their presence as we make this plea for the return of our lands, our River and our Sacred Honour.¹⁴²

Whanganui Māori had adopted this staunch position because it had become clear that the park proposal was moving ahead with or without them. They decided that they needed to protect the river at all costs. They believed that if the river were included in the park without their claim to title being resolved, it would effectively spell the end of their river claim.¹⁴³ They knew that the Government wanted to establish the park as a matter of urgency, and this seemed an opportunity to exercise pressure to have their river and land issues settled quickly, and to withhold a name for the park unless the Crown responded favourably to their demands.

Whanganui Māori say that, at the hui, Minister Wētere gave various verbal assurances regarding their role in managing the park, and employment opportunities in it, that have not been honoured.¹⁴⁴

We saw no written record of what Koro Wētere said at the meeting. We heard testimony from people who had been there, and we questioned these witnesses closely on their memory of what was said.¹⁴⁵ Their testimony did not agree in every respect, as is to be expected when recalling events from 20 years ago. However, they recalled that Koro Wētere told Whanganui Māori that the park would be established regardless of their wishes, so that they



Whanganui Māori at hui with the Minister of Lands, Koro Wētere, Ngāpūwaiwaha marae, Taumarunui, December 1985. At this hui, Whanganui Māori asked that the Crown settle title to the river and land prior to the establishment of the Whanganui National Park and allow them to manage the park. The Crown subsequently agreed that the river should not be included in the park and promised that the park would not affect Whanganui land claims. When the park was established, however, no provision was made for Whanganui Māori to have any substantial role in its management.

should 'look for the best deal that you can get, it is your only way out'.¹⁴⁶

The witnesses we heard from were not kaumātua at the time, and so were not privy to all that was said in the meeting with Koro Wētere. However, it was plain from their testimony that the people did not leave the meeting thinking that Koro Wētere had agreed to what Whanganui Māori wanted. Instead, they were disappointed and angry that they had been forced to agree to the park, and seemed to have gained little in return.¹⁴⁷ No one in our hearings

had heard the Minister refer to the proposed park as the Whanganui River Māori National Park.¹⁴⁸

Whatever Koro Wētere may have said in private at Ngāpūwaiwaha, he clearly and publicly declined the key requests of Whanganui Māori: to settle title to the river and land before the park was established, and to allow them to manage the park.¹⁴⁹ He is reported to have said, 'We have to bear in mind other interest groups such as trampers, canoeists, recreational people and other environmental groups'.¹⁵⁰

‘GOOD Faith discussions only get you so far and now we are trying to reclaim a position that was given by [Koro Wetere,] the Minister at the time, and his commitment to us as a people doesn't seem to have been articulated in writing and committed to. We are only able to hold on to those promises as long as those people are alive because once they go we are going to be claiming what conversation happened between our tupuna. So if we don't tie that down over the next few years our chances of really establishing a partnership over the National Park will become less and less.’

—Nancy Tuaine⁷

(2) *After the hui with Minister Wētere*

After the hui, Minister Wētere wrote to Archie Taiaroa on 18 December 1985 to clarify his intentions. It is plain that he was prepared to take some steps to support the aspirations of Whanganui Māori, but not nearly as many as they would have hoped:

Tena koe Archie

The purpose of this letter is to clarify some of the decisions which were discussed at the meeting held at the Ngapuwaiwaha Marae on 8 December. In particular, I think it is desirable for me to confirm and possibly expand on some of the matters which I announced.

I am willing to introduce legislation into Parliament to establish a Maori Trust Board for the Maori people of the Wanganui River. Matters such as the constitution and name of the Board are matters on which the decision should come from the local Maori people and I would not impose my wishes on you. Perhaps your committee could also consider a name for the National Park, although at this stage that will be established consisting wholly of Crown owned land excluding the river.

Although I had previously indicated that the Maori Trust

‘KA whakawhiti whakaaro, ka whakawhitiwhiti kōrero hoki o mātou nei matua tūpuna o roto i o rātou ake reo. Ko wai rā ko te minita i tērā wā, ko tērā tino rangatira o roto o Tainui waka a Te Wetere nāna i haere mai ki te tauawhiahi i o mātou nei matua tūpuna me tana kōrero mai ‘e hoa aroha mai, ko te mahi a te Kawanatanga whakatūria Te Papa Atawhai ki runga o o koutou nā awa, aha ko he aha o koutou nā kōrero ko taku ki a koutou tautohetohe ake rātou mo ngā painga hei pai mā koutou. [Inaudible] tēnā a koutou nā rongoa engari anō kia ora ai koutou.’ Muri mai i tēnā ka huri whakaaro ai o mātou nei matua tūpuna kia pērātia.’

‘So that we are all aware that discussions were carried out and discourse was logged involving our elders in their own language to the Minister of the time from Tainui Koro Wetere. He came to sit with our elders and he stated, ‘Please do not be angry because the Crown’s work is to establish Te Papa Atawhai on your river. Although no matter what you say to us, what I say to you, no matter your arguments, we must find what benefit we can for you. It is not the remedy you seek, but so that you find some relief.’ Following that our elders changed their thinking to follow the Minister.’

—Robert (Bobby) Gray, Paraweka marae, Pipiriki, 14 March 2008⁸

Board should be established by legislation before negotiations on compensation for the taking of metal were commenced, you may feel it worthwhile to consider this question further beforehand. I am sure you will appreciate that I am under some considerable pressure to establish the National Park without delay. The Tauranga Moana Maori Trust Board was set up in this manner after a decision had been reached. I must admit that, upon reflection, the early resolution of the metal question has some appeal to me.

If you agree with the suggestion I have just made, the

introduction of enabling legislation may be delayed slightly, but I would still see it taking place towards the middle of 1986. Depending on the wishes of the local Maori people the legislation could cover not only the establishment of the Trust Board, but also the involvement of your people in the management of the National Park and the protection of areas of traditional and cultural concern. Perhaps it may also be possible in this legislation to cover the question of mana or spiritual sovereignty – but this will need very careful wording.

At the meeting a number of other matters were raised with me with which I could not agree fully. One of these matters was the title held by the Crown in the land which is to be included in the National Park. As far as I am concerned, the title is legitimate from both a legal and a moral point of view; but I realise that your people still have some doubts on this issue. I am quite happy for this to be further discussed with officials of my departments and I leave it to you to raise your doubts with appropriate officials. I understand Mr Fouhy would be quite happy to discuss matters from a Maori Affairs point of view, but perhaps you may also seek the involvement of officials of the Department of Lands and Survey.

Kia ora

K T Wetere

Minister of Maori Affairs and Lands¹⁵¹

As to employment, Whanganui Māori have consistently maintained that Minister Wētere promised that ‘most of the jobs’ in the park would go to Whanganui Māori. The tenor of Mr Wētere’s submission on the park proposal to the Cabinet Social Equity Committee confirms that this was part of his thinking.¹⁵²

(3) *Impasse and compromise*

After the hui at Ngāpūwaiwaha, Crown and Māori views about Whanganui Māori and the park became polarised. Negotiations about the river came to an impasse. Whanganui Māori continued to demand that the river be excluded from the park, and that they should manage it, but Minister Wētere could not see why, without the river, ‘the Trust Board has any grounds to seek involvement in

the administration and management of the park.’¹⁵³ The trust board, for its part, now felt that Mr Wētere had ‘purposely ignored the total wishes of the people and has contradicted all assurances he has previously given.’¹⁵⁴

Each side then made some conciliatory moves. At the end of July Mr Wētere changed his mind about compensating Whanganui Māori for gravel taken from the river, saying imminent payment of some money was ‘preferable.’¹⁵⁵

The negotiating subcommittee then told the trust board on 9 August 1986 the news that Whanganui Māori would have just one seat on the Wellington National Parks and Reserves Board, and that their committee would have an advisory role only on spiritual aspects. The trust decided to negotiate for equal representation on the board.¹⁵⁶ It had become clear that they had very limited leverage in the face of the Government’s determination to proceed.

On 10 September 1986, Minister Wētere wrote to the trust saying that he now felt there was ‘a fair measure of agreement’. He set out the position as he understood it: the bed of the river was to be excluded from the park, but legislation would ‘tie in management activities affecting the river with the procedures for managing the park’ (as per the Cabinet committee approval). Legislation would also recognise the mana of the river and its spiritual value to the people. He said this ‘will provide a mechanism through the management plan’ for ‘real involvement in the management of activities affecting the river, and with decisions that might affect Maori spiritual values and tapu areas’. He reiterated what he had said ‘quite clearly on at least two occasions’: total management by Māori was not possible, but through the trust board and their one representative on the Wellington National Parks and Reserves Board, Māori could ‘have a very real say in matters which affect Maori cultural values and spirituality.’¹⁵⁷

On 22 October 1986, Minister Wētere presented Whanganui Māori with a set of ultimatums. He could not wait much longer to announce the establishment of the park. He hoped Whanganui Māori would provide a name before then. Some compensation for the taking of gravel from the Whanganui River was available now, but

full settlement of the issue might take time. The further research Whanganui Māori wanted into the Crown's land acquisitions would not hold up the park. However, Minister Wētere reassured them about 'land areas which you may consider have not been correctly and fairly acquired by the Crown'.¹⁵⁸ He stated: 'I have already given such assurances, but I confirm once again that the park will in no way inhibit or prejudice any future actions or claims by the Whanganui Maori people.'¹⁵⁹

The Trust Board knew the consequences of acquiescing to the proposed structure: 'minimal power in Wellington Parks Board. No power and control in management of proposed Park'.¹⁶⁰ It authorised its subcommittee to continue negotiating, but they gained only reiteration of the Minister's written assurance that the park would 'in no way inhibit or prejudice any future actions or claims'.¹⁶¹ At a meeting on 8 October, the Trust Board agreed to the name Whanganui National Park.¹⁶²

On 7 November 1986, the Trust Board's solicitors wrote to the Director of Lands and Survey on Amohia's instruction to argue once again that the Crown should not establish the park without first settling customary title to the river bed: negotiations needed to reopen.¹⁶³ However, it appears that there was then a change of heart, because on 25 November the Trust Board wrote to say that it did not oppose the dedication of the park.¹⁶⁴ But, by then, the point was already moot – the previous day, the Governor General in Council had announced that the park would come into effect from 6 December 1986. The administrative centre was to be at Waanganui, with satellite offices at Pipiriki and Taumarunui.¹⁶⁵ Koro Wētere and Russell Marshall made the formal announcement by joint press release on 2 December. Koro Wētere publicly recorded his core promises to Whanganui Māori:

Maori claims to traditional fishing rights, and to 'customary Maori title' to the bed of the river or to other land areas which may not have been correctly or fairly acquired by the Crown, would not be prejudiced.

Negotiations on these matters are continuing, because the act of declaring the area a national park in no way

inhibits or prejudices any further actions or claims by the Maori people.¹⁶⁶

Whanganui Māori welcomed guests to the ceremony at Pipiriki when the Governor-General formally opened the park on 7 February 1987.

22.4.5 Conclusion

At the outset of the park proposal, the Crown wanted to include in the park both Māori land and the Whanganui River, and this alone created an obligation to communicate with Whanganui Māori about it as openly and as early as possible. But Crown officials saw such communication as neither necessary nor desirable.¹⁶⁷ When, in September 1981, it was finally decided to inform Māori about the park, it was cynically cast as a 'public relations move' to try to defuse expected objections.¹⁶⁸ This attitude and approach was wholly inappropriate. The Crown's failure to consult in the early stages of the proposal had downstream prejudicial effects, contaminating the basis for subsequent engagement.

From the opening of formal negotiations in 1983, Whanganui Māori expressed their concerns about the legitimacy of the Crown's title to the land in the park; the possible effects on their Treaty claims; and their desire to have at least an equal say in park management as partners with the Crown. The Crown's position was less clear. On the one hand, the Crown officials who were negotiating with Whanganui Māori about the river believed a solution could be found for the river before the park was established, and were prepared to consider accommodating Whanganui Māori desires for a substantial say in the park governance. On the other hand, the Crown officials who were developing the park proposal, saw much less need to recognise Māori interests. The Wanganui River National Park Assessment 1983 and the Report to the National Parks and Reserves Authority 1984 did not adequately engage with Māori interests and concerns.

In 1985, Whanganui Māori regrouped, insisting both that the river be taken out of the park, and that the park should not affect their land claims. The Crown, through

Governor-General Sir Paul Reeves signing the Order in Council establishing Whanganui National Park, 6 December 1986. With him (from left) are Prime Minister David Lange, Cabinet Secretary Patrick Millen, Minister of Lands and Māori Affairs Koro Wētere, Minister for the Environment Russell Marshall, and Deputy Prime Minister Geoffrey Palmer.



Koro Wētere, agreed to these two key points. But Minister Wētere then took the view that as the river was no longer part of the national park, Whanganui Māori had no right to a substantial role in park management. And he made it clear that the park would be established whatever the wishes of Whanganui Māori.

We heard claims that Koro Wētere made verbal promises to Whanganui Māori when discussing the establishment of the park, and that the Crown has not honoured these promises. With one clear exception, which we will discuss shortly, we lack evidence to support these claims. Koro Wētere did not intentionally deceive Whanganui Māori. Rather, he fought hard in Cabinet to advance the Whanganui Māori claim to the river, and to gain for them involvement in park management. However, it is equally clear that he lost those battles well before he went to Ngāpūwaiwaha in December 1985.

(1) The hui – neither consultation nor negotiation

Our first major criticism concerns the Crown's approach to negotiating with Whanganui Māori about the park

proposal. At the hui at Ngāpūwaiwaha, all issues were supposedly on the table for discussion. But that was really not the case. Minister Wētere had already yielded to pressure to announce approval of the park in principle, acting against officials' advice to meet with Whanganui Māori before doing so.¹⁶⁹ Further, by the time Mr Wētere went to Ngāpūwaiwaha he had almost nothing to put on the table. The meeting therefore appeared to be, but actually was not, either a negotiation or a consultation in the true sense. Justice Cooke criticised this kind of behaviour in the *Forests* case as not representing 'the spirit of the partnership which is at the heart of the principles of the Treaty of Waitangi'.¹⁷⁰

(2) The legitimacy of Crown title not fully addressed

Our second major criticism of the Crown was that it proceeded with the park proposal on the premise that its title to the land destined for the park was unexceptionable, when it was not. Pressed by Whanganui Māori to research the issue, the Crown did go to the trouble of documenting that it had acquired the land. The research wrongly

stated, however, that the Crown had acquired all the land from willing sellers. Almost 7,000 acres were compulsorily acquired for scenic reserves in a process to which Whanganui Māori objected at the time. Neither did the research investigate the propriety of the Crown's other purchases – for example, those made against the specific advice of the Stout–Ngata commission. The Crown's self-justifying approach was mitigated only by the repeated written assurances Minister Wētere gave Whanganui Māori that the establishment of the park would not prejudice their Treaty claims in any way.

(3) *Wētere's undertaking and the land policy*

In 1994, however, the Crown adopted a policy that conservation land would not be 'readily available' for the settlement of Treaty claims. It appears that this policy remains in place. Exceptions can be made, and 'discrete sites' considered, including river and lake beds and mountains, where special significance is demonstrated. Any settlement, however, is not to affect the strength of legal mechanisms protecting conservation values, public access, or the rights of existing concessionaires. In recent Treaty settlements the Crown has more frequently agreed to return conservation land to claimants. However, in this inquiry's discrete remedies process, it did not agree to return any conservation land. Still, it did not rule out any options for settling the claims of Whanganui Māori.

If the policy is applied in respect of Whanganui Māori and the Whanganui National Park, it will contradict Minister Wētere's promises, made repeatedly and in writing, that establishment of the park would not affect their Treaty claims.

Quite simply, if the Crown land that became the park had remained simply Crown land, there would be no prohibition on its forming part of a Treaty settlement with Whanganui Māori. The Crown is bound by the Minister's undertakings.

(4) *A 'consultation' with only one outcome*

Whanganui Māori had no real power to influence whether the Whanganui National Park should be established, because the Crown's decisions about it did not depend on

their agreement. They ultimately acquiesced even though they knew that one representative on the board would give them far too little influence. The experience of Ngāti Tūwharetoa in Tongariro National Park had taught them that, and they said from the outset that they would not agree to the park on that basis. But what options did they have? The Crown's approach gave them no options, which confirms our impression that the Crown's engagement with Whanganui Māori about the park was not a consultation or negotiation in any true sense.

22.5 MANAGING WHANGANUI NATIONAL PARK

22.5.1 How the park would be managed

When Whanganui National Park opened in February 1987, the Government was completely restructuring protected land management, including national parks. As it stood, Lands and Survey would run the park, with the benefit of an advisory committee of Whanganui Māori. General policy oversight would be provided by the Wellington National Parks and Reserves Board on which Whanganui Māori were to have one seat.

Meanwhile, Whanganui Māori were developing their own new administrative structures. In 1988, the Interim Whanganui River Māori Trust Board became the Whanganui River Māori Trust Board.¹⁷¹

In 1987, the Interim Whanganui River Māori Trust Board lobbied the Minister of Conservation, advocating for the park to have its own separate board with three Māori representatives. This 'would go a little closer towards the ideal of the "truly Maori National Park" which Maori were advised Whanganui would be.'¹⁷² But the Minister of Conservation said they should wait until the Government's restructuring was complete and a new regional board established.

(1) *The new dispensation for the conservation estate*

The new dispensation began with the passage of the Conservation Act 1987, which established DOC. Now solely responsible for managing the conservation estate (including Whanganui National Park), DOC was also required to 'give effect to' the principles of the Treaty.

What would this mean in practice? DOC and the Interim Whanganui River Māori Trust Board immediately differed on Whanganui Māori's role in running the park. DOC was worried that the Interim Whanganui River Māori Trust Board's request for three of nine seats on the board could have implications for similar situations elsewhere. One official commented that though Whanganui Māori would 'have a say', 'day to day control will *always* lie with DOC' (emphasis in original).¹⁷³

The extent of Māori 'say' was also shaped by the Conservation Law Reform Act 1990, which introduced new bodies to advise on DOC policy and plans: the New Zealand Conservation Authority replaced the National Parks and Reserves Authority and, at the regional level, the Taranaki/Wanganui Conservation Board replaced the Wellington National Parks and Reserves Board.

Whanganui Māori were to be disappointed again by their limited role in the new dispensation. No separate park board was created. They had only one seat on the Taranaki/Wanganui Conservation Board when it was established in 1990.¹⁷⁴ That body had a narrow function: to help DOC prepare the park's draft management plan, hear public submissions on the draft, and ultimately recommend a final management plan to the New Zealand Conservation Authority for approval.

However, the Conservation Law Reform Act 1990 also amended the National Parks Act 1980 to require the Taranaki-Wanganui Conservation Board to 'have regard to the spiritual, historical, and cultural significance of the [Whanganui R]iver to the Whanganui iwi', and to

seek and have regard to the advice of the Whanganui River Maori Trust Board on any matter that involves the spiritual, historical, and cultural significance of the park to the Whanganui iwi.¹⁷⁵

(2) A management plan for the park

Next came preparation of a management plan for the park. Whanganui Māori's submission called for emphasis on the spirituality of the park's lands and waters; recognition of Māori values, including protection of urupā; unrestricted customary uses; exemptions from levies; employment

opportunities; and equal representation in administrative structures.¹⁷⁶ Whanganui Māori were represented on the subcommittee of the Wellington National Parks and Reserves Board responsible for developing the Draft Management Plan. The full Interim Whanganui River Māori Trust Board also met twice with the Wellington National Parks and Reserves Board.¹⁷⁷

The Draft Management Plan was released in December 1987. DOC would manage the park, with headquarters in Wanganui, and conservation offices at Taumarunui, Pipiriki, and Raetihi. DOC would control navigation on the Whanganui River, but not its fishery. It would manage fish in the park's other waterways, though. DOC would seek out and have regard to the views of the Interim Whanganui River Māori Trust Board on all matters of concern to Māori.¹⁷⁸

After a series of hui in the summer of 1987–88, Whanganui Māori rejected the draft management plan in its entirety: it was 'patronising, paternalistic and offensive', and fell far short of Treaty partnership as articulated by the Court of Appeal in the *Lands* case.¹⁷⁹ The use of Māori imagery was purely token, and DOC was trying to take over control and management of the river.¹⁸⁰ Instead, control and management of the park should be gradually devolved to the trust board, with funding and training phased in over three years.¹⁸¹

Minister of Conservation Helen Clark replied in July 1988 that she was surprised at the rejection, given Māori involvement in preparing the draft. She thought disagreement related only to the river. The trust board could not assume control under current law. Partnership could develop only over time and by agreement.¹⁸²

Archie Taiaroa's reply again advanced the right of Whanganui Māori to be 'equal partners in the management of the national park' because of their historical grievances over land purchases and takings. Having only one representative on the board was 'most unsatisfactory'.¹⁸³

(3) Whanganui National Park Management Plan, 1989

The *Whanganui National Park Management Plan, 1989*¹⁸⁴ strengthened Māori involvement in that, instead of liaising with Māori and seeking their input, DOC would now



Sir Archie Taiaroa. A long-term advocate for significant and meaningful Māori involvement in the management of the Whanganui National Park, Sir Archie Taiaroa acknowledged in 2008 that relationships between Whanganui Māori and Department of Conservation staff had improved (owing to 'extensive lobbying' by Whanganui Māori) but said that, under law, iwi remained 'just an interested party or an advisor to DOC'.

'consult with and give full consideration to the views of the Whanganui River Maori Trust Board on park management issues of concern to the Maori people'. The plan explained that the area had traditional and spiritual significance to local iwi, who would be involved, through the Whanganui River Māori Trust Board, 'in all aspects of park management'.¹⁸⁵

The park was to to be managed 'in a spirit of co-operation with the tangata whenua'. Māori traditional fishing and plant gathering activities were also to be supported, whereas the draft proposed to 'permit' them.¹⁸⁶

The plan mentioned possible additions to the park of areas of Māori land, which were to be negotiated through the Whanganui River Māori Trust Board. It also stated as

desirable the inclusion of the river in the park, and advocated management and uses of the river that were compatible with management and values of the park.¹⁸⁷

But, overall, the 1989 management plan set an unfortunate tone for DOC's engagement with Whanganui Māori in the managing of the park. Their right to participate was basically confined to 'Maori' issues like protection of wāhi tapu and customary activities. Their requests for unrestricted access to fishing and plant material were refused. Nor was the spiritual significance of the area to Whanganui Māori emphasised as requested.¹⁸⁸

An updated management plan, drafted in 2006, did not find favour with Whanganui Māori and was not implemented. Whanganui Māori had substantial input into an updated plan that was implemented in 2012 (see section 22.5.5(1)).¹⁸⁹

(4) Conclusion

The establishment of Whanganui National Park and the new conservation regime introduced by the Conservation Act 1987 coincided. Section 4 of the new Act required DOC to give effect to the principles of the Treaty. The National Parks Act was also amended in 1990 to give Whanganui Māori a small advisory role.

Although the law seemed to usher in a new era of conservation management, it is difficult to discern immediate effects on the ground in Whanganui. Overall, the Crown rebuffed the efforts of Whanganui Māori to develop a partnership to govern and manage the park, fearing the establishment of an unwelcome precedent.

The Crown refused to establish a special board to govern the park, chary of setting up a governing body on which Whanganui Māori would occupy three of nine seats. Instead, it favoured a regional board on which Whanganui Māori had one seat. The Conservation Law Reform Act and the National Parks Act Amendment both directed this board to 'have regard to' the importance of the river to Whanganui Māori and to seek their advice regarding matters that affected their values in the park. But, both theoretically and practically, this fell far short of running the park as partners, as Whanganui Māori wanted.

To set up the new national park as a model of Crown-Māori partnership would have been novel in the late 1980s, but by no means unthinkable. The Court of Appeal's well-known decision in the *Lands* case and the reports of the Waitangi Tribunal had laid the conceptual groundwork for such a model. And the fact that the Government of the day enacted the strong Treaty section in the Conservation Act also suggests that the zeitgeist was propitious. But it was not to be. The Crown did not follow through on the promise of section 4 and was ultimately not prepared to establish a partnership to run the park as a means of mending its relationship with Whanganui Māori. With the benefit of hindsight, this can be seen only as a lost opportunity for Whanganui and the Crown, and for Aotearoa/New Zealand.

22.5.2 Role of Māori in governing and managing the park

Once DOC took over management of Whanganui National Park, and the role of Whanganui Māori was confined in the ways described in the previous section, the relationship between DOC and tangata whenua was not good and the aspirations of Whanganui Māori were generally thwarted. In the words of the late Sir Archie Taiaroa: 'Nothing really happened until 2006.'¹⁹⁰

The way Whanganui Māori saw it, DOC regarded them as just another stakeholder as far as the park was concerned. This was a million miles away from their own conception of their relationship with the park. It also departed from widely held beliefs about promises made to them at the time the park was established.

Historian Robin Hodge told us that a key problem was that the park's first management plan did not provide for regular meetings between Whanganui Māori and DOC. Meetings occurred when things went wrong, so the relationship was 'ad hoc and increasingly crisis-driven.'¹⁹¹ Whanganui Māori never accepted DOC's view of their role in the park, and we look now at how conflict characterised their engagement over park issues for nearly 20 years.

(1) DOC facilities at Pipiriki

DOC's facilities at Pipiriki were a locus of conflict from the beginning.

The vision Whanganui Māori developed for the park included headquarters at Pipiriki, where a Māori conservancy office staffed by tangata whenua would be the gateway to a Māori national park.¹⁹² Claims that the Government agreed to locate the park's headquarters at Pipiriki are not supported by written record.¹⁹³

DOC never regarded locating Whanganui National Park headquarters at Pipiriki as viable. The park's 1987 draft management plan stated that park headquarters would be at Wanganui.¹⁹⁴ However, the draft management plan was produced while the Government was restructuring the administration and management of the conservation estate. Since 1980, regional boards have made policy and strategy for conservation areas much larger than individual national parks. The Taranaki-Whanganui Conservation Board has done this since 1990. Regional Conservator Damian Coutts explained that, as a result of such restructuring, 'DOC does not consider extra administrative offices are required to exclusively manage say a national park'.¹⁹⁵

The role and status of the DOC facilities at Pipiriki may therefore not always have been clear. Certainly, although DOC has always maintained facilities there, periodic restructuring has caused friction with Whanganui Māori.¹⁹⁶

From its formation in 1987 DOC maintained an office and information centre at Pipiriki.¹⁹⁷ The 1989 management plan stated that this facility would be maintained and upgraded. It then employed four permanent staff. When DOC was restructured in 1990, Whanganui Māori gained assurances over DOC's continued commitment to Pipiriki. Nevertheless, facilities at Pipiriki were downgraded to become a 'field base', losing a permanent staff member.¹⁹⁸ In 1995, Pipiriki was nominally upgraded to become a 'field centre', but Robin Hodge suggests it did not receive the additional financial or staff resources to match its increased responsibilities, so that some Whanganui Māori saw the change as futile tokenism. Regardless, another restructure in 1997 cost Pipiriki functions again.¹⁹⁹

Between 1997 and our hearings in 2008, the situation remained stable. DOC operated a regional conservancy office at Wanganui, alongside one of its three area offices.

The Whanganui area contains field centres at Pipiriki and Taumarunui which are the main operational bases for DOC's work in the park.²⁰⁰

DOC retains what it regards as 'a significant presence' at Pipiriki which is said to be the 'operational focus' and 'primary gateway' for the park. DOC reassured us that it is committed to retaining that presence. Shortly before our hearings a significant refit of the Pipiriki field centre was completed.²⁰¹ After restructuring in 2013, the number of staff at Pipiriki was increased from four to five.²⁰²

(2) A proposal to extend the park

In 1988, the Royal Forest and Bird Protection Society wanted areas of land to be added to Whanganui National Park. To that end, it initiated a statutory process, under section 8 of the National Parks Act, promoting an investigation into those additions. As part of the statutory process, in 1989 the National Parks and Reserves Authority (the predecessor to the New Zealand Conservation Authority) formally recommended that DOC fully investigate the proposal and seek public comment on it.²⁰³ DOC was obliged to act on this recommendation.

The Royal Forest and Bird Protection Society identified seven areas as having outstanding values worthy of addition to the park.

DOC wanted to add other areas as well. Establishing the park, the Crown had included in it only about half its land in the Whanganui area. It had tagged for possible future inclusion other pieces of Crown land, mostly then State forests. These pieces became part of the conservation estate in 1987, and DOC began to consider adding them to the park. Its Draft Management Plan of 1987 listed the Waitotara Conservation Area, Tangarakau Stewardship Area, the Manganui-o-te-ao River, Rotokahu, and land near Aotuhia.²⁰⁴ These were among the nine new areas DOC now wanted to include. In total, more than 200,000 acres were to be investigated for inclusion – which, if included, would have more than doubled the size of the park.²⁰⁵

The public responded positively to the proposal, apart from two submissions from Whanganui Māori. They opposed adding to the park any land that was the subject

of either claims to the Waitangi Tribunal, or direct negotiations with the Crown.²⁰⁶

The Whanganui River Māori Trust Board wrote to Minister of Conservation Denis Marshall on 17 July 1991 saying that it did not want the section 8 proposal to proceed until Treaty claims were settled in the district.²⁰⁷ Minister Marshall explained that New Zealand Conservation Authority approval was needed to stop the process.²⁰⁸

In 1992 and early 1993, Whanganui DOC staff and the Whanganui River Maori Trust Board negotiated a draft contract, 'in the spirit of partnership'. The contract provided that, in order to ensure that parties were informed and further Treaty breaches avoided, iwi would research the history of ownership of the land in the park and its cultural significance.²⁰⁹ According to Archie Taiaroa, this research was not done, because DOC head office would not agree to contract provisions that the board insisted upon: the research would be done solely for the purposes stated, and the trust board would own it. Taiaroa said that the trust board sought these provisions to prevent DOC using the research 'simply as the removal of an obstacle to the inclusion of the land into the park'.²¹⁰

But then in 1993, DOC issued a discussion paper seeking more public comment on the proposal to extend the park. The Whanganui River Māori Trust Board saw this as a betrayal, saying it 'completely wipes out the mana and rangatiratanga of the Iwi over its valuable taonga'.²¹¹ The Hinengakau Tupuna organisation said DOC's action was 'another outward sign' of its disregard for Whanganui iwi: 'The Trust Board asked you not to proceed but the Minister & Conservation Authority insisted on going ahead.' The Hinengakau Tupuna organisation gave notice that it would disrupt any activities on the Whanganui River, and fight any actions it saw as decreasing the chance of the return to tangata whenua of land 'that was wrongfully acquired'.²¹²

In August 1997, the New Zealand Conservation Authority reported to the Minister of Conservation on its investigation into the section 8 additions. The Minister decided to await the Waitangi Tribunal's report on the Whanganui River inquiry before taking any further action.²¹³

In the same vein, the draft Whanganui National Park Management Plan of 2006 promised that DOC would consult further about potential additions to the park with tangata whenua who had settled with the Crown and, where parties had not yet settled, would not add further land 'unless all parties agree'.²¹⁴

(3) *Wāhi tapu, DOC huts, and fees*

The many wāhi tapu in the park are under the control of DOC rather than their traditional owners. The mineral spring Waiora, for instance, was included in the park after earlier being taken for a scenic reserve. Some claim DOC 'cleaning up' the springs adversely affected the flow of water.²¹⁵

From the outset, in discussions about the park management plan, Whanganui Māori asked for sacred sites to be surveyed and preserved as a priority.²¹⁶ The plans always supported such activities, but in practice things did not always go so well.

DOC built huts near places of ancient habitation that were wāhi tapu, and confrontations developed. Pāora Haitana told us that 'it didn't take long for the Crown and other agencies to realise that those marae were the best locations on the river for camp sites, for huts to be built'.²¹⁷ The John Coull hut, originally built in the 1960s, was rebuilt in 1981 on an urupā. Māori demanded its relocation.²¹⁸ The department agreed, and the hut was eventually relocated and upgraded in 1990. Disputes later arose about the location of some toilets, and these were tipped into the river.²¹⁹

DOC said that it has made its staff more aware of their responsibilities towards wāhi tapu, but it acknowledged that its procedures for protecting such places still need to be improved.²²⁰

There were also tensions over DOC's policy of charging fees for the use of park facilities through a 'Facilities User Pass' system. As well as raising revenue, DOC saw this as a way to combat the environmental damage caused by people 'freedom camping' along the Whanganui River. But Whanganui Māori saw it as a charge for using the river, and the Facilities User Pass eventually became one of the reasons for the occupation of Tieke hut.²²¹

‘THE river as far as we concerned belonged to us and so why should we have to pay to go down there? DOC would say that you aren't being charged to go down the river, you are being charged to stay there, to which we would respond that it was our land! Not only that, but we were paying twice to go on to our own land – paying our taxes and paying the FUP.’

—Rangi Bristol⁹

(4) *Economic return for Whanganui Māori*

From the time Whanganui Māori were first consulted about the national park proposals, tangata whenua sought access to employment and training programmes and licences for commercial opportunities. For instance, at the Taumarunui marae meeting in 1983, there was a strong feeling that at least 30 per cent of all those employed in the park should be Māori, with local Māori given first opportunity for training and employment and Māori commercial interests assisted.²²² However, there is nothing about this in the 1984 report to the National Parks and Reserves Authority, nor in the 1989 management plan for the park, which said that DOC would consider concession applications ‘on their merit.’²²³

By 1992, the Whanganui River Māori Trust Board described the involvement of Whanganui Māori in park management and employment as an ‘unhappy experience.’²²⁴ However, more tangata whenua were employed in the park over time, and also took up more concessions. By 1997, the field centre supervisors at Pipiriki and Taumarunui were tangata whenua, as were 95 per cent of their staff.²²⁵ Damian Coutts, in his evidence, noted that the employment opportunities created by the park

have been fewer than was perhaps anticipated at the time of its establishment, but do note that over half of the staff employed in the Whanganui Area Office come from the local communities of the Whanganui River.²²⁶

The Tieke occupation by Tamahaki (see next section) seems to have been the catalyst for DOC to review its policies on iwi employment and concessions.²²⁷

(5) *The use of 1080 and other poisons in the park*

Possums are a serious threat to forests, and DOC says that the pesticide 1080, or sodium fluoroacetate, is a cost-effective tool for possum control because it can be used as an aerial drop. It maintains that, although traces of 1080 may be found in water after contact, these soon dissolve to undetectable levels. In soil, micro-organisms degrade 1080 in about two weeks. Baits of 1080 are dyed green and are flavoured with cinnamon to make them less attractive to birds.²²⁸ However, opponents of the use of 1080 are concerned about the effects of aerial drops on bird, human, animal, insect, plant, and soil life. They believe that it can cause human illness and miscarriage.²²⁹

In 1994 and 1995, DOC planned a major 1080 programme for part of Whanganui National Park. Officials discussed plans with Whanganui Māori and ‘gained the impression that, while iwi might prefer other methods, they would agree to aerial drops because of the nature of the terrain and the urgency of the problem.’²³⁰ DOC believed the benefits of using 1080 outweighed the risks and costs and that the operating procedures provided adequate safeguards against any potential adverse effects.²³¹

Tangata whenua often took a different view. ‘Our nga-here is lifeless after a 1080 drop,’ Jenny Tamakehu told us.

‘THE legislation states that 1080 cannot be applied within 50 metres of a waterway, but this is hard to control with an aerial drop. Also after the possums ingest the poison they quite often go to the water to die and can be fed on by eels and fish. The government says that once it lands in the water it dissolves and it is safe, but when handed the opportunity would they drink it?’

—Wai Wiari Southen¹⁰



A demonstration against the use of 1080 poison in Whanganui National Park, Victoria Avenue, Wanganui, 24 August 1995. Whanganui Māori were concerned about the impact of 1080 on the bush and asked that alternative methods be used to eradicate possums.

‘The sounds of our bush lose their voices, there is an eerie stillness, silence.’²³²

Several hui were held from February 1995 to discuss the tangata whenua’s concerns. Some suggested that, rather than aerial drops, 1080 could be distributed by hand or possums could be trapped. The Whanganui River Māori Trust Board also requested that an investigation be carried out by the parliamentary commissioner for the environment.²³³ Then, in August 1995 there was a protest at DOC’s Whanganui conservancy office. A new group, Te Iwi o Whanganui, called on the Crown to stop the use of 1080 poison and, instead, to encourage Māori employment in trapping, generating skins for the fur industry.²³⁴

(6) Conclusion

The relationship between Whanganui Māori and DOC was troubled for many years following the establishment of the park. Disagreements flared over a dedicated park headquarters at Pipiriki; a proposal to extend the park’s boundaries; lack of protection for wāhi tapu and insensitive siting of DOC huts; as well as the policy of charging fees for the use of facilities; and the use of 1080 poison in the park. Local Māori hopes of employment and training opportunities, and licences for commercial opportunities, were not wholly fulfilled.

These threads of anger and dissatisfaction underpinned the occupation of Tieke hut.

'I remember one day I went over the river to Tieke and told the DOC officer that there should not be a hut there because it was the site of an old marae. His exact words in response were 'so long as your Maoris arse is pointing at the ground and you have a bottle of beer in your hand you aren't coming back here.'

'I told him to just wait, the time would come.'

—Pāora Haitana¹¹

22.5.3 Tieke

In the early 1990s, Māori from the Whanganui River's middle reaches were negotiating with the Crown their claims over the purchase of the Waimarino block.²³⁵ No settlement was in prospect, and they were angry and frustrated because meanwhile, DOC continued to manage their ancestral land in the park in ways they did not like.²³⁶

Tangata whenua have long challenged Crown ownership of Tieke, an ancestral kāinga and urupā beside the Whanganui River (see section 13.7.7(8)).²³⁷ The first tramp-ing hut was built there in the 1960s, and replaced in 1983. Rangimarie Ponga told us that Tieke has always been a 'central point, a rallying point along the river'.²³⁸ It became so again in the 1990s as the focal point for opposition to DOC policies in managing the park.

DOC's 'Facilities User Pass' was for some the final straw. In September 1993, Te Whānau o Tieke, descendants of the original owners of the Waimarino 5 non-seller reserve, decided to occupy the old kāinga.²³⁹ Others from along the river and from further afield helped, and the occupation lasted until February 1994. It ended upon agreement that DOC would accept the occupiers as tangata whenua of Tieke and would inquire into how the Crown had acquired the land. Subsequently, the Crown offered to give back 25 acres surrounding the hut. The offer was refused.²⁴⁰

In fact, some stayed on at Tieke until the late 1990s, establishing a marae and kāinga that still function today.

'To me the two reasons that we went back there were firstly that the Crown was charging our people to go on to our own lands and camp and that secondly, the Crown was taking revenue off land that they had confiscated from us through the FUP.'

'Tieke was also a legal title issue. We wanted to get arrested and go to Court so that we could prove that DOC had acquired the land illegally. We also used the occupation as a way of informing the wider public about issues on the river. The hut at Tieke was adorned with all the history of Tieke, of how and when the Crown took it.'

—Pāora Haitana¹²

The descendants of Tamahaki and DOC now manage the kāinga at Tieke jointly, complete with its own wharepuni. In 2000, they erected a pou that depicts the carved figures of the tūpuna who connect the people to the place.

Many witnesses in our hearings described their connections to Tieke, and their involvement in the occupation.²⁴¹

The Tribunal was very impressed by its own reception at Tieke, where a full pōwhiri, karakia, and hākari were attended by many Whanganui Māori, and also by a healthy contingent of DOC staff. The practised ease with which the event occurred showed us that the people of Tieke now work comfortably with DOC – whose women staff members had to hand a pull-on skirt to wear over their DOC trousers for the pōwhiri!

22.5.4 Te Ranga Forum

The Tieke occupation attracted considerable public attention, and DOC was anxious not only to resolve the issue, but to minimise the chances of anything like it happening again. The Minister of Conservation Denis Marshall proposed a working party to address contentious issues.²⁴² Te Ranga Forum was born, bringing together DOC and a number of Whanganui Māori groupings. They were

I wouldn't describe what happened at Tieke as an occupation. I would call it coming home.

'Aunty Nancy Herewini who was one of the principal kuia round here at the time said 'if you are returning, you stay there, you go back for real, you don't go and wake those old people up and leave them again'. So we knew that we couldn't just go home half heartedly, sit for a couple of days and then leave again. This was the kaupapa of our return to Tieke and it is what kept us going the whole time.

'We had a vegetable garden. The chooks that were down there were koha that some of the manuhiri brought to us. Our aim was to be completely self-sufficient, get in running water, grow our own food, kill our own meat, teach our kids. We also eventually leased some land which was on the other side of the river to run sheep. The kaupapa of the marae was established early on: no drugs, no alcohol, no guns, and manuhiri were always to be respected. For everyone who came, we gave them a proper powhiri. It was our marae and we welcomed manuhiri in the proper way. We did that every time people came on.'

—Rangimarie Ponga¹³

collectively known as Whanganui Iwi Whanui Tonu, and included Tamaūpoko, Hinengākau, Tūpoho, Ngāti Rangi, Ngāti Kurawhatia (Pipiriki Incorporation), Mana Whenua, and the Whanganui River Māori Trust Board. Tamahaki, however, withdrew from the collective and conducted their own separate negotiations.²⁴³

The Te Ranga Forum Agreement emerged in November 1995. It formally recognised that both parties would maintain a working relationship, and identified for attention issues that included park management; the Facilities User Pass; training and employment; enhancement of river water quality; wāhi tapu; the status of Pipiriki and

location of the park headquarters; and proposed extensions to Whanganui National Park.²⁴⁴

However, beneath the working relationship lay a yawning gap between the parties' aspirations for the park, which the Te Ranga Forum Agreement expressed like this:

The stated Iwi goal is to achieve ownership, management and control of the Whanganui National Park and other conservation areas within their tribal boundaries. The Department's goal on the other hand is to continue to meet its obligations as the management agency for Whanganui National Park under the Conservation Act, National Parks Act and other Acts and Government policy.²⁴⁵

DOC envisaged that the Te Ranga Forum would work around this polarity, and simply try to resolve some of the many points of conflict. Whanganui Māori, however, sought to use the forum as a vehicle to transfer ownership and control of the park's land and assets to them. The DOC officers concerned had no power to do this; such issues would have to be addressed through the Treaty settlement process.²⁴⁶

Te Ranga Forum continued until 1997, although meetings were suspended during DOC's restructuring that year. In 1999, Te Ranga Forum commissioned a report on exploring collaborative management initiatives between iwi and DOC, and a workshop was held to discuss the issues. The report concluded that DOC must take a leading role in encouraging iwi conservation initiatives, supported by adequate resources for negotiations, and a change of attitude: 'If collaborative management models are to be successfully developed, a participatory and empowerment ethos will also have to become central to the actions and perceptions of all parties involved.'²⁴⁷

The forum collapsed completely when iwi withdrew in 2000.²⁴⁸ At that time, Dennis McDonnell from DOC wrote:

The gap between Iwi and DOC is complete. All control now meets only DOC requirements. Iwi totally alienated from the river and land they anciently believed was their tribal base and heritage. Their vision for the future and trust in Government



Tieke marae and pou, 2014. In the 1990s, Tieke, an ancestral kāinga and urupā, became the focal point for Maori opposition to the Department of Conservation's management of Whanganui National Park. Between September 1993 and February 1994, Te Whānau o Tieke and others occupied the old kāinga. The occupiers dispersed when the department accepted they were tangata whenua of Tieke and agreed to inquire into how the Crown had acquired the land.

as espoused in the Te Ranga Agreement totally destroyed. The department's activities within this region present risks to Crown-Iwi relationships. Whanganui Iwi cannot see how these changes support their interests in a Treaty relationship. The future of the conservation estate within the boundaries of Te Atihaunui-a-Paparangi need re-structured, full, fair and equitable consultation which leads to achievable outcomes for both Crown and Iwi.²⁴⁹

The polarity of the two sides' positions probably made the breakdown of the forum inevitable, despite DOC and Māori genuinely desiring a better relationship. Their essential differences were irreconcilable; the Crown was not prepared to meet any of the demands of tangata whenua for transfer of power. Hodge noted that friction was made worse by external factors such as the delay in settlement of Waitangi Tribunal claims, and the financial

constraints and restructuring imposed on the department by successive Governments.²⁵⁰

22.5.5 Some signs of improvement

The stalemate between the parties continued into the 2000s, but since then the relationship between DOC and tangata whenua has gradually improved. Changes in personnel made a difference. Damian Coutts was appointed regional conservator in 2006, and a key part of his brief was to revamp the relationship with Whanganui iwi.²⁵¹

The department has since signed off on a number of formal memoranda of understanding with Te Whānau o Tīeke and with Tamahaki, a move which Coutts said reflected ‘the wishes of the signatories to be part of the development of a more open and trusting relationship.’²⁵² There has also been interest in convening a new forum to replace the Te Ranga Forum.²⁵³

Many claimant witnesses noted during our hearings that tensions with DOC had subsided recently and that the relationship was now one of active cooperation and collaboration. ‘The doors to the Department of Conservation Regional Conservator and his Area Manager are always open to us now,’ Pāora Haitana told us.²⁵⁴ ‘[W]e are forming not only relationships but friendships. . . . they are building relationships and friendships with our iwi from Hine Ngakau to the sea, and that’s positive.’²⁵⁵ Area Manager Nick Peet told us that tensions ‘have now been replaced by a willingness by both parties to seek solutions and to advance conservation of the ngahere and its taonga.’²⁵⁶

It is very encouraging to see how much better relationships are now, but we hope that this is indicative of a sea change within DOC, rather than relying only on the skills and attitude of particular personnel.

Archie Taiaroa noted that although relationships with DOC staff had improved the same legal structure remained where iwi were ‘still just an interested party or an advisor to DOC.’²⁵⁷ Rangi Bristol emphasised that iwi still want ‘at the very least joint management.’²⁵⁸

In our hearings, Mr Coutts acknowledged the concern that progress may be ‘personality based’, but emphasised the importance of the parties working together to create

‘OUR relationship and our engagement with Whanganui Conservancy has moved on since those early days of the occupation. This is really only because of the personal relationships we have with the local staff. The national policy is the same, yet one DOC person would have a problem with how we wanted to do things, whilst another one wouldn’t.

‘The situation is not ideal though because they still control things and we are still not adequately involved in park management – not by a long shot. On a day to day level whilst we do have a good personal relationship with the people at the Whanganui Conservancy but the big decisions and the policy is still made without our input and influence.’

—Rangi Bristol¹⁴

a new Whanganui National Park management plan as a ‘road map for the future.’²⁵⁹

(1) Writing a new park management plan

The regional conservator told us at the hearing that DOC was working with iwi to draft the new Whanganui National Park management plan as ‘co-authors, not just stakeholders’. Mr Coutts envisaged ‘a new and unique form’ of management plan being developed.²⁶⁰

The new management plan was approved by the New Zealand Conservation Authority in August 2012. It was prepared in consultation with local iwi, as well as the general public and other interested groups. The plan’s foreword notes that it is the department’s goal ‘that the Park becomes a flagship for successful collaborative conservation management in accordance with the principles of the Treaty of Waitangi.’²⁶¹

The plan is effective for up to 10 years from August 2012, although a review may occur at any time. Mr Coutts told us that the intention was for the plan to be a practical tool to help both parties identify what a more collaborative

approach might look like in advance of Treaty settlement. 'We recognise that the plan may have a very finite life and is likely to need significant review once the settlement process has been completed.'²⁶² Mr Coutts noted that it was important for Whanganui iwi and DOC to spend time exploring the concept of a 'Whanganui Māori National Park'. 'We need to understand what this means in practice.'²⁶³

The plan highlights key features of the park that make it one of New Zealand's iconic cultural places. It notes that the department has a key relationship with tangata whenua, 'although issues around the establishment and management of the Park remain unresolved for Whanganui Iwi.'²⁶⁴ The plan notes the need to

continue to build a collaborative relationship and inclusive style of management for the Park between the Department, Whanganui Iwi and tangata whenua. Fundamental to this is the identification of common values and principles that can form the basis for collaborative management.²⁶⁵

The department says the plan can only address management issues affecting the park 'in a way that is consistent with the existing legislation'. A footnote says:

'DOC cannot bring about changes that would require new laws to be passed, such as on matters relating to ownership or formal powers to manage the Whanganui National Park. The plan can, however, address the ways in which the Crown, through the Department of Conservation, will give effect to the principles of the Treaty of Waitangi.'²⁶⁶

While the plan commits the department to seeking to understand the 'Māori National Park' concept there is a caveat – 'However, it is possible that not all aspects of the concept may be able to be furthered within current legislation and policy.'²⁶⁷

(2) Conclusion

DOC staff are striving to create a model of best practice for managing the conservation estate with Whanganui iwi. Rangi Bristol's evidence is typical of what claimants

reported to us: 'The Department of Conservation at the moment talk to us about anything.'²⁶⁸ Pāora Haitana said that since the management change 'they are only a phone call away'; iwi have been able to 'really sit down and talk through certain issues.'²⁶⁹ He said:

To date we are walking through, let's say, a minefield, a minefield of old suspicions and we are learning as Tamahaki to trust and work with them and that has been a hard thing given the history and the past but, yes, we are finding that more and more the dialogue is more flowing rather than stop/start/stop/start/stop altogether.²⁷⁰

DOC told us they are committed to practical ways of involving tangata whenua in the decision-making process. The department acknowledged that building strong relationships with tangata whenua 'is fundamental to understanding their interests and involving them in decision making.'²⁷¹ Area Manager Nicholas Peet told us about his team learning to manage the park for a range of values, including its cultural importance.

From the perspective of DOC staff I believe that we have developed our thinking from the more preservationist views of the late 1980s to a more open and collaborative way of working based on establishing partnerships.²⁷²

On the relationship between iwi and the department, Mr Coutts said:

There is growing trust between the parties and a real desire from DOC to be more collaborative in the way the park is managed. As a result I am optimistic about the future and see significant opportunities for us to do more together.²⁷³

DOC and tangata whenua seemed to us to be moving along a path towards achieving the aspirations of the late Niko Tangaroa:

It is time for the divide between Conservation and Culture to be brought closer together but this can only be achieved by recognition and understanding of what we are about on a far

deeper level than is currently the case. We are the people of the land.²⁷⁴

We know that since our hearings, there have been further changes within DOC, and in the working relationship between DOC and tangata whenua. It is fair to say that achieving partnership in the Whanganui National Park is a work in progress, but there definitely has been progress, and there is potential for much more.

22.6 TREATY PRINCIPLES AND THE MANAGEMENT OF CONSERVATION LAND

22.6.1 Introduction

In the well-known words of the president of the Court of Appeal, '[t]he Treaty signified a partnership'.²⁷⁵ Today, partnership is the framework for Crown and Māori engagement over the conservation estate in Aotearoa/New Zealand.²⁷⁶

Partnership, however, is one of those words that can be understood in a number of ways. In our inquiry, claimants and the Crown conceived partnership rather differently. The claimants told us that partnership is about sharing power and authority; it requires that Whanganui Māori exercise control over their taonga, and are involved, as of right, in decision-making. The Crown, however, argued that it is responsible for protecting the public interest in conservation, and it must therefore make the final decisions. For the Crown, partnership is more about standards of behaviour, respect, and process; it concerns the values that should shape how Māori and Crown engage with one another, so that when the Crown comes to make the final decisions, it is fully informed about Māori views, and takes appropriate account of their wishes (see sections 19.2.1 to 19.2.3). Here, we explain how we see a Treaty partnership between the Crown and Māori in the context of conservation.

22.6.2 The nature of the Treaty partnership

Genuine Treaty partnership between the Crown and Māori involves shared decision-making and good process.

As to process, and the standards of behaviour required

of Treaty partners, it is well established that they must act 'with the utmost good faith which is the characteristic obligation of partnership'.²⁷⁷ Acting in good faith requires the Crown and Māori to demonstrate, in all their dealings, respect, fairness, honesty, and openness.²⁷⁸ As the Tūranga Tribunal stressed, the Crown, as the most powerful Treaty partner, must 'behave impeccably' towards Māori; it has

a negative duty to avoid any appearance whatever of manipulation or sharp dealing; and a positive duty to look to the Māori interest at all times and to protect that interest to the extent reasonably practicable in the circumstances...²⁷⁹

We also like the way the Tribunal expressed Treaty partnership in the *Te Whanau o Waipareira Report*:

like a marriage contract, in which broad and general vows express the desire and the intention of the parties to live together in mutual love and respect. The success of a marriage depends not on the ability of the parties to formulate or interpret vows advantageously to themselves, nor on their ability to enforce them in the case of dispute. Rather, it depends on their commitment to work through problems in a spirit of goodwill, trust, and generosity, actively seeking creative solutions, and taking opportunities to bolster each other.²⁸⁰

What the respective obligations of Crown and Māori under the Treaty amount to in any particular situation can only be considered on a case-by-case basis, and resolution is unlikely to be final: Treaty relationships are ongoing, evolving, and fundamentally creative. As the Tribunal said in the Wai 262 report, there is 'no standard template for environmental decision-making that privileges one set of interests over others'.²⁸¹

We therefore disagree with the Crown's view that when it comes to managing the conservation estate, it must always decide how to balance the Māori interests with those of the wider public. The Crown's guarantee of *te tino rangatiratanga* obliges it to create space in which Māori can exercise authority, or *mana*, over their taonga. But neither is the Māori right of *tino rangatiratanga* over their taonga absolute. When it comes to the environment, the

authority and control of both Crown and Māori are matters of degree.

This may seem an uncomfortable answer, because it lacks finality and certainty. But it arises from the complex nature of the interests at stake. The Crown is Treaty partner to many different Māori iwi and hapū, and all interests deserve protection. Indeed, everyone's interests must be taken into account when what is at stake affects everyone – like water and air. The histories of how the Crown has engaged with the different Māori iwi and hapū in the past also come into play when balancing interests in the present, and for the future. Plainly, there is much to be weighed and balanced, and few absolutes.

22.6.3 The courts' thinking on partnership and conservation: the *Whales* case

We have quoted already from judgments that discuss the nature of the partnership between Māori and the Crown that is founded in the Treaty of Waitangi.²⁸² The Court of Appeal has also said that partnership 'does not mean that every asset or resource in which Maori have some justifiable claim to share must be divided equally'. Rather (as the court found with regard to forestry and coal assets), 'there may be national assets or resources as regards which, even if Maori have some fair claim other initiatives have still made the greater contribution.'²⁸³ Thus, the partners' relative shares may depend on context.

The Court of Appeal considered this question in what is generally known as the *Whales* case.²⁸⁴ Ngāi Tahu then held the only permits to watch whales off the Kaikōura coast, and it challenged DOC's plan to issue permits to other commercial operators. As we have noted, section 4 of the Conservation Act obliges DOC to give effect to the principles of the Treaty. What was the content of this duty when it came to deciding whether Ngāi Tahu or others should get the permits?

The court was clear that the Crown has the power and the right to make law and set policy to conserve and protect the natural environment. It found that the need to protect the environment is an overriding consideration to which '[t]he rights and interests of everyone in New Zealand, Maori and Pakeha and all others alike, must be

subject'. That is, the Crown's overriding obligations are to the environment itself.²⁸⁵

The court also found, however, that, to give effect to Treaty principles, DOC had to give Ngāi Tahu 'a reasonable degree of preference' when allocating permits to watch whales. This was required to give effect to the principles of the Treaty, even though whale watching was not a taonga, and tino rangatiratanga had no application to whale watching. The principles of the Treaty applied nevertheless, because whale watching was sufficiently analogous to Ngāi Tahu's historical uses of whales, and to the role that indigenous people have traditionally played in guiding visitors to see the natural resources of the country. The court also thought it significant that the Ngāi Tahu whale-watching enterprises were tribal ventures and that Ngāi Tahu had pioneered the whale-watching industry.²⁸⁶

The court stressed that the Crown's interpretation of the Conservation Act was too narrow: the Crown was wrong 'in confining treaty principles to an empty obligation to consult'; that, it said, 'would be hollow'.²⁸⁷ A reasonable Treaty partner could not restrict consideration of Ngāi Tahu's interests to 'mere matters of procedure', as the Crown had tried to do, for they were in 'a different position in substance' from other parties.²⁸⁸

We take from this judgment these three relevant points:

- ▶ Treaty partners should not interpret their obligations in a pinched and narrow way;
- ▶ the overriding obligation of both the Crown and Māori is to ensure the conservation of the environment; and
- ▶ even though the guarantee of te tino rangatiratanga did not directly apply to this situation, Māori had substantive rights under the Treaty.

22.6.4 Tribunal thinking on conservation

Previous Tribunals, like the courts, have consistently found that only the Crown has the appropriate perspective and power to make law and set policy for the management of the conservation estate as a whole.²⁸⁹ But previous Tribunals have been equally clear that the Crown must provide for Māori to exercise te tino rangatiratanga and must acknowledge their right to be kaitiaki of their ancestral taonga.

At a general level, this requires, as the Tribunal found in the *Te Roroa Report*, that ‘tangata whenua should share in the control and management of natural and cultural resources on Crown land and their traditional resource areas.’²⁹⁰ ‘It is in the nature of the partnership that Crown and Māori seek arrangements which acknowledge the wider responsibility of the Crown but at the same time protect tribal tino rangatiratanga.’²⁹¹ The *Tauranga Moana* report noted that, ‘in making a place for two peoples, the need is always to ensure . . . that the rights, values, and needs of neither should be subsumed’. That Tribunal concluded that, where taonga are ‘highly valued by the wider community’, the ‘most straightforward way’ to respect all interests is ‘for each partner to have a place on the bodies that make decisions.’²⁹²

The most recent and comprehensive thinking about the Treaty and the respective roles of Crown and Māori in managing the conservation estate is set out in the report of the Wai 262 Tribunal, *Ko Aotearoa Tēnei*.

That Tribunal said that though the health of the environment is always paramount, all iwi have a right to exercise kaitiakitanga and so maintain their culture.²⁹³ It emphasised the ‘overriding importance of DOC-controlled taonga to the ongoing exercise of kaitiakitanga and therefore to the survival of the Māori culture.’²⁹⁴ It saw partnership as ‘the default setting’ for the relationship between DOC and Māori, and shared decision-making as the starting point of partnership. But, like the Court of Appeal, it found that ‘the exact form of partnership – how decisions are made, and at what level, and who is responsible for day-to-day management of taonga – can be considered case by case.’²⁹⁵

Sometimes, the Wai 262 Tribunal said,

the health and needs of taonga themselves, or the competing interests at play, will mean that the kaitiaki interest is most appropriately provided for by influencing decisions made by DOC or others; in these cases, consultation will be sufficient . . .

But, in other cases, the kaitiaki interest in taonga in the environment may be of overwhelming significance – for

example, places very important for iwi or hapū identity. In these cases, it might be right to devolve to Māori control over those taonga, including transfer to them of land ownership.²⁹⁶

The Wai 262 Tribunal also considered the specific question of how the partnership between Māori and the Crown might best be realised in national parks. National parks are the jewels of the conservation estate, greatly prized by all New Zealanders: their conservation values and the public interest in them are both of the very highest order. Equally, however, kaitiaki interests

are of a greater order of magnitude in relation to national parks, where the relative abundance of taonga species is likely to be higher and where the most iconic features such as mountains, lakes, and rivers are likely to be located . . .

As a result, ‘the conflict between kaitiakitanga and the preservationist approach is likely to be at its sharpest in relation to national parks.’²⁹⁷ The Wai 262 Tribunal did not want to pre-empt the findings of district inquiries such as this one but nevertheless said:

we are of the view that our national parks should be available for return of title and shared management if the circumstances of alienation and the ongoing strength of kaitiakitanga warrant it.²⁹⁸

We endorse this view. Many claimants sought the return of title to land in Whanganui National Park and to other conservation land within their rohe. Their seeking return of particular urupā, wāhi tapu, and mahinga kai was common. They also sought shared governance and management of the park. Our task here is make findings on the merits of these claims.

22.6.5 The tenets of environmental Treaty jurisprudence: applying the conceptual framework

Looking at Treaty jurisprudence (courts and Tribunal) as it relates to the environment, we distil the tenets of Crown and Māori conduct as follows:

- the Crown has the power and the duty to make laws

and set overall policy for the conservation of natural resources in order to protect the environment;

- Māori have a right to exercise te tino rangatiranga. While this is not an absolute right, it is one not lightly set aside;
- simultaneously, the Crown has a duty to do all it can to enable Māori to be kaitiaki of their environmental taonga;
- the concept of partnership captures the relationship between the various environmental authorities of the Crown and Māori;
- partnership in this context means working together to make decisions; and
- there is no hard and fast set of rules about how and in what proportions that shared decision-making should occur: it is to be determined contextually and case by case.²⁹⁹

In the context of Whanganui National Park, applying these tenets means finding that Whanganui Māori and the Crown must work together as partners to make governance and management decisions. Their respective roles and authority depend on a number of issues.

Determining the role for tangata whenua in the governance and management of any part of the conservation estate involves balancing three key considerations:

- Given the current state of the place concerned from an environmental point of view, what is required to protect it and its ecosystems?
- What is the nature and strength of the Māori relationship with this place? What Māori interests are at stake? What has been their contribution?
- What is the nature and strength of the relationship between the wider public and this place? What public interests are at stake? What has been the public contribution?

Balancing these considerations in relation to a particular place will indicate what kind and level of Māori interest should be recognised there. It could be a partial, preferential, equal, or controlling interest.

Whanganui National Park is a place of significant conservation value.³⁰⁰ Protecting it and its ecosystems is extremely important.

The focus of our inquiry was on the Māori experience, and as a result we heard little about the wider public's involvement and investment in the park. Even so, we can confidently assert that it is high. National parks are iconic in New Zealand culture. They are unique remnants of the landscape of Aotearoa/New Zealand that enable New Zealanders to engage with our special natural world in emotional, spiritual, and recreational ways that are critical to our sense of ourselves.

In this chapter, we have traversed the evidence presented to us about the nature and extent of Whanganui Māori interests in Whanganui National Park. The claimants' contention is that their interests, the history of the park, and the principles of the Treaty combine to provide a basis for our recommending a change to the status quo in the park. The park was established within the living memory of claimants, and they conveyed to us their disappointment about how that unfolded, and the reasons for their protests afterwards, with the fervour that comes with personal involvement.

We agree with the claimants that consideration of the three factors listed above leads in the case of Whanganui National Park to the conclusion that Māori and the Crown should be genuine partners in running the park. More power-sharing is possible under the current legislation. The challenge for the Crown is to look creatively at the current system to work out how this can be advanced as between DOC and Whanganui Māori, and in the case of sites of special significance entirely devolved to tangata whenua.

We accept that the current legislative regime has limitations, but we also believe that there are ways around most of them, especially given the clear directive in section 4. It will probably be necessary to amend the Conservation Act in order to achieve the degree of devolution to tangata whenua necessary in the areas where their connections, and their claims, are strongest. The Waitangi Tribunal in the Wai 262 inquiry has already recommended amendments to DOC's general policy for national parks to ensure compliance with Treaty principles, and we endorse those recommendations.

Our cross-examination of DOC witnesses suggested that

the department may have been as constrained by culture as by legislation. Damian Coutts explained that DOC had clear lines of command, and some areas offered more flexibility than others.³⁰¹ For instance, decisions around policy documents were less constrained, while decisions regarding concessions were more fettered. There is potential for progress, and we hope that the changes that have been put in place since our hearings ended are moves in the direction we are recommending.

22.7 FINDINGS AND RECOMMENDATIONS

22.7.1 Findings

We find that the Crown acquired the land in Whanganui National Park in breach of the Treaty of Waitangi.

Most of the park came from the three blocks: Waimarino, Taumatamāhoe, and Whakaihuwaka. This report details how the Crown breached the Treaty in the acquisition of land in these blocks. In the Waimarino block and its reserves, the Crown's purchase practices were among the worst in the country (see chapters 13 and 20). The owners of the Taumatamāhoe block sought to have it set aside from sale, but their wishes were overridden. Purchase in the block aroused considerable protest in the nineteenth century. In both Taumatamāhoe and Whakaihuwaka, the Crown's determined purchasing flouted the Stout–Ngata commission's recommendation that the Crown should stop buying in those two blocks. Tens of thousands of acres that the Crown bought from Taumatamāhoe and Whakaihuwaka in this period ended up in the park.

The Crown also took almost 7,000 acres of Māori land for scenic reserves, and many of these also became part of the park. We found in chapter 13 that these takings breached the Treaty.

Whanganui Māori have struggled to accept the legitimacy of the park because of the unjust acquisition of the land. This means that here, just as in Te Urewera, the national park 'rests on a defective foundation'.³⁰² The Crown breached articles 2 and 3 of the Treaty, and also breached the Treaty principles of good faith, active protection, partnership, equity, and equal treatment.

Although they lost ownership of the land, Whanganui Māori retained their customary associations with the land and remain its kaitiaki.

In the 1980s, when the Crown conceived the park, Whanganui Māori clearly laid out their case for partnership. They did so at the same time that the courts and the Waitangi Tribunal were articulating why partnership was a principle of the Treaty of Waitangi. The Crown's enacting section 4 of the Conservation Act 1987 can be seen as an expression of that 'partnership' zeitgeist of the late 1980s. In the context of Whanganui National Park, however, the Crown was not prepared to embrace the concept of a Māori national park, nor to share management or governance with Whanganui Māori. Given the zeitgeist, the history of the land in the park, and the close relationship of the people with that land that continued into the 1980s and to this day, this was an opportunity sadly missed. The dashed hopes of tangata whenua gave rise to anger and resentment that underpinned the fraught relationship between them and DOC that subsisted until recently.

The evidence before us does not support the claimants' contentions about a Minister of the Crown promising them a Māori national park. However, Minister of Lands and Māori Affairs Koro Wētere did undertake in writing that the creation of the national park would in no way prejudice the people's Treaty claims. The Crown is bound by the Minister's undertaking, and the claimants' access by way of settlement to the Crown land that went into the park should not be affected in any way by its status as national park land.

The relationship between DOC and tangata whenua has certainly improved. Whanganui Māori have a real role in planning park management, and are now preferentially employed in the park. There is an open-door consultation policy. These are good and important developments, but the role of tangata whenua in park governance and management remains at a level that is below what our findings indicate is appropriate.

We find that the Treaty, the history of the park, and the strength of the traditional and ongoing relationship between Whanganui Māori and the land in the park, combine to dictate a full partnership between Whanganui

Māori and the Crown in governing and managing the park. This has not occurred, the Crown has breached the Treaty, and Whanganui Māori have suffered prejudice as a result.

22.7.2 Recommendations: what needs to happen now

We recommend that:

- Title to the land in the Whanganui National Park be transferred to iwi for the purpose of a national park.
- A plan be developed under which Whanganui National Park transitions over a period of several years to joint governance and management by the Crown and Whanganui iwi, with tangata whenua as at least equal partners.
- Title to certain sites of special significance pass from the Crown to their traditional owners, with ancillary agreements and arrangements (including Crown funding) to secure environmental protection as necessary and appropriate. Particular sites of significance that fall into this category are: Waiora Spring,³⁰³ Tīeke Kāinga (kāinga and urupā),³⁰⁴ Mangapāpapa (wāhi tapu and several urupā),³⁰⁵ urupā on Ahuahu A and Ahuahu B,³⁰⁶ Puketapu maunga (and urupā),³⁰⁷ and Kirikiriroa (kāinga and pā site).³⁰⁸ We do not consider this list to be comprehensive, and Whanganui iwi and the Crown should augment it as appropriate.
- Legislative change occur as required to facilitate the new arrangements.

There are issues concerning iwi capacity at the present time to take on the kind of expanded governance and management role envisaged here.³⁰⁹ We foresee the need for:

- tangata whenua to assess honestly their current capacity to manage the park;
- DOC to provide support and training;
- tangata whenua to engage in acquiring training and qualifications;
- DOC to be open to acquisition of Māori knowledge; and
- funding to support the transfer of skills/mātauranga over time, employing pedagogy and tikanga from both Pākehā and Māori cultures.

We make recommendations accordingly.

It is appropriate that the late Sir Archie Taiaroa should have the last word:

If the National Park can be jointly managed and this other land returned, and the earlier promises regarding work opportunities and development thereby fulfilled, it is my hope that opportunities will be created in tourism and other matters that will enable Maori communities up the River to be revitalised. These are the benefits that should properly be available to Whanganui iwi in return for the commitment of land to the National Park.³¹⁰

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CHAPTER 23

INTRODUCTION TO LOCAL ISSUES

23.1 INTRODUCTION

Here begins our discussion of 31 cases that Whanganui Māori brought to us concerning acts and omissions of the Crown that were carried out, and affected people, at a local level. Typically, the cases are small in scale, and have particular significance for one whānau or hapū. Some are discrete parts of larger claims. The issues covered are wide ranging, but for the most part concern events in the twentieth century: public works, local government, rating, and management of the land and wider environment.

In this chapter, we introduce this Tribunal's discrete remedy initiative, and describe how our approach to local issues flowed from it.

We discuss the three topics to which the local issues cases mainly relate: public works takings; the delegation of authority to local government; and Māori land administration.

We have grouped the local issues cases by location – the northern, central, and southern zones within our inquiry district, with a chapter for each.

For a fuller description of this inquiry's discrete remedies project, a list of the discrete remedies applications made, and a complete list of the local issues cases, see appendices iv and v at the end of the report.

23.2 DISCRETE REMEDIES AND LOCAL ISSUES

Shortly after the Whanganui District Inquiry got underway, this Tribunal introduced a pilot scheme aimed at enabling claimants and the Crown to settle certain kinds of claim during the hearing stage of the inquiry.

23.2.1 The discrete remedies pilot

In this inquiry, as in many others, there were a number of small-scale claims involving relatively small groups of people that could easily have been sorted out and settled in the past, but for various reasons were not. It has been the experience of the Waitangi Tribunal that it is these kinds of grievances – small in scale, but personal and local, and often relatively recent – that often rankle most with claimant communities. The Whanganui Tribunal thought it was worth seeing whether it would be possible to generate real goodwill by solving these long-standing problems even before we turned to writing our report. Particular hapū and whānau would get the answers for which they had waited too long,

Pūtiki Rifle Range

This Tribunal's discrete remedy process saw the delivery of only one discrete remedy: the return of the former Pūtiki Rifle Range. Although more was hoped for from the process, the return of this land was an important and thoroughly worthwhile outcome for the land-poor tangata whenua of Pūtiki Marae.

In late October 2007, Te Poho o Matapihi Trust (Wai 999) claimants applied through the discrete remedy process for the return of the rifle range. The Crown compulsorily acquired approximately 25.5 hectares of land from the Whakapaki and Onetere blocks at Pūtiki for a rifle range in June 1904. These blocks were part of the original Pūtiki reserve, set aside for Māori as part of the Whanganui Purchase of 1848. There was no record of the Crown seeking to negotiate with the owners about the land wanted for the rifle range, and after compulsorily acquiring it, the Crown paid derisory compensation only after a long delay. Hōne Tamehana told the Tribunal how culturally offensive it was that the rifle range was situated next to their urupā, Pihia.

The Crown investigated the claim, and agreed to return the rifle range to Te Poho o Matapihi Trust on behalf of all those with interests in the land.

On 23 May 2009, tangata whenua hosted a large hui at Pūtiki to celebrate the return of 23 hectares of the land. The Honourable Chris Finlayson, Attorney-General and Minister for Treaty of Waitangi Negotiations, attended, along with many other notables and wellwishers.

Mariana Waitai of Pūtiki and New Zealand Army Chief Rhys Jones sign the Pūtiki Rifle Range handover document, as Minister for Treaty of Waitangi Negotiations Christopher Finlayson, Defence Force Chief Jerry Mateparae, and Chris Shenton of Pūtiki look on.



and the settlement process would be able to focus on the large issues that affected everybody. The remedies provided to these claimants while the inquiry was in train would be discrete, in that the solutions to their particular problems would not affect the Crown's later settlement with the wider claimant community.

As it turned out, only the Pūtiki Rifle Range claim was settled as a discrete remedy (see sidebar). Other claimants did not seize the opportunity early enough and missed out because, although the Crown had been willing to engage in the discrete remedies initiative at the outset, its policy changed due, it said, to a heavy workload and the need to prioritise resources.¹ By the time hearings were drawing to a close, discrete remedies were no longer available, both because the process required the Crown's willing and co-operative participation and because there was by then too little time for the necessary level of investigation to occur to settle even small, discrete claims before the inquiry moved into its report-writing phase.

23.2.2 Local issues focus

Although the discrete remedies process did not deliver outcomes for most of those who applied, we decided to maintain our focus on these small, local claims for this report. They merit separate and specific attention because:

- They really matter to the claimants, and what matters to the claimants should matter to the process: reconciliation is a main objective of the Waitangi Tribunal and Treaty settlement processes. Ensuring that these cases – small-scale, deserving, and sometimes festering – are properly resolved is key to healing the wounds of the past.
- Although the acres involved are usually few, the focus on them has come about because, after the large-scale land losses in the nineteenth and early twentieth centuries, the land that Māori retained assumed proportionally greater significance. The Crown should have responded by increasing its efforts to support Māori in the continued ownership and use of the land that remained to them. As the ensuing three chapters show, however, there were all too many instances where this was conspicuously not how the Crown responded.

23.2.3 Evidential problems with some cases

We were able to analyse cases deeply only where we had sufficient evidence.

With one or two exceptions (Taumarunui Hospital and the North Island main trunk railway), the Crown made no concessions of Treaty breach on local issues, and barely referred to them in closing submissions.² It would have been helpful had the Crown researched these specific claims, made concessions where appropriate, and perhaps even rectified matters itself. It chose not to do so in most cases, in our view failing to apprehend where claimants wanted to see the Crown putting its efforts.

We undertook research ourselves, in an effort to fill in gaps. However, in a number of cases there were still too few facts to enable us to make findings.

23.2.4 Others may have been affected too

In most cases we cannot say with certainty that the claimant group that raised the local issue is the only group with interests in the land in question. Even where a case appears particular to one claimant group, we cannot exclude the possibility that others were also affected. Our recommendations reflect this possibility.

23.3 WHAT ARE THE LOCAL ISSUES IN WHANGANUI?

We now introduce the three topics to which the local issues cases mainly relate: public works takings; the delegation of authority to local government; and Māori land administration. We discuss these topics in overview in order to reduce repetition when addressing the cases.

23.3.1 Public works

'Takings' – or compulsory acquisitions – for public works were a focus of claims in this inquiry. The public purposes for which the Crown and local authorities compulsorily acquired significant areas of land throughout the district included gravel pits and quarries, roads, railways, forests, schools, hospitals, and scenic reserves.

Public Works Acts authorising compulsory acquisition of land for public works have been a feature of New Zealand's legislative environment since 1876. They specify

who may take land; the notification and consultation process; the terms for the payment of compensation; and how land is to be disposed of when no longer needed for the purpose for which it was acquired. We look at how the legislation worked in the takings in claims before us, and how the claimants were affected.

These are the cases that involved public works: the King Country Electric Power Board; Tūwhenua (Taumarunui Aerodrome); Taumarunui Hospital; Taringamotu School; Ōhura South G4E2; Taumarunui area issues; the Piriaka puna (spring); Piriaka School site; Manganui-a-te-ao issues; Parinui School site; Mangamingi Marae; Ōhākune area issues; Tūranganui railway reserve lands; Pipiriki School; Koriniti School; Kaiwhaiki quarry; Ōtoko issues; Ōhotu 6F1; Puketarata 4G1 worker's dwelling; Parakino School; and the Kai Iwi issues.

(1) *The Waitangi Tribunal on public works*

In chapter 16, we looked at how Māori land was taken for scenic reserves. We considered the interaction between the Treaty of Waitangi's guarantee to Māori of te tino rangatiratanga and the Crown's exercise of legislative authority to take Māori land compulsorily for public works. In sections 16.1.2 and 16.4.1, we summarised the key principles of the Waitangi Tribunal's public works jurisprudence, and we will not do so again here. Suffice to say that, in order for public works takings to comply with the principles of the Treaty, the circumstances must be exceptional to the extent that the national interest is at stake, and there is no other option but to take the land compulsorily.³

We concur with the public works findings of previous Tribunal inquiries.⁴ It is not necessary to revisit them in detail, although we sometimes refer to their findings as we assess public works takings.

(2) *Legislative requirements for public works takings*

In the local issues cases, most public works takings were carried out under legislation from 1905 onwards. Taking authorities were required to make a survey plan of the proposed taking, and deposit it in a place where it could be viewed. A *Gazette* notice, to be published twice, was to state where the plan was open for inspection, with a

general description of the proposed works and the lands required. A copy of the notice and description of lands and works was also to be served on the owners and occupiers and others with an interest in the land. Anyone affected by the proposal could send 'well-grounded objections' in writing within 40 days of the first publication. Any objections had to be duly considered, and the taking needed the consent of a Minister or local authority to proceed.⁵ Landowners were afforded some protections, where land was occupied by a building, yard, garden, orchard, vineyard, ornamental park, or pleasure ground – but not where the land was a wāhi tapu or mahinga kai (food-gathering area).⁶

The Public Works Act 1928 was the principal legislation governing public works takings in the twentieth century. It kept on the provisions developed previously, requiring a survey and plan of the land, notice of the proposed taking, and the opportunity for well-grounded objections to be made and heard. Land continued to be protected when it was occupied by any building, yard, garden, orchard, vineyard, ornamental park, or pleasure ground, or for brick works or other commercial activity.⁷ Cemeteries or burial grounds were added to the list by a 1948 amendment.⁸ The 1928 Act also included provision for taking by agreement and purchase, and contained provisions for the disposal of surplus land.⁹

Claims about public works takings for the extraction of gravel were common. Gravel was extracted from land and river beds in Whanganui for many different purposes, but mostly for roading in the twentieth century, when the Government and local authorities took land and materials required for the creation of new roads as well as for road realignments.¹⁰ The Public Works Act 1928 allowed the Crown to acquire land compulsorily for a quarry or gravel pit for public works purposes, or to take materials such as stone or gravel from any land, provided it gave 24 hours' notice to the occupier and paid 'reasonable compensation' for the gravel and the damage done to the land (section 17). We explore aspects of quarrying and gravel extraction on Māori land in our discussions of Manganui-a-te-ao, Ōhura South B2B2C2 and the Pukehou Road quarry, and the Kaiwhaiki stone quarry.

(3) Local authorities and public works

With the passage of the Public Works Act 1876, local authorities gained the power to take all types of Māori land for public works purposes, and the Public Works Acts of 1905 and 1908 consolidated these powers. Local authorities exercised their authority under the Public Works Act frequently, and by the twentieth century carried out most public works takings in Whanganui.¹¹

Our local issues cases feature a wide range of bodies that acquired Māori land compulsorily for public works: county councils, hospital boards, soil conservation and river control councils, and harbour boards. We look at Te Peka Marae; Taumarunui Aerodrome; Ōhura South B2B2C2 and the Pukehou Road quarry; the King Country Electric Power Board depot; Manganui-a-te-ao issues; Ōhākune area issues; the Kaiwhaiki quarry; and Kai Iwi water supply.

Local government reorganisation in 1989 slashed the number of local authorities from 625 to 94 (13 regions, 74 cities and districts, and seven special purpose boards).¹² Today, the Wanganui and Ruapehu District Councils perform a wide range of functions. Importantly, they issue consents for some land uses, and can acquire land compulsorily for local infrastructure projects like roads and landfills. Horizons Regional Council is the primary environmental decision-maker: it develops policies to guide environmental management, approves resource consents, and monitors consented activities.

(4) Crown responsibility for local authorities' takings

As our jurisdiction concerns Treaty breaches by the Crown, we must establish the nature and extent of Crown responsibility when local authorities use their power to acquire land compulsorily for public works.

We agree with the Ngāwhā Geothermal Tribunal's statement that the Crown's obligation under article 2 to protect Māori tino rangatiratanga 'cannot be avoided or modified by the Crown delegating its powers or Treaty obligations to the discretion of local authorities'.¹³ If the Crown chooses to delegate its powers, 'it must do so in terms which ensure its Treaty duty of protection is fulfilled'.¹⁴

The Wairarapa ki Tararua Tribunal said:

The Treaty is a nonsense when governments avoid complying with it simply by passing inconsistent legislation.

By delegating to local authorities the power to take Māori land without the consent of its owners, the Crown has done precisely that.¹⁵

So the Crown's Treaty duties are not extinguished when it delegates its powers to other authorities: it is responsible for monitoring the actions of those authorities to ensure they accord with the Treaty.¹⁶ It is also responsible for prejudice to Māori that arises whenever takings by local authorities do not meet the 'as a last resort in the national interest' test.¹⁷ In the Wairarapa ki Tararua district inquiry, the Tribunal concluded that none of the public works takings met the test and found that 'The Crown is therefore responsible for the negative consequences to Māori of all the public works takings that were the subject of claims'.¹⁸ We concur with that approach.

The Crown continues to reject this view of its liability, although accepts responsibility for designing and monitoring the legislative system for public works takings.¹⁹

(5) Compensation for public works

From 1887 to 1962, owners of Māori land were compensated differently from owners of general land when their land was taken for public works. For owners of general land, a specialist tribunal decided on the amount of compensation payable. But to compensate the owners of Māori land, the taking authority was responsible for making an application to the Māori Land Court. The court would decide the amount of compensation and to whom it was awarded.²⁰ While local authorities had a time limit to apply to the court, central government had no time limit. Although the Māori Land Court was not expert in land valuation, owners of Māori land had no access to the specialist tribunal.²¹

From 1962 to 1974, there were two processes for compensating owners of Māori land, one for multiply owned Māori land, and one for Māori land vested in a single owner or incorporation.²² In this period, the Māori Trustee was responsible for initiating compensation claims and negotiating awards for multiply owned

Māori land. The Trustee could accept or reject the taking authority's offer, and take matters to the Valuation Court if agreement could not be reached.²³ For Māori land held by a single owner or incorporation, the owners negotiated compensation claims but the Māori Trustee could pursue claims if appointed. The Trustee could negotiate compensation only after the land had been taken, and could act only in respect of the freehold interest in the land.²⁴ Previous Tribunals have found that the compensation regime before 1974 prejudiced Māori, reducing their ability to participate in and influence compensation decisions, and contributing to delays.²⁵

When divided between many shareholders in blocks of Māori land, compensation for each individual owner was usually insignificant. Shareholders often numbered in their hundreds, and once the compensation was disbursed, it was unlikely that owners would be able to combine and buy replacement land.²⁶ When the Ōhākune scoria pit was taken in 1968, the Ministry of Works avoided paying compensation by citing as a reason the negligible compensation that each of the several hundred owners would receive.²⁷ In the Tūwhenua case, we observe that the different compensation procedures caused confusion when it was unclear exactly how many people owned a block of Māori land. In 1974, the Māori Trustee was removed as a statutory agent for the owners, and the owners instead conducted negotiations themselves.

(6) The Tribunal on valuation and compensation

Treaty jurisprudence shows that public works will meet the criteria for Treaty-compliant compulsory acquisition only very rarely.

Moving then to consider the systems for valuing the Māori land that is taken, and for compensating its owners, the Tribunal has consistently found that the Crown has fallen short here too. Neither the current system nor any previous system for valuing such land has taken into account:

- ▶ the special significance of ancestral land in Māori culture, and the potential for emotional, spiritual, and educational detriment to follow its loss;²⁸

- ▶ the increased significance to Māori of land remaining in their hands by the twentieth century: so much of their land was by then gone that what remained to them was proportionally more important;
- ▶ whether the land taken was wāhi tapu;
- ▶ whether the land was strategic for providing a traditional food resource, or for providing access to such a resource;
- ▶ whether the land had inherent qualities (such as scenic beauty or hydroelectric potential) that should have attracted a higher price: the valuation criteria for rural land related only to agricultural potential;
- ▶ the extent to which the people from whom the land was taken could in any sense 'spare' the land, given their other landholdings;²⁹ or
- ▶ whether payment of money was a culturally appropriate means of providing a benefit to Māori that corresponded to the detriment of losing land.³⁰

Thus, the system for valuing Māori land taken for public works was, and is, monocultural.³¹ Its application to Māori landowners led to owners being paid too little, because it took into account too few of the aspects of loss Māori suffered. Nor was consideration given to the inherent inadequacy of monetary compensation given those aspects of loss, and given the Crown's Treaty duties.

(7) Land no longer needed for the original purpose

Disposal of land no longer needed for public works was an issue in a number of cases, including Tūwhenua (Taumarunui Aerodrome); Ōhura South G4E2; the Parinui Native School site; the Pipiriki School site; the Koriniti Native School; and the Parikino School site.

Early Public Works Acts did not recognise Māori landowners' continuing interest in land taken from them for public works. Until 1981, neighbouring landowners were seen as having the best claim to purchase land no longer needed for public works. Before 1928, land was sometimes returned to Māori by special legislation.³² The Native Purposes Act 1943 then introduced an alternative system, separate from general Public Works Acts, for the return of Māori land previously taken for public works. It provided

that Māori land transferred for a public work and no longer required for that work or ‘for any other public purpose’ could be returned (or revested) in the native owners by the Māori Land Court where it was ‘deemed expedient’ to do so. The land was deemed to be Māori freehold land unless the court expressly ordered otherwise. There was a similar section in the Māori Affairs Act 1953.³³ Our cases show, however, that the Crown did not often use these provisions to return land to its original owners when no longer required for public works.

In the 1960s and 1970s, public opinion generally became more critical of authorities’ extensive powers to take land for public works.³⁴ But it was not until the Public Works Act 1981 – which remains in force today – that public works legislation recognised the original owners’ interests in land no longer required for public works.³⁵

Sections 40 and 41 of the 1981 Act created a requirement for surplus land to be offered back first to the person ‘from whom it was acquired or the successor of that person’. ‘Successor’ meant the person entitled to the land under the will or intestacy of the former owner.³⁶ However, there were important exceptions that allowed the general rule to be subverted in many, many cases. For instance, the land did not need to be offered back if its character had substantially changed, or if returning the land would be ‘impracticable, unreasonable or unfair’.³⁷ In practice, this exception might be applied to any land that was the subject of development by the authority that compulsorily acquired it. It was originally intended that land was to be offered back at current market value, but a 1982 amendment provided that it could be returned at a lesser price if the Government or local authority found it reasonable.³⁸ Land Information New Zealand became responsible for administering public works legislation, including the process for offering land back to its former owners.³⁹

(8) *The Tribunal on offering surplus land back*

As already observed, only since 1981 has the law obliged the Crown, when Māori land is no longer required for the public works purpose for which it was taken, to offer it back to its former owners. However, the legal duty to offer

land back has several exceptions, which have allowed the Crown to escape its obligations.⁴⁰ Discussing the return of former school sites originally gifted by Māori, both the Wairarapa Tribunal and Te Tau Ihu Tribunal found that the Crown’s failure to ensure that all compulsorily acquired Māori land was offered back once no longer required for the original purpose was a breach of the Crown’s duty to actively protect Māori interests.⁴¹

Another issue is the price at which land should be offered back to Māori, and the application of market rates to the value of improvements.⁴² Current policy is for the Crown to return land gifted for a particular purpose to its donors or their successors at no cost. Any improvements to the site are to be sold at the current market value.⁴³

The Wairarapa Tribunal considered the situation of the former Ōkautete School, where the Crown was prepared to return the land to its donors, but wanted them to pay for the school buildings and school house. That Tribunal said that the Crown would be acting properly and honourably if it gave back the school buildings and school house along with the land, as a reciprocal gesture for having had use of the site for 80 years.⁴⁴ In these circumstances, for the Crown to benefit from price inflation and recompense for improvements was neither fair nor in accordance with Treaty principles.⁴⁵

Moreover, when the Crown knows that land was gifted, it must properly investigate to whom a site should be returned, and failure to do so breaches the Treaty. The Wairarapa Tribunal considered that proper purchase and offer-back regimes were basic mechanisms that would have helped the Crown to adhere to its Treaty responsibilities, and ensure that the whakapapa connection to gifted lands was not lost.⁴⁶

The Crown also has a duty, when offering back land formerly owned by Māori, to spare them from unnecessary problems and expense. The Tūrangi Township Tribunal found that the Crown must return surplus public works land ‘at the earliest possible opportunity and with the least cost and inconvenience to those Māori owners’.⁴⁷ Similarly, the *Te Maunga Railways Land Report* highlighted the power of the Crown to decide the terms under which land

is returned, and found that ‘it is inherent in the fiduciary obligation of the Crown under the Treaty of Waitangi that this discretion be used positively’.⁴⁸

(9) Takings under the ‘5 per cent rule’

Early public works takings from Māori land for roads and railways were known as ‘5 per cent’ takings. Various Land and Public Works Acts authorised taking up to 5 per cent of a land block for road and railway purposes without paying compensation. This practice, as applied to Māori land, lasted from 1865 until 1927.⁴⁹ Once a block went before the Māori Land Court to ascertain its owners, up to 5 per cent could be taken for roading at any time in the next 10 years – and this was later extended to 15 years. As with other public works takings, land was exempt if it contained buildings, gardens, orchards, plantations, or ornamental grounds. There was no requirement to discuss with the owners of the land any aspect of the taking, including the path the road would take.⁵⁰

The 5 per cent rule also applied to Māori land taken for railways purposes. We look at takings for the North Island Main Trunk railway in Ōhura South G4E2, Piriaka puna, Taumarunui area issues, and Tūranganui railway reserve local issues cases. Approximately 2,420 acres of land were compulsorily acquired within the Whanganui inquiry district for the North Island Main Trunk railway, of which 25.8 per cent was Māori land.⁵¹ A maze of legislation surrounded the railway’s development. Some of the land was acquired under the 5 per cent rule, some under public works legislation and orders in council.⁵²

(10) The native schools regime

In chapters 25 and 26, we explore the gifting of Māori land at Parikino, Parinui, and Koriniti for native schools.

The Native Schools Act 1867 created a system of Government schools intended primarily for Māori children, and made standard the gifting of Māori land to build those schools in Māori communities.⁵³ Under the Native School Code, Māori were to request a school in writing, gift a piece of their land to the Crown for a school site, and provide a share of the teacher’s salary and the cost of the buildings.⁵⁴

Section 2 of the Native Schools Sites Act Extension Act 1890 specified that where owners agreed to gift land for a school, the Governor could place a notice in the *New Zealand Gazette* and *Kahiti* signifying his agreement to the gift. From the date of that notice, the land would vest absolutely in the Crown, for the purpose of a school, and for no other purpose. After 1900 it seems to have been usual practice to transfer school sites into Crown ownership under the Public Works Act, with security of title seen to be important for public money to be spent on buildings and other improvements.

Māori saw gifting land as highly symbolic, and often spoke of the special relationship between schools built on Māori land and the community.⁵⁵ Native schools remained distinct from other New Zealand schools until 1969, when the last 114 native schools were transferred to the control of local education boards.⁵⁶ Māori communities often objected to the transfer of native schools to those boards.⁵⁷ They feared that people would lose sight of the significance of their gift of land. Those fears were justified, because when schools were closed, they were often sold to private owners rather than returned to the Māori community that donated the land. Our local issues chapters address such cases.

(11) The Crown ‘protection mechanism’

In 1993 the Crown introduced a mechanism designed to protect Māori interests in surplus Crown land, and safeguard the Crown’s ability to settle Treaty of Waitangi claims with Crown land.⁵⁸ Māori claimants expressed their interest in surplus land for possible use in a future Treaty of Waitangi settlement, and land was ‘banked’ for future deployment in those settlements.

A number of our cases raise the issue of how the land bank has worked in Whanganui. Before 2004, the Office of Treaty Settlements operated a complicated system of regional and specific land banks under the protection mechanism process. The Government established a claim-specific land bank that the Whanganui River Māori Trust Board controlled as the mandated body to represent claimant groups in the region.⁵⁹ The Whanganui River Māori Trust Board could nominate surplus Crown

properties for inclusion in the Whanganui claim-specific land bank, but other claimants could not. Other groups say that this gave the Whanganui River Māori Trust Board a preferential right of first refusal in surplus Crown properties in Whanganui. It appears that the Crown thought that the Whanganui River Māori Trust Board represented the whole claimant community, but that is now contested.⁶⁰

Another criticism is that, before being land-banked, properties were not assessed against the protection mechanism criteria, which included an assessment of the financial value and special features of the property.

The Crown changed policy in 2004 and incorporated the Whanganui claim-specific land bank into the Whanganui regional land bank.⁶¹ Financial limits were introduced on the total value of land that could be protected in each region, and properties were no longer held for any particular claimant group.

Today, the Office of Treaty Settlements manages the land bank. Any Māori who has registered a claim with the Tribunal can apply to have surplus Crown land placed in one of 15 regional land banks. Applicants fill in a form providing information that supports the application, including a description of the cultural or historical importance of the site to the claimant group and the proposed future use of the site.⁶² An interdepartmental committee of officials assesses the applications against a set of Cabinet-approved criteria that include the site's cultural or historical importance and its proposed future use by the claimants. Following the committee's assessment, the Ministers of Finance and Māori Affairs and the Associate Minister for Treaty of Waitangi Negotiations decide whether a property should be land-banked or be released for disposal.⁶³

23.3.2 Environmental issues

We have reported already on claims in this inquiry that concern the environment: land taken for scenic reserves (chapter 16) and the management of the Whanganui National Park (chapter 22). We turn now to claims about the management of local conservation land and areas of significance to the claimants. They alleged that

tangata whenua have not been empowered to continue to exercise kaitiakitanga, and have been sidelined in local decision-making.

We address these topics in relation to the Ōhākune area; the Whangaehu River; the Ōtoko scenic reserve; the proposed Ātene Dam; Taukoro Bush; Kaitoke Lake; and Lake Wairua.

(1) *Managing the environment: legislative change*

Prior to the Conservation Act 1987, there was negligible recognition that the Treaty afforded Māori particular rights in respect of the environment. Today, though, the situation is different. Both the Conservation Act 1987 and the Resource Management Act 1991 – the two statutes that most affect the management of New Zealand's natural and physical resources – recognise the Treaty, and provide for regard to be had to Māori concerns.

The Conservation Act 1987 created the Department of Conservation (DOC) as an efficiency measure, drawing most Government conservation functions together in a single department. Functions consolidated in DOC included those of the former Wildlife Service, the research and protection elements of the former Forest Service, a number of responsibilities of the Department of Lands and Survey, and some Government science activities. Crown land held for conservation, reserve, and recreation purposes was amalgamated under DOC.⁶⁴ Section 4 of the Conservation Act is the strongest Treaty imperative in New Zealand legislation, requiring the Act to 'so be interpreted and administered as to give effect to the principles of the Treaty of Waitangi.'

Then, in 1991, the Resource Management Act aimed to improve the efficiency and coordination of environmental management.⁶⁵ The Act sets out the basic powers, functions, and responsibilities of the agencies that manage the environment, and mechanisms for influencing environmental decision-making. It recognises Māori environmental concerns like this:

- All decision makers (including local authorities) must 'take into account' Treaty principles when managing the use, development, and protection of the environment (section 8).

- Decision makers must also recognise the ‘relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga’ as a matter of national importance (section 6(e)).
- Decision makers must have particular regard to ‘kaitiakitanga’ (section 7(a)).
- Regional and district councils must take into account iwi planning documents, and identify matters of significance to iwi in their regional policy statements (sections 61(2A)(a), 62(1)(b), 74(2A)).

(2) *The Tribunal on environmental issues*

While each local issues case explores different contemporary environmental issues, they all address the tensions between the right of tangata whenua to exercise kaitiakitanga over areas that are culturally significant to them and the Crown’s assertion of its right to make decisions concerning the environment and areas of conservation estate. How the Crown and its delegates should balance the competing interests involved in contemporary decisions about the environment and the management of resources in Whanganui is at the heart of many claims.

In chapters 16 and 22, we found that partnership is a key component of the Treaty relationship between the Crown and Māori in the management of the environment and conservation land. The partnership principle requires that the Crown and Māori act towards each other reasonably and with the utmost good faith.⁶⁶ Most recently, the Tribunal for the Wai 262 claim emphasised the ‘overriding importance’ of the partnership principle in the practice of kaitiakitanga and Māori culture when taonga are under DOC control.⁶⁷ Previous Tribunals found that the Crown must facilitate the ability of Māori to act as kaitiaki over their ancestral taonga.⁶⁸

The Tribunal that heard the central North Island claims found that the Treaty affords the Crown the right to make national laws about conservation and resource management, but it must ensure that proper arrangements for the conservation, control, and management of resources are in place.⁶⁹ Consistency with Treaty obligations must be part of those arrangements, both for the Crown and for delegates such as local and regional councils.⁷⁰

In chapter 22, we discussed how the partnership principle should work in practice (see section 22.6.5). The appropriate balance between Māori and the Crown in decision-making about particular places and taonga will depend on a range of factors that have regard to the history of the place, the nature and strength of the Māori association with it, competing interests, and the overriding need to provide for sustainability and bio-diversity. The end result of the balancing exercise could be:

- tangata whenua having full control of the taonga; or
- a partnership arrangement for joint control with the Crown or another entity; or
- a tangata whenua right to influence outcomes that sits alongside the imperatives of the environment and the weight of competing interests.⁷¹

(3) *The Tribunal on waterways and fisheries*

Because of the significance of water and waterways in Māori culture, the Tribunal has often inquired into water issues, ranging from catchments in large district inquiries to sometimes looking at one river. The *Whanganui River Report* is a signal example of the latter.

In article 2 of the Treaty, the Crown guaranteed te tino rangatiratanga over taonga. The Tribunal has consistently found that waterways are taonga.⁷² *Ko Aotearoa Tēnei* articulated the distinguishing features of taonga like this:

Taonga have mātauranga Māori relating to them, and whakapapa that can be recited by tohunga. Certain iwi or hapū will say that they are kaitiaki. Their tohunga will be able to say what events in the history of the community led to that kaitiaki status and what obligations this creates for them. In sum, a taonga will have kōrero tuku iho (a body of inherited knowledge) associated with them, the existence and credibility of which can be tested.⁷³

The Tribunal has also recognised that Māori do not view their waterways as separate from the land; rather, they are single and indivisible entities made up of their beds, waters, and fisheries.⁷⁴ The Crown’s obligation to actively protect the customary ownership and use of waterways by tangata whenua therefore extends to every

constituent part. Legislation that takes the right to determine and allocate water rights from Māori and vests it in the Crown breaches the Crown's duty of active protection of te tino rangatiratanga over every aspect of taonga.⁷⁵ This duty on the Crown to protect taonga, and to facilitate the exercise of te tino rangatiratanga over them, lasts for as long as tangata whenua wish to exercise it.⁷⁶

Both the *Kaituna River Report* and the *Ngai Tahu Report* stated that environmental consultation with iwi is a significant aspect of the partnership duty under the Treaty.⁷⁷ The Wai 262 Tribunal found that non-Māori, in particular those charged with the protection of fresh water, must have regard to Māori spiritual values relating to water and the resources it supports.⁷⁸

In *He Maunga Rongo*, the Tribunal recognised the Crown's right to exercise kāwanatanga in conservation matters. But even in situations where water-related natural resources are endangered or depleted, the Treaty guarantee of te tino rangatiratanga must be considered. Māori Treaty rights and property interests may be overridden only in exceptional circumstances in the national interest, following full consultation with tangata whenua, and after all other options have been exhausted.⁷⁹ Unless these requirements are met, tangata whenua retain the right to exercise authority over their waterways and fisheries, and the right to develop these taonga.⁸⁰

Tribunal reports relate how the Crown extinguished the legal rights of Māori to and in lakes and rivers, by acts and policies that were inconsistent with the Treaty of Waitangi guarantee of te tino rangatiratanga. The Crown breached the Treaty and failed in its duty to actively protect the interests of tangata whenua.⁸¹

Local issues cases about the Whangaehu River, Kaitoke Lake, and Lake Wairua raise all these Treaty concerns.

23.4 CONCLUSION

In the local issues cases that we address in the next three chapters, we see the problems of tangata whenua whose whenua is largely lost to them, and who have experienced the cumulative impact of Crown actions over many generations. Many of the issues these claimants brought to

us have remained unresolved for far too long. We hope that our analysis assists claimants and the Crown to work together to find solutions. We encourage the Crown to implement our recommendations for redress in ways that recognise the prejudice that has occurred to specific groups.

Notes

1. Memorandum 3.4.103, p 2
2. Submission 3.3.126
3. Waitangi Tribunal, *The Ngai Tahu Ancillary Claims Report 1995* (Wellington: Brooker's Ltd, 1995), p 11; Waitangi Tribunal, *The Turangi Township Report 1995* (Wellington: Brooker's Ltd, 1995), p 285; Waitangi Tribunal, *Turanga Tangata Turanga Whenua: The Report on the Turanganui a Kiwa Claims*, 2 vols (Wellington: Legislation Direct, 2004), vol 2, p 647; Waitangi Tribunal, *The Wairarapa ki Tararua Report*, 3 vols (Wellington: Legislation Direct, 2010), vol 2, p 743; Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims, Stage One*, revised ed, 4 vols (Wellington: Legislation Direct, 2008), vol 2, p 819
4. Waitangi Tribunal, *Te Maunga Railways Land Report* (Wellington: Brooker's Ltd, 1994); Waitangi Tribunal, *The Ngai Tahu Ancillary Claims Report 1995*; Waitangi Tribunal, *The Turangi Township Report 1995*; Waitangi Tribunal, *He Maunga Rongo*; Waitangi Tribunal, *The Wairarapa ki Tararua Report*; and more recently Waitangi Tribunal, *Tauranga Moana, 1886–2006: Report on the Post-Raupatu Claims*, 2 vols (Wellington: Legislation Direct, 2010) and Waitangi Tribunal, *Te Kāhui Maunga: The National Park District Inquiry Report*, 3 vols (Wellington: Legislation Direct, 2013)
5. Document A57 (Cleaver), p 51
6. *Ibid*, p 23
7. *Ibid*, p 61; Cathy Marr, *Public Works Takings of Māori Land, 1840–1981*, Rangahaua Whanui Series (Wellington: Waitangi Tribunal, 1997), p 133
8. Public Works Amendment Act 1948, s 14
9. Document A57 (Cleaver), p 62; Marr, *Public Works Takings of Māori Land*, p 145; Public Works Act 1928, ss 32, 35
10. Marr, *Public Works Takings of Māori Land*, pp 135, 157
11. Document A57 (Cleaver), pp 30, 52; Marr, *Public Works Takings of Māori Land*, pp 86–87, 122–123
12. Graham Bush, 'The Historic Reorganization of Local Government', in *The Fourth Labour Government: Politics and Policy in New Zealand*, ed Martin Holland and Jonathan Boston, 2nd ed (Auckland: Oxford University Press, 1990), pp 232–250, esp 243
13. Waitangi Tribunal, *Ngawha Geothermal Resource Report 1993* (Wellington: Brooker and Friend Ltd, 1993), p 144
14. *Ibid*, p 144
15. Waitangi Tribunal, *The Wairarapa ki Tararua Report*, vol 2, p 789

16. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Manukau Claim*, 2nd ed (Wellington: Waitangi Tribunal, 1989), PP73, 77
17. Waitangi Tribunal, *The Wairarapa ki Tararua Report*, vol 2, p 790
18. Ibid
19. Submission 3.3.123, pp 1–2; submission 3.3.126, p 19
20. Document A57 (Cleaver), pp 48–64
21. Ibid, p 64
22. The provisions came into effect on 1 April 1963, and lasted until 1975: see Marr, *Public Works Takings of Māori Land*, pp 142–143; doc A57 (Cleaver), p 65.
23. Marr, *Public Works Takings of Maori Land*, pp 142–143
24. Ibid
25. Waitangi Tribunal, *Tauranga Moana*, vol 1, p 292; Waitangi Tribunal, *He Maunga Rongo*, vol 2, pp 849–850
26. Waitangi Tribunal, *Tauranga Moana*, vol 1, p 290
27. Document A57 (Cleaver), pp 284–285
28. Waitangi Tribunal, *The Wairarapa ki Tararua Report*, vol 2, p 796
29. Waitangi Tribunal, *Tauranga Moana*, vol 1, p 290; Marr, *Public Works Takings of Māori Land*, p 143
30. Waitangi Tribunal, *Tauranga Moana*, vol 1, pp 291–292
31. Waitangi Tribunal, *The Wairarapa ki Tararua Report*, vol 2, p 796
32. Marr, *Public Works Takings of Māori Land*, p 147
33. Native Purposes Act 1943, s 7; Māori Affairs Act 1953, s 436
34. Waitangi Tribunal, *Tauranga Moana*, vol 1, p 248; doc A57 (Cleaver), p 67
35. Document A57 (Cleaver), p 67
36. Public Works Act, ss 40, 41
37. Waitangi Tribunal, *Tauranga Moana*, vol 1, pp 298–299. Originally the wording was ‘impractical’ but in 1982 this was amended to ‘impracticable,’ meaning not capable of being put into practice: see Marr, *Public Works Takings of Maori Land*, p 150; Russell Davies, *History of Public Works Acts in New Zealand, Including Compensation and Offer-back Provisions* (Wellington: Land Information New Zealand, 2000), pp 52–65.
38. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, vol 2, p 631
39. Davies, *History of Public Works Acts in New Zealand*, pp 64–65
40. Waitangi Tribunal, *The Wairarapa ki Tararua Report*, p 760
41. Waitangi Tribunal, *Te Tau Ihu o te Waka a Maui: Report on Northern South Island Claims*, 3 vols (Wellington: Legislation Direct, 2008), vol 3, p 1285; Waitangi Tribunal, *The Wairarapa ki Tararua Report*, vol 2, pp 798, 799–800
42. Waitangi Tribunal, *Te Tau Ihu o te Waka a Maui*, vol 3, p 1443
43. Land Information New Zealand, ‘Disposal of Gifted Land, Accredited Supplier Standard 24’, Property Regulatory Group, Land Information New Zealand, 1 July 2002, pp 3, 11
44. Waitangi Tribunal, *The Wairarapa ki Tararua Report*, vol 2, pp 797–798
45. Ibid, p 799
46. Ibid, p 798
47. Waitangi Tribunal, *The Turangi Township Report 1995*, p 320
48. Waitangi Tribunal, *Te Maunga Railways Land Report*, p 67
49. Document A57 (Cleaver), pp 21–22
50. Ibid, p 23
51. Submission 3.3.126, p 21
52. Document A57 (Cleaver), pp 184–185
53. Ibid, p 157
54. Ibid, pp 157, 159
55. John Barrington, *Separate but Equal? Māori Schools and the Crown, 1867–1969* (Wellington: Victoria University Press, 2008), p 90
56. Ibid, pp 292–293
57. Ibid, pp 90, 91, 127, 279, 289
58. Memorandum 3.1.175, p 5
59. Office of Treaty Settlements, *Protection of Māori Interests in Surplus Crown-Owned Land: Information for Crown Agencies* (Wellington: Office of Treaty Settlements, 2006)
60. Tim Papps to Cedric Tānoa, 8 June 1998 (doc 12, app A)
61. Office of Treaty Settlements, *Protection of Māori Interests*, p 9
62. Office of Treaty Settlements, ‘Protection of Māori Interests in Surplus Crown-Owned Land’, November 2005
63. Office of Treaty Settlements, *Protection of Māori Interests*, pp 7–8
64. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua*, 2 vols (Wellington: Legislation Direct, 2011), vol 1, p 298
65. Janine Hayward, ‘Is Local Government a Treaty Partner?’, in *Local Government and the Treaty of Waitangi*, ed Janine Hayward (Melbourne: Oxford University Press, 2003), pp 4–5; Morris Te Whiti Love, ‘Resource Management, Local Government, and the Treaty of Waitangi’, in *Local Government and the Treaty of Waitangi*, p 29
66. Waitangi Tribunal, *The Whanganui River Report* (Wellington: Legislation Direct, 1999), p 265
67. Waitangi Tribunal, *Ko Aotearoa Tēnei*, vol 1, p 341
68. Waitangi Tribunal, *He Maunga Rongo*, vol 4, pp 1240–1241; Waitangi Tribunal, *Tauranga Moana*, vol 2, p 520; Waitangi Tribunal, *Te Tau Ihu o te Waka a Maui*, vol 3, p 1205
69. Waitangi Tribunal, *He Maunga Rongo*, vol 4, pp 1238, 1249, 1250
70. Ibid, pp 1238, 1426; Waitangi Tribunal, *Ko Aotearoa Tēnei*, vol 1, p 280; Waitangi Tribunal, *The Report on the Management of the Petroleum Resource* (Wellington: Legislation Direct, 2011), pp 169–170; Waitangi Tribunal, *Ngawha Geothermal Resource Report 1993*, p 153
71. Waitangi Tribunal, *The Stage 1 Report on the National Freshwater and Geothermal Resources Claim* (Wellington: Legislation Direct, 2012), p 69; Waitangi Tribunal, *Ko Aotearoa Tēnei*, vol 1, pp 269–280
72. Waitangi Tribunal, *Te Ika Whenua Rivers Report* (Wellington: GP Publications, 1998), pp 12, 84, 88; Waitangi Tribunal, *Te Kāhui Maunga*, vol 3, pp 1015–1016; Waitangi Tribunal, *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim*, 2nd ed (Wellington: Government Printing Office, 1989), pp 180–181; Waitangi Tribunal, *The Whanganui River Report*, pp 262–263
73. Waitangi Tribunal, *Ko Aotearoa Tēnei*, vol 1, p 269
74. Waitangi Tribunal, *Rekohu: A Report on Moriori and Ngati Mutunga Claims in the Chatham Islands* (Wellington: Legislation Direct, 2001), p 278

75. Waitangi Tribunal, *Te Kāhui Maunga*, vol 3, pp 1014–1016; Waitangi Tribunal, *The Mohaka River Report 1992* (Wellington: Brooker and Friend, 1992), p 66
76. Waitangi Tribunal, *He Maunga Rongo*, vol 4, p 1239; Waitangi Tribunal, *Te Kāhui Maunga*, vol 3, pp 1015–1016
77. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Kaituna River Claim*, 2nd ed (Wellington: Government Printing Office, 1989), pp 9–11, 24; Waitangi Tribunal, *The Ngai Tahu Report 1991*, 3 vols (Wellington: Brooker and Friend Ltd, 1991), vol 3, pp 914–915
78. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Motunui–Waitara Claim*, 2nd ed (Wellington: Government Printing Office, 1989), pp 53–54; Waitangi Tribunal, *Ko Aotearoa Tēnei*, vol 1, p 260
79. Waitangi Tribunal, *He Maunga Rongo*, vol 4, pp 1238–1242
80. Ibid, pp 1238–1242; Waitangi Tribunal, *Report on the Muriwhenua Fishing Claim*, para 11.3.7
81. Waitangi Tribunal, *The Whanganui River Report*, p 269; Waitangi Tribunal, *Te Ika Whenua Rivers Report*, p 136

Sidebar sources

Pūtiki Rifle Range (p 1244): Memorandum 3.2.74, pp 2–3, 9; sub-mission 3.3.43, p 3; 'Putiki Land Back in Maori Hands', *Wanganui Chronicle*, 25 May 2009, p 1

CHAPTER 24

NORTHERN WHANGANUI LOCAL ISSUES

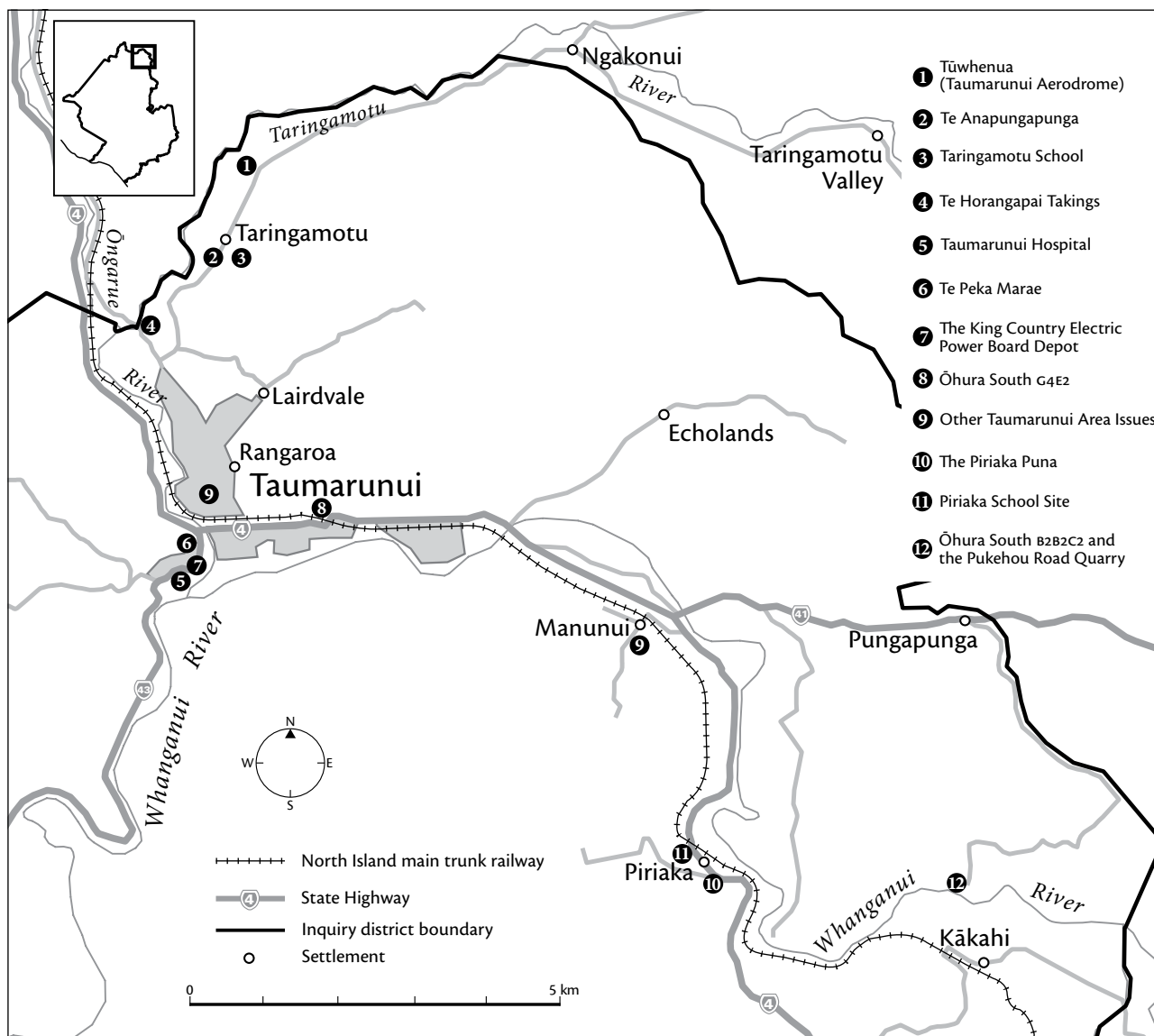
24.1 INTRODUCTION

In this, the first of our local issues chapters, we consider 12 cases relating to the northern region of the Whanganui inquiry district. This region encompasses the upper reaches of the Whanganui River and the high country of the central North Island. Tangata whenua groups that brought local issues claims included Ngāti Hekeāwai, Ngāti Hāua, Ngāti Hāuaroa, Ngāti Hari, Ngāti Hira, Ngāti Urunumia, Te Patutokotoko, Ngāti Heke (or Hekeāwai), Ngāti Hinewai, and Ngāti Manunui; the uri of Tūtemahurangi and Waikura, Te Tarapounamu, and Tānoa and Te Whiutahi. Often, the issues related to the last remnants of land remaining in Māori hands following the events of the late nineteenth and early twentieth centuries that saw the transfer to the Crown of many thousands of acres under circumstances that we have found breached Treaty principles.

We have already noted that although canoe routes linked the interior of the island with settlements at the lower Whanganui River, many of the hapū and iwi of the region had minimal contact with the Crown following the Treaty signing at Pākaitore in May 1840. Later, some found common cause with the Kīngitanga, which at the end of the New Zealand Wars transformed into resistance against the activities of the Native Land Court. That resistance was overcome in the 1880s, when the Crown purchased extensive tracts to complete the North Island Main Trunk railway, and more again following the hearings of the Waimarino and Ōhura South blocks, both in 1886. Within a few months of title determination, the Crown had acquired four-fifths of the Waimarino block, leaving Māori owners with 74,000 acres of reserves, of which three were located in the north.¹ Between 1894 and 1901, the Crown purchased over 70 per cent of the Ōhura South block, and purchases continued into the early twentieth century. By 1920, Māori retained a small fraction of their original holdings.

Taumarunui, located at the confluence of the Ōngarue and Whanganui Rivers, is the settlement at the heart of the northern inquiry district. It was established in 1903 as a 'native township' on a portion of the remaining Māori land in the Ōhura South block, and is the region's largest community today. The development of the town placed pressure on Māori occupation of their remaining land, and several of our cases detail how that pressure increased over the course of the twentieth century. We begin our consideration of local issues along the Taringamotu River, then move south to Taumarunui, and then further south to Piriaka and Kākahi.

Many of the local issues feature public works takings.



Map 24.1: Local issues in the northern Whanganui region

These began in the early twentieth century with the Crown's efforts to complete the North Island Main Trunk railway, taking land in Ōhura South G4E2 (section 24.9), at Piriaka (section 24.11), and Taumarunui (section 24.10).

We also look at compulsory acquisitions for Taumarunui Hospital (section 24.6), the King Country Electric Power Board depot (section 24.8), and Taumarunui Aerodrome (section 24.2), and other Crown actions in and near

the town that have cumulatively affected Māori in the Taumarunui area (section 24.10).

We explore contemporary Crown policy regarding offer-back of surplus Crown land. The cases concern the Taringamotu School site (section 24.4), the Piriaka School site (section 24.12), and the puna at Piriaka (section 24.11).

In the Te Anapungapunga (section 24.3) and Te Peka marae (section 24.7) cases, we examine the operation of the Native Land Court and Native Land Acts. We also explore Māori land legislation that led to the alienation of 'unproductive' Māori land at Te Horangapai (section 24.5).

Lastly, we report on erosion on Māori land near Kākahi, brought about by a combination of Whanganui River meandering, and hydrological changes that resulted from quarrying on neighbouring property (section 24.13).

24.2 TŪWHENUA (TAUMARUNUI AERODROME)

24.2.1 Introduction

During the 1960s, Taumarunui County Council compulsorily acquired over 28 acres of Māori land at Tūwhenua, north of Taumarunui, for a local aerodrome and road. The land is located in the Ōhura South A block, and comprises some of the Ōhura lands that had remained in Māori ownership. Historic Tūwhenua marae, where Te Kooti stayed, was included in the taking, and a nearby urupā became largely inaccessible. The claimants' concerns included default on an agreement, lack of notice, and compensation.

24.2.2 What the parties said

Ngāti Hari and Ngāti Hira contended that it was the Crown's Treaty duty to protect their occupation and ownership of land they wanted to keep – especially their marae, papakāinga, and urupā. The Crown breached the Treaty by creating a public works regime that allowed the council to take land that included Tūwhenua marae, and restrict access to the urupā,² prejudicing Ngāti Hari and Ngāti Hira. Construction of Jurgen Road also damaged puna (springs).³

Ngāti Hari and Ngāti Hira said that there is no evidence that the owners of Tūwhenua were compensated.⁴



The lower Taringamotu Valley on the official opening of Taumarunui Aerodrome, 7 October 1967. Over 28 acres from two adjacent land blocks were taken for the airport in the 1960s. One of the blocks was 20 acres in size and, at the time of the taking, was owned by one person. No compensation was ever paid for this block. The other block was known as the marae block. The owners of this block withdrew their initial opposition to the taking in exchange for five acres of land for a new marae and a new road to access the urupā, which lay adjacent to the marae block. When compensation for the marae block was negotiated between the Māori Trustee and the Taumarunui County Council, the agreement was forgotten. As a result, Ngāti Hari and Ngāti Hira claimants never received the five acres of land for the site of a new marae or vehicle access to the Tūwhenua urupā.

Although the council may have consulted the owners before taking the marae site, the package agreed to by both parties (the council would provide land elsewhere, and provide some monetary compensation) was never delivered.⁵

Amelia Kereopa, Terry Turu, and Pauline Stafford at Tūwhenua, 2008. The taking of land for Taumarunui Aerodrome left the adjacent urupā without access. Today, the claimants have to cross the airstrip to access the urupā.



Ngāti Urunumia filed a similar claim and made similar arguments. The argument Ngāti Urunumia added was that the land loss at Tūwhenua caused economic and commercial suffering to the hapū, because they could not use their land to obtain an income.⁶

The Crown argued that the Tūwhenua takings were a local authority taking, and rejected any suggestion that the Crown failed to comply with the Public Works Act or breached the Treaty in this case. The Crown said the owners agreed to the taking after discussions with the Taumarunui County Council.⁷

24.2.3 Tūwhenua

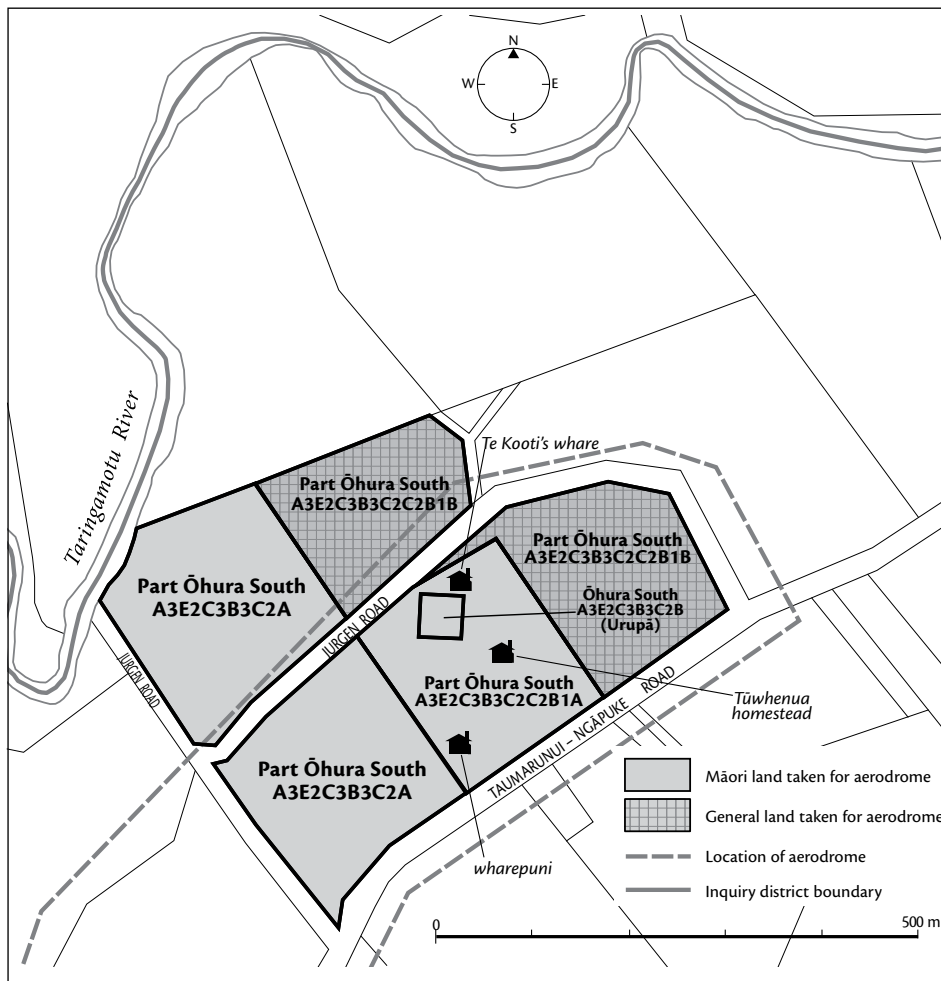
The land at Tūwhenua that became Taumarunui Aerodrome is part of the Ōhura South block. By 1900, the Crown had purchased the greater part of the block, establishing Taumarunui township on the Ōhura South G4 block, adjacent to Te Peka Pā. In the 1960s, Tūwhenua was one of the small pieces of land left to Māori from the large Ōhura South block.

Tūwhenua was a significant place in the lives of tangata whenua. A number of Ngāti Hari, Ngāti Hira, and Ngāti

Urunumia families lived there.⁸ Ngāti Hari and Ngāti Hira witness Amelia Kereopa recalled:

There seemed to be so many families in the valley where the airport is now (Tuwhenua). We had a big home and it was full. There were so many of us in the whare at Tuwhenua that we were all bunched in together . . . My memories of my childhood are happy ones. We spent a lot of time in the gardens around Tuwhenua and playing on the riverbanks.⁹

Life at Tūwhenua centred on the marae block. Measuring just over eight acres, it became the site of Taumarunui Aerodrome. Thus, the land is flat, and also sunny and well positioned on a plateau above the Ōngarue River. When the council purchased the land in the 1960s, located there were the Tūwhenua wharepuni; the home- stead where Mrs Kereopa was raised; a milking shed; an urupā; and a whare tapu (sacred house). The house was sacred because Te Kooti stayed there when he fled Crown and Māori troops after his defeat at Te Pōreru in October 1869.¹⁰ Other people did not live there; the house stood as a monument to Te Kooti and his stay during his flight.



Map 24.2: Blocks taken for Taumarunui Aerodrome

The urupā was partitioned from the surrounding block in 1917, and measured two roads.¹¹ Because the urupā and the surrounding block had the same owners, the Native Land Court did not lay off a road when it made the partition. There was therefore no formal access to the urupā when the council purchased the land.¹²

24.2.4 Why and how was the land taken?

In the 1960s, the council envisioned an airport that would boost the local economy, decrease Taumarunui's

geographic isolation, and provide a gateway to tourists heading for Lake Taupō, the Whanganui River, and hunting areas. Experienced farm workers – who in the past were put off by the area's isolation – would be encouraged to move to Taumarunui. Large topdressing aircraft could land there, reducing the cost of fertilising.¹³

Between 1963 and 1970, the Taumarunui County Council acquired over 28 acres from two blocks known as Ōhura South A3E2C3B3C2A (the 20-acre block) and Ōhura South A3E2C3B3C2B1A (the marae block), for an

aerodrome and access road. It acquired another 17 acres in Ōhura South A3E2C3B3C2C2B1B, which was by then owned by a Pākehā farmer.¹⁴

The council issued a notice of intention to take the 20-acre block in December 1962, and less than 10 months later took the land under the Public Works Act 1928.¹⁵ This land was vested in one owner, Te Manu Tupukāheke (also known as Te Pou Hākiri), who had died nearly 20 years earlier.¹⁶ As the Māori Land Court did not determine his successors until August 1964, there were no legal owners to object when the council took the land.¹⁷

The council did face opposition when it tried to acquire the marae block for the aerodrome in 1964. Its owners argued that the land was the site of their marae.¹⁸ However, after meeting with the council, the owners agreed to the taking on three conditions. The council was to:

- ▶ set aside five acres of land for Tūwhenua marae as close to the urupā as possible;
- ▶ provide vehicle access to the urupā and five acres; and
- ▶ establish a new road in the location agreed to by the council and owners.¹⁹

The council told the Māori Trustee that it had made an agreement with the owners of the marae block, and that the owners would make a compensation claim with the Māori Trustee's assistance.²⁰ After the taking, a mere 10.6 perches of the block remained in Māori ownership. But this was short-lived; in 1970, the council took this last portion for Jorgen Road.²¹

The final block of land making up Taumarunui Aerodrome and Jorgen Road, Ōhura South A3E2C3B3C2C2B1B, was taken in 1970.²² Although this land was by then owned by a Pākehā farmer, Ngāti Hari and Ngāti Hira continued to use two puna that were located on the block.²³ In her evidence to the Tribunal, Mrs Kereopa said that one of the puna was used for fresh water for the marae and gardens, while 'the other was where we were not allowed to go'.²⁴ She said that when Jorgen Road was established, it 'cut right through the puna and damaged it'.²⁵

24.2.5 Consideration given to Māori interests in the land

It appears that, before taking the land in the marae block, the council and the Public Works Department followed

an informal process of a kind local authorities often employed when proposing to take land for public purposes. In 1963, the department asked the resident engineer at Taumarunui to investigate whether the desired land contained any buildings, yards, gardens, orchards, vineyards, ornamental parks, pleasure-grounds, or burial grounds that could prevent the land from being taken under the Public Works Act 1928. The engineer responded that the land contained none of these features.²⁶ He gave no indication that he had discussed the taking with local Māori, and did not mention that there was a marae and urupā there.

We do not know whether the council considered alternative sites before deciding to take Tūwhenua for the aerodrome. During the Whanganui hearings, Sue Morris, the mayor of Ruapehu District Council, stated that some county councillors believed Ōwhango was a better site for the airstrip.²⁷

Before taking the land, the council met with the owners to discuss the planned acquisition, and reached a negotiated agreement. The owners withdrew their initial opposition to the taking in exchange for five acres of land for a new marae and a new road for vehicle access to the urupā and new marae site.²⁸ In principle, this kind of negotiation is of course preferable in Treaty terms to compulsory acquisition.

By contrast, the council did not contact the owners of the 20-acre block before taking the land, and apparently did not discover that its sole owner, Te Manu Tupukāheke, was deceased.²⁹ His successors were therefore denied the opportunity to be involved in decisions about their land.

24.2.6 Compensation

(1) *The marae block (Ōhura South A3E2C3B3C2C2B1A)*

In 1968 and 1969, the Māori Trustee negotiated compensation with the council on behalf of the 14 owners of the marae block.³⁰ Neither the Māori Trustee nor the council referred to the agreement that the council made with the owners in 1964. Historians Grant Young and Michael Belgrave suggested that the length of time between the agreement with the owners and the process of formally taking the land meant that the agreement was forgotten.³¹

The Māori Trustee's compensation claim did not take into account the agreement reached with the owners in 1964, basing it instead on the market value of the block plus 5 per cent interest from the council's date of entry. This amounted to \$2,632.³² The council reluctantly accepted this valuation, and sent the Māori Trustee the full amount for distribution to the owners.³³ However, it appears that only eight owners received the compensation, as not all of the owners' addresses were known and at least two were deceased.³⁴

In 1971, one of the former owners of the marae block, Taame Peti Uru (Tom Ram), approached the council about the five acres promised in the 1964 agreement. The council took no responsibility for the broken agreement, and instead blamed the Māori Trustee.³⁵ The Māori Trustee acknowledged that he had based the compensation claim on the market value of the land, and said that the council had not informed him of any agreement.³⁶ The situation was not rectified. Ngāti Hari and Ngāti Hira claimants have received neither the promised five acres of land for the site of a new marae, nor vehicle access to Tūwhenua urupā.

Ngāti Hari and Ngāti Hira witness Amelia Kereopa told us that the council did offer her mother, Taringa Hinerau, five acres across the road from the urupā. She refused, because the land offered was unstable and swampy. The council did not suggest an alternative.³⁷ A 1970 plan suggests that a right of way connecting the urupā to Jurgen Road was contemplated but never formed.³⁸ To gain access to their urupā, tangata whenua have to trespass on the airstrip.³⁹ Hoani (John) Wī told us:

Today the urupa is unfenced and unprotected. Stock grazes on it. People can walk over it. Planes take off over it. It is not right that our tupuna are left exposed in this way and that people may walk over and disturb the tapu of this urupa.⁴⁰

(2) *The 20-acre block (Ōhura South A3E2C3B3C2A)*

The compensation process for the 20-acre block was a bureaucratic fiasco, and no compensation has yet been paid.

Notice of intention to take the land was issued in 1962, and the council took it 10 months later. But nothing

happened about paying for it until 1964, which was when the Māori Land Court made orders of succession for the deceased sole owner of the block, Te Manu Tupukāheke. One of his 14 successors was Taame Peti Uru, and it was he who raised the issue of compensation with the Māori Trustee.⁴¹

Then ensued a period in which the Office of the Māori Trustee tried to decide whether this was a situation where the Māori Trustee should bring a claim for compensation or not. The issue was whether the land was properly regarded as solely owned when it was taken for Taumarunui Aerodrome. In those days, the Māori Trustee negotiated compensation only for Māori freehold land held by multiple owners. If land had only one owner, that person had to negotiate compensation with the taking authority without the help of the Māori Trustee.⁴² The difficulty here was that although Te Manu Tupukāheke was a sole owner, he was deceased at the time when the council took the land, and his multiple successors had yet to succeed. Officials debated what to do.⁴³ In the end, the Māori Trustee decided that it was up to Te Manu Tupukāheke's representatives to claim compensation, and proceeded no further.⁴⁴

Nothing happened until, in 1985, the Taumarunui County Council discovered that it had not paid compensation. It raised the issue with the Māori Trustee. Officials looked into the matter again, and this time decided that the Māori Trustee should have negotiated compensation for the owners.⁴⁵

The Māori Trustee contacted some of the successors, and a meeting of owners appointed the Trustee to act on their behalf.⁴⁶ Over the next 20 years, sporadic negotiations involving the owners, the Māori Trustee, and the council yielded no agreement. The council did suggest in 1987 that it could exchange the Pākehā farmer's land to the north of Jurgen Road, which it had taken for the aerodrome but not used, for Te Manu Tupukāheke's 20 acres. But then it realised that the Public Works Act obliged it to offer the Pākehā farmer's land back to him if it was no longer needed for the aerodrome.⁴⁷ In 1988 it offered Te Manu's successors a lump sum payment of \$10,000 plus \$1,000 per annum until 2000, but the owners said no. They wanted their land back.⁴⁸ That remains their position.

24.2.7 Conclusion, findings, and recommendations

We find that the Tūwhenua takings did not meet Treaty standards for public works takings: Taumarunui Aerodrome was not a public work that was in the national interest; there were alternatives to compulsory acquisition; and those with interests in the 20-acre block were neither consulted nor paid.

(1) Was the taking a last resort in the national interest?

The aerodrome was a very local project for which there can be no serious argument that there was a national interest at stake. In fact, the affluent 1960s probably induced a level of optimism about the future of Taumarunui and the benefits of an airport there that was not justified even then. At the time of our site visit, we learned that the airstrip services topdressing aircraft. No scheduled airline flights ever got up and running. The airstrip benefits local farmers; other sites would almost certainly have done the job equally well.

(2) Was it necessary to purchase the land compulsorily?

It was open to Taumarunui County Council to negotiate agreements with the Māori owners of all the land blocks rather than using powers of compulsory acquisition.

In the case of the marae block, it appears that the council and owners did reach agreement as to a basis on which the owners were prepared to give up their land – they would receive five acres of land for a new marae and a new road for vehicle access to the urupā and new marae site. We do not know whether the agreement was reached under duress, given that the owners would have understood that the council could take their land whether they agreed or not. Nevertheless, agreement was arrived at – but then the council lost sight of the agreement altogether, and paid compensation on another basis entirely.

In the case of the 20-acre block, dealing directly with the owners does not seem to have been contemplated. At no stage did the Taumarunui County Council or the Māori Trustee inform the owners about or involve them in the council's compulsory purchase of their land.

In neither case is it at all apparent that the council

needed to acquire the land compulsorily. It could have negotiated purchases, but, more importantly, leases would have sufficed. The sites are little modified, and it would have been possible for the council, once it was apparent that its dreams of an airport at Tūwhenua would never be more than dreams, to give up the lease so that the land reverted to the owners' use and control.

(3) Was good process followed?

In both cases, the process followed fell well short of any acceptable standard.

In the case of the marae block, an agreement was reached but then unilaterally abandoned by the council. The Crown enacted a public works regime that did not compel the Māori Trustee to involve Māori owners in the process of negotiating compensation. By the time it was dealing with the Māori Trustee about compensation, Taumarunui County Council had apparently forgotten about its agreement with the owners, and neither the council nor the Māori Trustee communicated with the owners at that stage. As a result, the Māori Trustee simply sought monetary compensation on the usual basis, which the owners neither wanted nor agreed to. We concur with the Tauranga Moana Tribunal that the compensation regime in force between 1963 and 1974, which permitted the Māori Trustee to leave the owners out of the loop when seeking compensation for land taken from them, disenfranchised owners of Māori land.⁴⁹

This whole situation was extremely unfair, and prejudiced Ngāti Hari, Ngāti Hira, and Ngāti Urunumia.

In the case of the 20-acre block, the botched process involving both the council and the Māori Trustee leaves the owners without their land and uncompensated more than 50 years later.

(4) Findings

We find that the compulsory acquisition of both the marae block and the 20-acre block breached the guarantee in article 2 of te tino rangatiratanga, and the principle of active protection. The Crown is responsible because it enacted legislation that allowed this to happen, and did

not monitor the council's exercise of the authority delegated to it.

(5) *Recommendations*

In the case of the marae block, we recommend that the Crown acts to remedy the prejudice experienced by Ngāti Hari, Ngāti Hira, and Ngāti Urunumia by providing an alternative marae site that reasonably meets the needs of the claimants for the re-establishment of their mana at Tūwhenua, or alternative redress acceptable to them. We also recommend that the Crown provides the necessary financial, legal, and administrative support to enable the claimants to regain legal access to the Tūwhenua urupā, including any costs associated with an application to the Māori Land Court, and construction of a formed road.

In the case of the 20-acre block, we recommend that the Crown ensures that the owners are properly compensated or their position otherwise reinstated in a way that takes account of their:

- loss of ownership of their land;
- having been deprived of its use for more than 50 years without compensation;
- never having been consulted; and
- never having agreed to sell.

24.3 TE ANAPUNGAPUNGA

24.3.1 Introduction

Te Anapungapunga was a kāinga (settlement) located in block Ōhura South A1. In 1892, the Native Land Court awarded Ōhura South A1 (100 acres) to members of Ngāti Urunumia.⁵⁰ Today, only a quarter-acre landlocked urupā remains in Māori ownership.⁵¹ The claimants submitted that the Crown caused this state of affairs by making Māori land subject to laws that ensured that it passed rapidly out of Māori hands.

24.3.2 What the claimants said

Today, Ngāti Urunumia's only interests in Ōhura South A1 lie in the small, landlocked urupā at Te Anapungapunga.⁵² The claimants said that this happened because the type

of title made available through the Native Land Court allowed individual members of the hapū to alienate land within Ōhura South A1 without reference to the wider community.⁵³ In addition, the land court regime imposed unfair survey costs, forcing the owners of Ōhura South A1 to alienate a substantial area to satisfy the survey lien.⁵⁴

The claimants alleged that prejudice arose from the Crown's failure to provide for Ngāti Urunumia customary interests under the native land regime. When the Native Land Court partitioned the Te Anapungapunga urupā without legal access, Ngāti Urunumia made the difficult decision to exhume their dead and move them to nearby urupā. The claimants now struggle to exercise kaitiakitanga and rangatiratanga over the urupā, as they can neither visit nor maintain the site.⁵⁵

Ngāti Hari and Ngāti Hira also filed a claim regarding Te Anapungapunga, as Tūtahanga Tininga Hinerau was their kuia, and she lived on the land in the first decades of the twentieth century.⁵⁶ As we see it, the claims of Ngāti Hari and Ngāti Hira, and of Ngāti Urunumia, are basically the same.

The Crown did not respond to these claims.

24.3.3 How was Te Anapungapunga alienated?

In the nineteenth century, Te Anapungapunga was one of the principal kāinga of Ngāti Urunumia, Ngāti Hari, and Ngāti Hira.⁵⁷ The settlement was located on the northern boundary of the Whanganui inquiry district, in the Taringamotu (Taringamutu) Valley, and within easy walking distance of Tūwhenua, another Ngāti Hari, Ngāti Hira, and Ngāti Urunumia kāinga. In his statement of evidence, Ngāti Hari and Ngāti Hira witness Terry Turu told us that his tūpuna used to walk between the two settlements to tend gardens and gather food.⁵⁸ Today there is almost no trace of Te Anapungapunga; all that remains is a little urupā, hidden behind willows, and surrounded by Pākehā-owned farmland.

Ngāti Urunumia's customary ownership of Te Anapungapunga was transmitted into Crown-granted title in 1892, when the Native Land Court heard applications for the subdivision and definition of interests in the Ōhura



Harry Adams (Ngāti Hari, 1850–1921) and Tūtahanga Tininga Hinerau (1857–1946) (also known as Mrs Adams) with children and mokopuna. Around 1907, although she owned no shares in the block, Tininga took up residence on Ōhura South A1, the 100-acre block where the kāinga Te Anapungapunga was located. When meetings of assembled owners agreed to sell land in the block in 1918 and again in 1926, she strongly opposed the sales. In a letter to Native Minister George Forbes in 1935, she based her claim to the land on aspects traditionally associated with the customary principle of ahi kā. Her husband, father, and grandfather had all died there, and were buried in the urupā. The pā belonged to her people, she said, and she had lived there with her family for 28 years. Over the years, however, the block was progressively alienated by road takings, survey liens, and sales, so that today only a landlocked urupā measuring a quarter of an acre remains in Māori ownership.

South block. The attribution of interests was strenuously contested at the hearings, but finally the Native Land Court awarded the area, now known as block Ōhura South A1, to members of Ngāti Urunumia. The block measured around 100 acres and included the kāinga and urupā at Te Anapungapunga.⁵⁹

In around 1907, Tūtahanga Tininga Hinerau (also known as Mrs Adams) of Ngāti Hari began living on Ōhura South A1. She held no interests in the block but, when meetings of assembled owners agreed to sell land there in 1918 and again in 1926, she strongly opposed the sales. She wrote a letter to Native Minister George Forbes in 1935, basing her claim to the land on the customary

principle of ahi kā. Her husband, father, and grandfather had all died there, and were buried in the urupā. The pā belonged to her people, she said, and she had lived there with her family for 28 years.⁶⁰

Tūtahanga Tininga Hinerau had been unable to prevent land at Te Anapungapunga being nibbled away by road takings, survey liens, and sales (see map 24.3).

In 1907, just over two acres were taken for what is now the Taumarunui–Ngāpuke Road.⁶¹ The remaining land was partitioned into four separate subdivisions, Ōhura South A1A, Ōhura South A1B2, Ōhura South A1B1A, and Ōhura South A1B1B, and almost all were alienated over the next 19 years:

- ▶ In 1908, the Native Land Court awarded the Crown over one-quarter (27 acres) of the block to satisfy the survey costs allocated to Ōhura South A1.⁶² The alienated land was partitioned as Ōhura South A1A.
- ▶ In 1918, a meeting of owners agreed to sell 64 acres (later partitioned as Ōhura South A1B2) to Hugh Cameron, a farmer from Turakina. The Waikato–Maniapoto District Māori Land Board confirmed the sale seven years later.⁶³
- ▶ In 1926, a meeting of owners agreed to sell Ōhura South A1B1B (14 acres) to Cameron. The land board confirmed this resolution a year later.⁶⁴

24.3.4 Did survey liens prejudice the owners of Ōhura South A1?

In chapter 11, we concluded that survey liens placed an unwarranted burden on Whanganui Māori in the nineteenth century. Survey costs – often paid in land – exceeded any benefit Māori landowners derived. They sometimes lost up to 20 per cent of a block as payment for survey costs. That was unfair, given that the entire colony benefited from surveys: land that was not surveyed could not be purchased, which would have run counter to the interests of the land-hungry settler population.

Ōhura South A1 was surveyed in 1898.⁶⁵ A survey lien of £26 15s 9d was charged on the block. The owners did not pay the sum owing, so in February 1908, the Crown exercised its lien, and over a quarter of the block was awarded

to it.⁶⁶ Left unpaid, liens usually accrued interest at a rate of 5 per cent per annum, and this may have contributed to the loss of such a large amount of land.⁶⁷

The argument in favour of charging Māori landowners for survey costs, and putting a lien on their land as collateral against payment, was that surveying Māori land and granting Crown-derived titles facilitated Māori engagement in the colonial economy. If we look at the owners of Ōhura South A1 as an example, however, it is difficult to see that they derived a benefit in any way commensurate with the detriment of losing a quarter of their land.

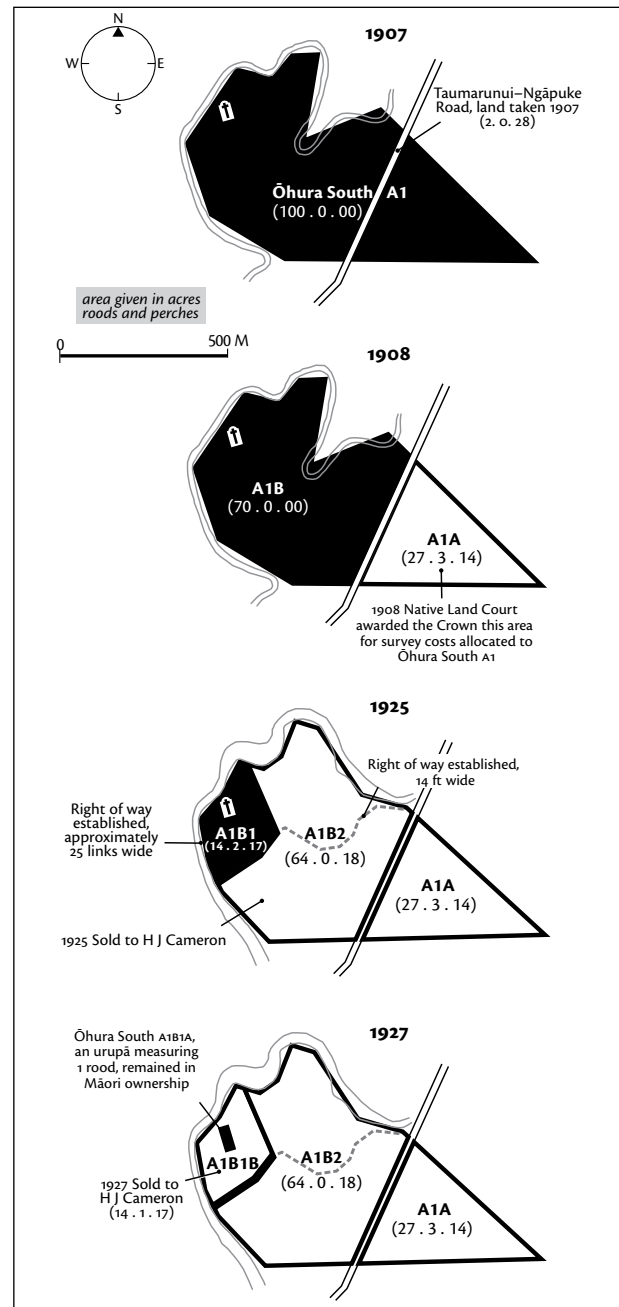
The owners did not need the land to be surveyed in order to use it themselves. They could, for example, have engaged in the economy as farmers without survey. In fact, in the first decades of the twentieth century, they sold all but a fraction of the 75 per cent of the block they retained after the Crown exercised the lien.

So who benefited? The Crown benefited, because it obtained nearly 28 acres of land. The purchasers of the land benefited, because the survey enabled the definition and transfer of title. What about the owners? Without the survey they would not have been able to sell the land. However, given the few owners who later made the decision to sell this land, it is not clear that sale was what most of them wanted. Whether they wanted to sell the land or not, they would have received the proceeds of sale, and benefited to that extent. Set against that is the detriment of losing 25 per cent of their block to the Crown – land that was culturally significant because of its proximity to Te Anapungapunga kāinga and urupā, and that was important in any case because by the early twentieth century they had fewer landholdings.

It is not difficult to reach the conclusion that the system did not operate to benefit the owners of this Māori land; it is indeed hard to justify their having been compelled to pay for the survey by forgoing a quarter of their land.

24.3.5 Did the 'meeting of owners' provisions prejudice the owners of Ōhura South A1?

In chapter 15, we discussed the meeting of owners provisions under the Native Land Act 1909. We observed that



Map 24.3: Alienation of Ōhura South A1

although providing for decision-making by meetings of owners of Māori land has the appearance of supporting collective decision-making, in fact the substance was often otherwise. The rules allowed decisions to be made at meetings by very few owners, and by a numerical majority who owned a minority of the shares. What happened to Ōhura South A1 was an example of this.

In 1918, a meeting was called to consider selling part of Ōhura South A1B to farmer Hugh Cameron. Only 15 owners considered the resolution: 10 voted in favour of the sale; five voted against. At least 12 of the meeting notices that the land board sent to the owners were returned unclaimed.⁶⁸ Those who supported the sale at the meeting held a majority of shares, and the resolution to sell was easily passed. Following the meeting, some of those who had voted against the sale continued to voice their opposition. They, along with four other owners and Kahutaua Kīngi, who was simply described as ‘kaitiaki’ (guardian), submitted memorials of dissent.⁶⁹ The land board proceeded with the sale and applied to the Native Land Court under the Native Land Act 1909 to have the dissenting owners’ interests, and Te Anapungapunga urupā, partitioned out as Ōhura South A1B1 (14 acres).⁷⁰ The large sellers’ block was partitioned as Ōhura South A1B2, and the land board confirmed the owners’ resolution to sell shortly after.

Only a year after it had confirmed the first resolution to sell, the land board called another meeting of owners to consider alienating Ōhura South A1B1B, a block of land that completely surrounded Te Anapungapunga urupā. At the time, 23 individuals held interests in the block. Only two attended the meeting, and another three were represented by proxy, which was enough for a quorum.⁷¹ The meeting passed the resolution to sell unanimously. A minority of owners thus sold without ascertaining the wishes of the majority.

As a result of these sales, only Te Anapungapunga urupā, located in Ōhura South A1B1A and measuring one rood, remained in Māori ownership. No provision was made for access to the urupā, and Ngāti Urunumia no longer owned a protective buffer zone around the wāhi tapu, so they decided to exhume many of their tūpuna

and move them to urupā at Hia Kaitūpeka and Tūwhenua. Pauline Stafford told us:

We think it was because we no longer owned the surrounding land that our old people decided to take our koiwi and move them somewhere safer. When I think about the pain of having to disturb our important tupuna and handle the koiwi it makes me sad. This must have been very difficult for our people because of the deep tapu issues involved in doing this.⁷²

If those connected with the urupā and the surrounding land – people of Ngāti Urunumia, Ngāti Hari, and Ngāti Hira descent – had been able to run their customary land interests in a system that supported their cultural imperatives, this lamentable outcome would not have come to pass.

24.3.6 Did Tūtahanga Tininga Hinerau have interests in Ōhura South A1?

When we heard the claims relating to Te Anapungapunga, the name Tūtahanga Tininga Hinerau was often mentioned. She was an important kuia of Ngāti Hari and Ngāti Hira, well known for her healing abilities and the aid she provided to people of the Taringamotu Valley during the influenza epidemic of 1918.⁷³ Many of the Ngāti Hari and Ngāti Hira witnesses who came before us traced their whakapapa back to her and her 10 children; kuia Veronica Canterbury told us in evidence that ‘So many of us here have whakapapa links to Tininga.’⁷⁴

Ngāti Hari and Ngāti Hira witnesses recalled how Tininga was treated when the blocks were sold. They told us that she and her husband Harry Adams were lessees at Te Anapungapunga then, and were powerless to prevent absentee owners and proxies from selling the land.⁷⁵

What we know of Tininga’s experience at Te Anapungapunga raises more questions than it answers. Time and again, she tried and failed to gain legal interests in the subdivisions of Ōhura South A1. In 1912, 1914, and 1919 she sought meetings of owners so that she could purchase land.⁷⁶ Two meetings of owners were called to consider her 1912 offer, but too few owners attended to meet the quorum requirements.⁷⁷ Later, a meeting of owners

rejected her offer to purchase Ōhura South A1B and instead proposed that she lease the land. The land board initially confirmed the resolution to lease, but withdrew confirmation less than a year later, apparently for non-payment of rent.⁷⁸ Tininga's only rights in the block were as lessee, so after the land board's decision she had none. Then, in 1919, the land board dismissed her application to have interests transferred to her.⁷⁹ We do not know why or how: did the land board consult the owners, or did it reject the application for reasons of its own?

With no shares in Ōhura South A1B2 or Ōhura South A1B1B, the only path open to Tininga was to persuade others to act on her behalf. After a meeting of owners decided to sell part of Ōhura South A1B in 1918, she tried to contact other owners so they could register their opposition.⁸⁰ And when she was forced from her home following its alienation, she wrote to the Native Minister and Frank Langstone, her local member in the House of Representatives, opposing the sale of her home.⁸¹

Because she had no legal rights there, Tininga could not stop the land from passing out of Māori ownership. Judge MacCormick, whom Langstone approached for advice after receiving Tininga's letter, asked Cameron, the purchaser, to consider allowing the old lady to continue living on the block.⁸² But he could not prevent her expulsion because, he said, it 'is quite clear she has no right there.'⁸³

The claimants told us how, once all the land but the urupā was sold, Tininga was forced off Ōhura South A1B1B. She decided to move her husband from his burial place at Te Anapungapunga urupā to Hia Kaitūpeka, at the same time relocating other kōiwi to Hia Kaitūpeka or Tūwhenua. She died at Tūwhenua in 1946, aged 89.⁸⁴

24.3.7 Conclusion, findings, and recommendations

The Crown's imposition of the Native Land Court system with its unfair survey costs, and its failure to provide satisfactory communal title, led to the troubling situation where the only land remaining in Māori ownership from Ōhura South A1 is a landlocked quarter-acre urupā. We discussed the 1909 Act's provisions concerning quorum and meetings of owners and their detriment to Whanganui Māori in chapters 14 and 15. We found that the legislation did



Veronica Canterbury at a Waitangi Tribunal hearing in 2008. She was a granddaughter of Tūtahanga Tininga Hinerau, an important figure for Ngāti Hari and Ngāti Hira. Ms Canterbury spoke of the well-known healing abilities of Tininga and the aid she provided to people of the Taringamotu Valley during the influenza epidemic of 1918. Tininga also strongly opposed the sale of a portion of the Ōhura South A1 block that she considered her home. When the land was sold, she was no longer able to live there and moved her husband from his burial place at Te Anapungapunga urupā (located on the block) to another urupā.

not give effect to the Crown's Treaty guarantee of te tino rangatiratanga of Whanganui Māori. In this case, procedures carried out under the Act led to very poor outcomes for the owners of land at Te Anapungapunga or Ōhura South A1. Tūtahanga Tininga Hinerau was forced from the land she considered her home, and Ngāti Urunumia, Ngāti Hari, and Ngāti Hira relocated tūpuna to other urupā rather than seeing them left in an area over which they no longer exercised rangatiratanga. The land, which included the site of a principal kāinga of Ngāti Urunumia, Ngāti Hari, and Ngāti Hira, left Māori ownership, and with

it went the cultural, spiritual, and economic benefits that future generations might have derived.

We do not know why Tininga had no legal interests in Ōhura South A1, Ōhura South A1B, or Ōhura South A1B1B considering her strong attachment and her assertion of rights in accordance with ahi kā. As we found in chapter 11, Native Land Court titles often did not include everyone who would have rights and interests under tikanga Māori. When the court determined shareholders in Ōhura South A1, it may have failed to recognise Tininga's whānau's connection to the land. Alternatively, it is possible that she did not succeed to whānau interests.

Because the evidence does not enable us to understand Tininga's associations with the land, nor why her efforts to gain legal interests there failed – for example, why did the owners refuse to sell to Tininga in 1915, but accepted Cameron's offer three years later? – we make no findings of Treaty breach.

However, we do find that the relevant legislation, and the relevant processes, failed when tangata whenua were left with an urupā at Te Anapungapunga to which they have no legal access. The Crown did not give effect to te tino rangatiratanga of Ngāti Urunumia, Ngāti Hari, and Ngāti Hira, and did not protect their interests actively, as the Treaty and its principles require. Given the surrounding circumstances, which we have related, it is appropriate that we recommend that the Crown now does what it can to ameliorate the claimants' situation as regards the urupā.

Sections 326A to 326D of the Te Ture Whenua Māori Act 1993 empower the Māori Land Court to order legal access to landlocked blocks. The claimants told us of their decision to approach the court 'once the hearing of their claims by this Tribunal has been dealt with'.⁸⁵ They sought our recommendation that the Crown covers legal and survey costs, given the prejudice they have suffered as a result of the operation of land laws adverse to interests of the owners of Ōhura South 1A.⁸⁶

We now recommend that the Crown fund any application for orders implementing legal access to Te Anapungapunga urupā that the claimants make to the Māori Land Court, including both legal and survey costs and disbursements.

24.4 TARINGAMOTU SCHOOL

24.4.1 Introduction

The former Taringamotu School lies on Taumarunui–Ngāpuke Road, just north of Taumarunui and opposite Te Anapungapunga, one of the principal kāinga of Ngāti Urunumia, Ngāti Hari, and Ngāti Hira in the nineteenth century. Taringamotu School closed in 2000, and in 2006 it became part of the Crown's land bank of surplus Crown properties. The claimants asked for the return of the school site, which was formerly part of the Ōhura South A block awarded to the Crown in 1901.

In this local issue, we are not inquiring into the merits of the claims of Ngāti Hari, Ngāti Hira, Ngāti Urunumia – and, according to the Crown, potentially others – to become the future owners of the Taringamotu School site. We do not have before us evidence on that matter. Rather, we look into the claim of Ngāti Hari, Ngāti Hira, and Ngāti Urunumia about the inadequacies of the Crown's process for land-banking sites for future Treaty settlements. It is a local issue to the extent that these groups had a particular experience of the process, which they said breached the principles of the Treaty of Waitangi.

24.4.2 What the parties said

Ngāti Hari and Ngāti Hira (Wai 1097) claimed that, in its dealings with the surplus Taringamotu School site, the Crown has not acted in good faith.⁸⁷ As redress, the claimants sought a recommendation that the Taringamotu School site is returned to the ownership of local hapū, and that the Crown funds any concomitant legal or other fees associated with transfer of title.⁸⁸ They also sought payment to Ngāti Hari of the cost of maintaining the site for five years following the date of transfer.⁸⁹

Ngāti Urunumia (Wai 987 and 1255) claimed that the Taringamotu School site was part of their customary lands at Te Anapungapunga kāinga.⁹⁰ Ngāti Urunumia contended that as the school site is the closest Crown land to the Te Anapungapunga urupā, it should be returned to Ngāti Urunumia and Ngāti Hari.⁹¹

In the course of our hearings, these claimants applied for return to them of the school site under the discrete remedy process, but the Crown took the view that



Taringamotu School, 1916. The school, located on the Taumarunui–Ngāpuke Road, just north of Taumarunui, is opposite Te Anapungapunga, one of the principal kāinga of Ngāti Ururangi, Ngāti Hari, and Ngāti Hira in the nineteenth century. When the school was closed in 2000, the iwi applied for the return of the school site under the discrete remedy process, but the Taringamotu School site remains in the land bank for transfer to one or more claimant groups as part of a Treaty settlement.

other iwi may also have interests in the school site, and as a result it did not meet the criteria for a small discrete remedy.⁹² The Crown stated that any attempt to resolve the issue would take time and resources that officials in the Office of Treaty Settlements did not have. The matter therefore did not proceed as a discrete remedy.⁹³

The Crown made no other submissions on this claim.

24.4.3 What happened to the school site after it closed?

Taringamotu School closed in 2000, and its pupils went to a nearby school in northern Taumarunui. In June 2006, the Office of Treaty Settlements advertised the property as surplus, and invited applications for the site to be protected for future settlements as part of the protection mechanism.⁹⁴ Ngāti Hari and Ngāti Ururangi applied to the officials committee under the protection mechanism

to have the site returned to them. The officials committee advised them in January 2007 that the property did not meet the criteria for land-banking as the cost of holding the property was too high, and the hapū had not provided enough information about the importance of the site.⁹⁵

Ngāti Hari claimants then wrote to Mark Burton, the Minister in Charge of Treaty of Waitangi Negotiations. They sent new information and asked him to put the school site in the land bank for the benefit of Ngāti Hari, Ngāti Hira, and Ngāti Ururangi.⁹⁶ In April 2009, the officials committee reassessed the application and put the property in the land bank.⁹⁷

With the site secured to this extent, Ngāti Hari and Ngāti Ururangi worked together to apply to have the property returned to them as a small discrete remedy in this inquiry. Crown officials initially concurred that the school site should be returned as a discrete remedy, and sought Cabinet approval.⁹⁸ However, when it was found that other iwi could have interests in the school site, the school no longer met the criteria.⁹⁹ Currently, the Taringamotu School site remains in the land bank for transfer to one or more claimant groups as part of a Treaty settlement.

24.4.4 What were the claimants' experiences of the protection mechanism process?

Hoani Wī told us about how his hapū found it difficult to provide the kind of information officials required to prove the significance of the site for Ngāti Ururangi, because

[we have] always been aware of the importance of the site and that it was within our rohe but we did not have much access to the historical detail of our claims . . .¹⁰⁰

The claimants felt that the process gave undue weight to documents, and not enough to their statements about the site as part of their oral tradition. Mr Wī told us:

It is so difficult when you tell the government how important a site is and they turn around and ask for more information. They just don't accept Maori values and need a historian to tell them how we feel.¹⁰¹



Tāme Tūwhāngai giving evidence on the Taringamotu School site, 2008



Pauline Stafford and Amelia Kereopa at the site of the now closed Taringamotu School, 2008

Ngāti Urunumia found the land-banking and 'sites of significance' processes long and complex. Mr Wī told us that

the process for ensuring that such properties are protected until our claims are heard and we are ready to negotiate with the Crown is cumbersome and difficult for claimants to work through . . .¹⁰²

Ngāti Urunumia acknowledged that when the officials committee set a deadline for receipt of further information about the school site, they ran over time. However, they questioned why the burden of providing information lay entirely with the applicant when

the Crown has all the information but does not make it available to hapu like us. We have only limited resources and ability to access the kind of information they require.¹⁰³

By comparison, the officials committee is better resourced and better equipped to find and provide information.¹⁰⁴

24.4.5 Conclusion

We do not know whether the Crown puts its own information into the process of determining whether there is the requisite degree of Māori interest in a site to justify its being land-banked. We consider that, in order for the system to work fairly:

- ▶ applicants should compile and submit all the information they have;
- ▶ applicants' statements about oral tradition should be accepted as valid until such time as there is an opportunity to test the evidence in a hearing or otherwise;
- ▶ the Crown should supplement applicants' information from its own resources to the extent reasonably possible; and



Hoani (John) Wi, 2008. Mr Wi gave evidence about the request by Ngāti Urunumia for the return of the Taringamotu School site in 2006. He explained that his hapū faced difficulties in providing adequate information about the importance of the site to them to Crown officials. He felt that written evidence, which they did not have the resources to provide, took precedence over the oral evidence of the hapū. They were informed that other iwi might also have interests in the school site, and so the case fell outside the criteria for a small discrete remedy. Currently, the Taringamotu School site remains in the land bank for transfer to one or more claimant groups as part of a Treaty settlement.

- the relatively low level of access that most applicants have to documentary sources should be implicit in any weighing of evidence in support of the proposition that a site is significant.

If this is not current practice, then we recommend that the Crown amends it.

24.5 TE HORANGAPAI TAKINGS

Ngāti Hari and Ngāti Hira brought before this Tribunal a claim that the Crown's actions with regard to a 12-acre land block called Rangitoto Tūhua 52A1 breached the

Treaty. This land, though, lies just outside this inquiry district: it is situated beside the Ōngarue and Taringamotu Rivers, and lies within the boundaries of the Te Rohe Pōtae inquiry district.

We have considered the claimants' request that we address their claim regarding this block. They stress its importance to a place known as Te Horangapai, which is where Whanganui Māori and Ngāti Maniapoto made peace after a series of wars that involved Ngāti Urunumia, Ngāti Rangatahi, and Ngāti Hāua (see section 2.4.2(1)).¹⁰⁵

In less than 40 years, the entire block passed out of Māori ownership: in 1921, part of the block was taken for a gravel pit, and 32 years later the remaining land was compulsorily vested in the Māori Trustee and then sold because of noxious weeds. How this alienation occurred demands examination.

Because the land lies outside this district inquiry, we cannot make findings about it. We therefore attach as an appendix the extent of our inquiry, for the use of the Te Rohe Pōtae Tribunal. That Tribunal will no doubt be hearing from other claimant groups with interests in the block, and will be in a position to make comprehensive findings and recommendations.

24.6 TAUMARUNUI HOSPITAL

24.6.1 Introduction

In 1916, the Taumarunui Hospital and Charitable Aid Board used powers in the Public Works Act 1908 to purchase compulsorily about 38 acres of Māori land for their new hospital. The Public Works Department was heavily involved: it monitored the hospital board's actions and approved the proclamation taking the site.

The claimants told us that the land was part of Te Peka Pā. It was their tūrangawaewae and lay at the heart of their tribal identity. They did not want to sell.

24.6.2 What the parties said

Ngāti Hekeāwai (Wai 1299) claimed that the Crown breached the principles of the Treaty of Waitangi when land was compulsorily acquired for Taumarunui Hospital.¹⁰⁶ The land was the site of Te Peka, Ngāti

Sir Archie Taiaroa, Te Horangapai, 2008. The peace-making site, where Whanganui and Ngāti Maniapoto made peace after a series of wars that involved Ngāti Urunumia, Ngāti Rangatahi, and Ngāti Hāua, is in the foreground on the left.



Hekeāwai's principal pā in the Ōhura Valley.¹⁰⁷ Its strategic, elevated location had long protected Ngāti Hekeāwai from attack.

Without their tūrangawaewae, Ngāti Hekeāwai today lack a cultural centre and 'people are dispersed everywhere'.¹⁰⁸ Also, for the past 100 years they have had only limited access to neighbouring Titipa urupā. A permanent right of access to Titipa was a condition of the hospital land taking, but no access was preserved at law.¹⁰⁹

The claimants said that too much land was taken, and compensation was inadequate. One reason for this was that the Native Land Court determined compensation rather than a specialist tribunal such as the Compensation Court.¹¹⁰

Ngāti Hekeāwai sought:

- the return of the excess land taken (and not used) for the hospital site;
- an appropriate compensation award, with interest calculated from 1917; and

➤ proper legal access to the urupā.¹¹¹

The Crown responded to only one of the claimants' issues. It conceded that, in breach of the Treaty and its principles, it acquired more land than was 'reasonably necessary' for the Taumarunui Hospital.¹¹²

24.6.3 How was the land taken?

In the years following the creation of Taumarunui township in 1903, a small cottage hospital served the townspeople. But by 1913, many Pākehā residents believed that the cottage hospital was too small for the growing settlement; they wanted an upgrade.¹¹³ The Taumarunui Hospital and Charitable Aid Board – a special-purpose authority that administered all public hospitals and welfare institutions in the Taumarunui Hospital District – quickly selected a site. They chose Māori land in the Ōhura South N2E1 block, near to Taumarunui township and the confluence of the Whanganui and Ōngarue Rivers, and right next to Titipa urupā in Ōhura South N2E2.¹¹⁴ Kimihia



Taumarunui Hospital and surrounds, 1947. Titipā urupā can be seen in the clearing to the bottom left of the photograph. In 1917, the Taumarunui Hospital and Charitable Aid Board compulsorily acquired around 38 acres under the Public Works Act 1908 for a new hospital. This land was part of Te Peka Pā and lay at the heart of tribal identity.

Marumaru and four minors of Ngāti Hekeāwai owned both blocks. Pūkākā Weretā (also known as Te Aohau Weretā) was trustee for the minors' interests.¹¹⁵

The Public Works Department and the hospital board worked together to take land from Ōhura South N2E1, following an informal monitoring system that guided local authorities through the taking process.¹¹⁶ In May 1915, the hospital board surveyed an area of around 38 acres in Ōhura South N2E1 in preparation for taking. Marumaru and unnamed others soon objected in a letter to Māui Pōmare, the Member for Western Māori, on the grounds that they had improved the land and built fences.¹¹⁷ The hospital board meanwhile issued a notice of intention to take in June 1915, and applied to the Department of Public Works for a proclamation of taking.¹¹⁸

The Department of Public Works commissioned a report from the resident engineer in Taumarunui on the suitability of the proposed taking. In August 1915, the resident engineer reported back that he did not know why the

owners objected, other than that they wished to use the land themselves, or keep it to sell later at a higher price. He noted that the land had recently been cleared of scrub and ploughed, and had a small shed or stable on it. In his opinion, the site was 'an excellent one for [the] contemplated use'.¹¹⁹

A month later, the Public Works Department requested a second report from the resident engineer. It sent a standardised letter that asked whether there was any objection to the taking of the land, and whether there were any buildings, gardens, or burial grounds on the land.¹²⁰ An official in the department added to the letter, asking the resident engineer to establish whether the board was trying to take more land than was necessary.¹²¹ In response, the resident engineer said that he had not observed any of the specified features on Ōhura South N2E1. He wrote that the proposed site was 'more . . . than is required for the purpose' because the hospital board planned a small farm to support the hospital. He thought the hospital board

should 'do with less' in view of the Māori owners' objections.¹²² In preparing his report, the resident engineer did not speak with Kimihia Marumaru, but discussed the taking with Pūkākā Weretā, the trustee for the four minors. Weretā told him that there was no burial ground on the land, but that the owners wanted to farm there.¹²³

In 1916, frustrated by the Public Works Department's delays, the hospital board made a foray into negotiating to purchase the site. Pūkākā Weretā agreed to sell for £1,100, but the hospital board thought this price was too high, and the sale did not proceed.¹²⁴

Over the next year, the hospital board's proclamation application shuttled between Native Minister William Herries, Minister of Public Works William Fraser, Minister of Public Health GW Russell, and Cabinet. Like the Public Works Department, the Ministers did not question the hospital board's taking land against the wishes of its Māori owners; the issue was how much to take. Herries concluded that 'it would have been better if less land were [to be] taken.'¹²⁵ However, Russell opposed any reduction, arguing that it was better for the hospital board to acquire 'sufficient property' while the land was affordable than purchase more later at a higher price.¹²⁶ It was not uncommon, he said, for hospital boards to have more land than required and use the land to raise capital.¹²⁷

The size of the area was not reduced, and in late December 1916 just over 38 acres of Ōhura South N2E1 was taken and vested in the hospital board.¹²⁸

In August 1917, the Native Land Court assessed the compensation award. After hearing submissions from both the hospital board and the claimants, and after inspecting the site, the judge awarded £832. This was more than the hospital board's valuation of £425, but significantly less than the owners' valuer's assessment, which was £1,799.¹²⁹

24.6.4 What about access to Titipa urupā?

When the Public Works Department examined the proposed taking, it found that any existing rights of access to the urupā would be extinguished when the land was transferred to the hospital board.¹³⁰ The department wanted to protect the owners' interests, and said that it would not approve the proclamation unless the hospital board

signed a binding agreement to create a right of way to the urupā immediately after the hospital site was taken.¹³¹ The hospital board signed such an agreement in December 1916, and the department approved the proclamation taking land from Ōhura South N2E1.

The agreement was never honoured though, and Ngāti Hekeāwai can enter the urupā only via a partly concealed, steep track or through the hospital entrance. Neither way is ideal, as both are gated and often locked.¹³² The track is on the Ōngarue River Valley Road, near a blind bend where vehicles speed along the sloping road, making it dangerous to enter and leave the urupā.¹³³ The second route, through the hospital entrance and grounds, is also unappealing. Ngāti Hekeāwai witness Francis Rupe stated that

the tangi had to go through the hospital buildings and pass among the laundry, boiler and maintenance buildings. It was against tikanga and a very degrading experience to go through that.¹³⁴

The Waikato District Health Board, now owner of Taumarunui Hospital, and Ngāti Hekeāwai have discussed the access issue, but thus far without resolution.¹³⁵

24.6.5 Are the urupā's boundaries wrong?

The claimants also raised issues about the size of Titipa urupā. They suggested that, when Titipa was partitioned in 1910, several years before the hospital land was taken, the partition was incorrect, because the urupā actually extends far beyond the boundaries of Ōhura South N2E2 (the urupā block).¹³⁶ If they are right, then the hospital's huts for tuberculosis patients along the urupā fence line, and its buildings to house male hospital staff, were built over the urupā. The accommodation included a wash-house, which discharged toilet and shower water along the urupā boundary.¹³⁷

The little land now remaining as an urupā has other implications because today, part of it is eroding into the river.¹³⁸ The claimants have planted trees to halt the erosion, but if it continues they will have to relocate tūpāpaku (deceased) from the affected area. The urupā is now quite

full, so there will be an issue about where else the kōiwi (human remains) can go.¹³⁹

24.6.6 What compensation was paid?

The Native Land Court determined compensation for the hospital site in 1917. At the compensation hearing, the court heard from a number of witnesses including Joseph Coutts, the Te Kūiti district valuer who had carried out the government valuation of the site, and Charles Smith, the valuer for the owners. Their valuations differed markedly. Coutts maintained that the land had a capital value of £425, while Smith valued the land and improvements at £1,799. Coutts ignored sales of surrounding land, saying the prices were excessive; there was no demand for Ōhura South N2E1 as a residential area; and the land would not sell even if it was subdivided.¹⁴⁰ In contrast, Smith based his valuation on prices for sale of comparable land on the basis that the land taken could be subdivided.¹⁴¹

Giving his decision, the judge said:

It is impossible to reconcile the evidence. Having personally inspected the land and several of the properties referred to in the evidence I am of opinion that the value of the Hospital site would largely depend on what demand there may be for residence sites in Taumarunui and in what direction the town may spread. Here again the evidence helps me little. I am of opinion that there will be little demand for a considerable time to come for residence sites on this property. There seems to me to be too much land already available in more settled parts to which the average person will naturally turn first. But no one could say there would be no demand at all especially at the upper end.¹⁴²

He set compensation at £832. Ngāti Hekeāwai submitted that the figure awarded was arbitrary and taken out of 'thin air'.¹⁴³

The judge's decision does indicate that he struggled to reach a decision on appropriate compensation. He did not refer to any principles or methodology, approaching the award as a matter of personal opinion. He did say, though, that the 'expropriated' Māori owners were 'entitled to the benefit of any doubt'.¹⁴⁴

24.6.7 Conclusion, findings, and recommendations

(1) *In the national interest and as a last resort?*

In chapter 16, in the context of Māori land taken for scenery preservation, we talked about the principles that the Tribunal has established for compulsory acquisition of Māori land for public works. Like all such purchases, this acquisition for Taumarunui Hospital was justified in Treaty terms only if it was in the national interest, and was a last resort.

Although land was needed to build a hospital at Taumarunui, the need was not one that resonated at a national level, and requiring a site for a bigger, better hospital is not an exigency of a kind that justifies compulsory acquisition of Māori land. Moreover, there is no evidence that this was the only land available, nor that it could only be purchased compulsorily. On the contrary, we heard that the trustee for the minor interests engaged in negotiation with the hospital board in 1916, and agreed to sell at a price that was several hundred pounds less than the owners' valuer said the land was worth. The hospital board thought this price too high, abandoned the negotiation, and continued down the track of compulsory acquisition in order to obtain the land at a lower price.

(2) *Too much land taken?*

Because compulsory purchase of Māori land breaches the Crown's guarantee of te tino rangatiratanga in all but a very few instances, it follows that the Crown has a duty to minimise its breach in every instance. Taking a small site is obviously less egregious than taking a big site.

It is plain, and the Crown has conceded, that 38 acres was far more than required as a site for a hospital in a provincial town. Even at a period in history when taking Māori land for public works was routine, various players in the process took the clear view that 38 acres was too much land – especially as the Māori owners objected to the sale. The 38-acre purchase proceeded nonetheless.

If the land taken had been limited to the minimum acreage required for the hospital site, Ngāti Hekeāwai would have:

- kept papatipu (ancestral land) all around the urupā, for marae and related purposes;

- remained in possession of land that, because of its elevated, sunny location affording an expansive view over the valley and river below, was always going to be valuable for its development potential; and
- been able to position themselves here in the future, close to town and to their ancestors.

The excessive acreage taken exacerbates the Crown's Treaty breach in purchasing this land compulsorily.

(3) Why is it the Crown's Treaty breach when the hospital board took the land?

We adopt the findings of the Wairarapa ki Tararua Tribunal concerning the Crown's responsibility for local authorities' compulsory acquisitions of Māori land for public works. The Tribunal said:

the compulsory acquisition of land for public works was simply an abrogation of private rights for the benefit of the whole community. From the point of view of those whose rights were abrogated – Māori people in the cases we are examining – the characterisation of the taking authority as the Crown or a local authority is merely a technical detail. The triviality of the distinction is reinforced in the cases where, effectively, the Crown and local authorities collaborated to effect the compulsory acquisition and to build the public work. In principle, there was no material difference: the guarantee of Māori property rights in article 2 of the Treaty was simply ignored, whether the taking was in the name of a local council or of the Crown. In either case, the Treaty was breached (except in the rare exigency where the national interest was at stake) because the Crown had passed legislation that authorised it.¹⁴⁵

The compulsory purchase for the hospital site was a case of this kind: the Public Works Department, the Native Minister, the Minister of Public Works, and the Minister of Public Health were all involved, along with the hospital board, in making decisions about the land to be taken.¹⁴⁶

The Crown accepted responsibility for monitoring local authorities' exercise of powers of compulsory acquisition, but in this case the Public Works Department and others did not query the hospital board's decision to acquire

this land compulsorily, and achieved no reduction of the amount of land taken, even though it plainly exceeded what was required.

We agree with the Wairarapa ki Tararua Tribunal that the Crown is responsible for the prejudice to Māori that arises whenever takings by local authorities fail to meet the 'as a last resort in the national interest' test that the Tribunal has devised as a correct statement of Treaty principle.¹⁴⁷ This is such a case, and the Crown is responsible for negative consequences for Ngāti Hekeāwai.

(4) The importance of this land

This land was important to Ngāti Hekeāwai. It was a pā, a papakāinga, and right next to an urupā. It appears that the Native Land Court incorrectly partitioned the area where the urupā is located, and when the neighbouring block was later taken for the hospital site, hospital buildings may have been built over the final resting place of Ngāti Hekeāwai tūpuna. The taking also compromised access to the urupā.

Prior to the compulsory purchase, information about the land where the hospital was to be located was sought from a person called the resident engineer at Taumarunui. A resident engineer is arguably not the ideal person from whom to elicit information about the cultural significance of a place, as his expertise lies with the technical elements of the suitability of land as a building site. Certainly, the information about the land that this resident engineer relayed said nothing about its cultural significance. Perhaps his informants did not tell him, or perhaps he did not speak to the right people. There is no mention of his speaking with Kimihia Marumaru, who was the named signatory on the letter of objection and the only adult owner of Ōhura South N2E1. This looks like an oversight, but possibly the resident engineer did not think the Māori history of the land was relevant to the decision about whether the site was suitable. It is impossible now to know.

Whatever the reason was, we are satisfied from the evidence we heard that, even if they were not actually in residence at the time when the land was under consideration for compulsory purchase, this land was significant to Ngāti Hekeāwai (see box). It is equally plain that its

significance was not factored into decisions made about its compulsory acquisition. We regard this as a system failure.

We find that the Crown breached its guarantee of *te tino rangatiratanga* in article 2 of the Treaty when it constructed a system that allowed local authorities to take Māori land unilaterally for public works without proper consideration of Māori wishes, concerns, and needs. That breach is exacerbated here by the failure to find out about, and properly take into account, the special importance of this land to Ngāti Hekeāwai.

Moreover, even though the Crown correctly identified preserving access to the *urupā* as an important aspect of the compulsory acquisition, its means of securing Ngāti Hekeāwai's access failed. The hospital board did not honour the 1916 agreement that the Public Works Department required it to enter into, and the Crown did nothing to make sure that it did. These many decades later, Ngāti Hekeāwai still lack satisfactory access to Titipa *urupā*.

The Crown did not do enough to protect the *mana* of this *wāhi tapu*, and of Ngāti Hekeāwai, because it did not ensure that the descendants of those buried there could continue to make proper use of it.

(5) *Valuation and compensation*

In chapter 16, we discussed the Native Land Court judges' role in valuing Māori land for public works compensation, and the criteria for compensation, in sections 16.4.5(2) and 16.4.5(3).

These findings from chapter 15 about the compulsory acquisition of Māori land also apply to this taking of land for Taumarunui Hospital:

- There was no proper basis for the Crown to operate a different valuation system for Māori land, and it would have been fairer for Māori to have had available to them the system that was available to owners of general land. This Crown failure breached article 3 of the Treaty.
- In enacting its regime for compensation for land taken for public works, the Crown took account of neither the special significance of land in Māori culture, nor the cultural significance of particular land. Here, for example, no consideration was given to the effect of the taking on Titipa *urupā*, which became landlocked, nor

to the fact that the land taken was part of Te Peka Pā. Instead, the Native Land Court judge who determined compensation for the hospital land focused on whether the land had potential for development as a residential subdivision.

- Valuation criteria had no regard to the fact that, by the twentieth century, land remaining in Māori hands was usually significant or strategic for both cultural and economic reasons.
- By facilitating the easy purchase of Māori land for public works, the Crown failed to protect Māori from unnecessary cultural, spiritual, and economic loss.
- Inherent in the idea that owners can be compensated for loss of land by payment of money is a conception of land as an asset rather than as a *taonga*.
- The Crown's monoculturalism in operating such a regime breached its duty of partnership.

Whether the compensation assessed for this land was fair in terms of orthodox valuation methodology of the time, we do not know. We lack the necessary evidence about contemporary land values in Taumarunui. However, we note that the award was almost £1,000 less than that put forward by the Māori owners' valuer, and nearly £270 less than the price at which they were prepared to sell in 1916. Also, having visited the site, it seems to us extraordinary that its development potential for housing would ever have been doubted, as the hospital plainly occupies one of the best locations in Taumarunui – which was of course also one of the reasons why Ngāti Hekeāwai chose to live there. The judge's valuation does not appear to have fully reflected that potential.

(6) *Recommendations*

It is outside our jurisdiction to make recommendations about the return to Ngāti Hekeāwai of land no longer required for Taumarunui Hospital, because the Crown does not own the land.

We are therefore limited to recommending that the Crown negotiates with Ngāti Hekeāwai other means of recognising the loss to them of the 38 acres that the hospital board wrongly compulsorily acquired, including compensation for the Treaty breaches identified here.

Te Peka Pā

In chapter 2, we talked about Ngāti Hekeāwai and their relationship with Te Peka Pā. The land that was taken for the Taumarunui Hospital contains the former site of the pā. Perched high on the hill, the pā overlooked the confluence of the Whanganui and Ōngarue Rivers and provided excellent views in all directions. Ngāti Hekeāwai witness Bryan Wilson told us that it was named after the confluence that it overlooked: 'Te Peka was named for its location near the bend in the river. Peka means branch'.

The pā was well fortified, and provided 'unassailable protection' to Ngāti Hekeāwai. At its centre was a tōtara tree which Ngāti Hekeāwai warriors climbed and, from the top, surveyed the surrounding area for any approaching threat.

Their dead lay in Titipa urupā, named after the kaitiaki or taniwha who lived in the river junction below.

It is unclear exactly how much land the pā covered. According to archaeologists and historians, most defensive pā were rebuilt a number of times to adapt to the needs of their communities, developing from open settlements to defensive pā and back again. It is likely that, at one time or another, the land between Titipa urupā and what became the second Te Peka pā was under cultivation, held fortifications or storage pits, or housed members of Ngāti Hekeāwai. With fortifications, banks, ditches, and scarps, Te Peka would have dominated the hillside, announcing Ngāti Hekeāwai's assertive occupation.

Witnesses for Ngāti Hekeāwai submitted that, at the time of the taking, the proposed site was the location of Te Peka marae or, at the very least, a papakāinga. Te Poumuā (Francis) Rupe explained that while only five individuals owned the land, it was actually a 'well known marae' with several families living on the site. This is hard to reconcile with the observation of the resident engineer in Taumarunui, who twice confirmed to the Department of Public Works that there were no buildings on the land or evidence of occupation, apart from a small shed. It may be that where Ngāti Hekeāwai resided had recently changed, or was changing, with the establishment of the town.

The claimants told us that after their land was taken for the hospital, they moved their marae north to Ōhura South N2E3G3 lot 11 B4A. We look into the 1960s alienation of this second Te Peka marae as a local issues case in section 24.7.¹

Te Poumuā (Francis) Rupe, 2008. Mr Rupe gave evidence on the ongoing impact of the taking of land in 1917 for Taumarunui Hospital. The taking affected access to the neighbouring Titipa urupā, and although a permanent right of access to Titipa was agreed to as a condition of the taking, it was never properly reserved. Mr Rupe described to the Tribunal how a tangi had to pass among the laundry, boiler, and maintenance buildings of the hospital to reach the urupā. He said it was 'against tikanga and a very degrading experience'.



We also recommend that the Crown works with the Waikato District Health Board to create permanent and appropriate legal access to Titipa urupā.

24.7 TE PEKA MARAE

24.7.1 Introduction

As distinct from the ancestral Te Peka pā, Te Peka marae was located at the eastern end of Ōhura South N2E3G3 lot 11 B4, a 64-acre block just north of Taumarunui Hospital. It came into being in the mid-1920s and was a 'hive of activity' in the early twentieth century.¹⁴⁸ In 1929, the site of the wharepuni was partitioned as Ōhura South N2E3G3 lot 11 B4A, which comprised five acres and was vested in Pango Hikaia and Weka Te Kaimoko.¹⁴⁹ Only a few decades later, in 1967, Taumarunui Borough Council bought this land, and the marae – which was already in a state of decline – ceased to exist.¹⁵⁰

The claimants thought that the council sold the land to pay for rates arrears, which we find was not the case. However, outstanding rates were the reason for the owners' decision to sell.¹⁵¹ The loss of the land and the marae located on it does illustrate how legislation and local authority administration militated against the retention of Māori land, so that even marae land could be sold against the wishes of the community.

We usually turn now to the parties' submissions, but in this case there were none. Witnesses talked about Te Peka marae, and counsel mentioned it too, although rather tangentially.¹⁵² It was during the Tribunal's own investigations that the loss of this second marae came into focus as relating both to the rating regime, and to the operation of meetings of owners provisions.

24.7.2 The genesis of Te Peka marae

(1) A new marae

In July 1923, the Māori King Te Rata, his cousin Te Puea Hērangi, and Māui Pōmare travelled to Taumarunui. On what is now known as Hospital Hill, high above the confluence of the Ōngarue and Whanganui Rivers, Te Rata officially opened the newly established Te Peka marae of Ngāti Hekeāwai, Ngāti Hāua, and Ngāti Hāuaroa.¹⁵³

The claimants told us that this marae replaced the marae just discussed, which stood on Te Peka lands (Ōhura South N2E1) and was destroyed when the hospital site was taken in 1917.¹⁵⁴ However, when we inquired into the hospital taking and Te Peka Pā, it appeared that by 1915–1916, when the site was investigated with a view to its compulsory acquisition, people were no longer living there.¹⁵⁵ The new marae was seen as a symbol of the enduring relationship between the Kīngitanga and some of its southern-most supporters, containing features such as Te Pitonga, a house used by the Māori King during annual poukai (gathering of Kīngitanga supporters). A memorial stone in honour of Te Māhuri Te Rauroha, a rangatira of Ngāti Hāuaroa who died in 1921, was also said to pay tribute to this relationship.¹⁵⁶ At the centre of the marae was the wharepuni Te Kohārua Te Mutunga Tauiahi Nā Mahuta, which commemorated the end of prolonged warfare between Te Hoata Ii and Tamaāio of Kāwhia in the sixteenth century.¹⁵⁷

Over time, people built houses around the marae, which under Reu Hikaia's leadership hosted dances, sporting events, and of course tangihanga.¹⁵⁸ When the Māori King visited, people from neighbouring regions travelled to the marae, and kaumātua would gather to discuss important issues.¹⁵⁹

Bryan Wilson was a witness who described a strong emotional and spiritual connection to this place. He was born in the house called Te Pitonga, and lived intermittently at Te Peka until he was 17 years old.¹⁶⁰ He told us how his pito (umbilical cord) was buried under one tōtara tree; a big walnut tree was used to hang meat carcasses intended for the pā; springs were used to dye harakeke (flax), and prepare kānga wai (fermented corn) and kōtero (fermented potatoes).¹⁶¹ Crops grown included potatoes, kūmara, corn, and watermelon, while plum, apple, pear, walnut, and chestnut trees grew in the large orchard.¹⁶² People could help themselves to produce, but also had to help tend the gardens.¹⁶³

(2) Making the papakāinga into a Māori reservation

In 1951, the owners of the marae block applied to the Māori Land Court to set it aside as a Māori reservation under



Inuhaere (Lance) Rupe, 2008, who gave evidence regarding the second Te Peka Pā, built after the original pā was included in the Taumarunui Hospital taking. The land on which the pā stood was sold in the 1960s.



Roger Herbert of Ngāti Rangatahi in 2008. He gave evidence about issues in the Taumarunui area.

section 5 of the Native Purposes Act 1937. This was apparently the brainchild of SH Andrew, Taumarunui county clerk at the time, who wanted to relieve the council of the ‘impossible’ task of collecting rates from the owners.¹⁶⁴ Rates are not payable on land in a Māori reservation. The court granted the application, but for some reason the order in council required to create the reservation was never issued.¹⁶⁵ However, the county council did not know this, and exempted the marae block from the obligation to pay rates.

The mistake was not discovered until 1960, when the Taumarunui Borough Council applied to have the order in

council revoked.¹⁶⁶ By then, Te Peka marae was no longer thriving, perhaps as a result of the migration to cities that was taking place at the time because of better employment there, and perhaps also because tangata whenua owned too little land for farming to support the community. Also, claimants told us that the council’s services did not extend to Te Peka, and the marae had neither water nor sewerage systems.¹⁶⁷ In addition, the wharepuni had become tapu after a double murder there in December 1949, and it was never used again.¹⁶⁸ There were, therefore, multiple reasons why whānau were no longer living at Te Peka.¹⁶⁹ As a result, the council thought that it no longer deserved

Māori reservation status, and sought to levy rates on the block. When it found that the order in council had never eventuated, rates immediately became payable.¹⁷⁰

24.7.3 How was the marae block alienated?

Norma Turner told us that some of the owners did not realise that they now had to pay rates, while others simply did not have the money.¹⁷¹ Arrears grew. The rates owing for the financial year 1964 to 1965 amounted to over £65, with another £65 levied against the marae block the following financial year.¹⁷² By the time the majority owners resolved to sell the land in 1967, \$460 was owing.¹⁷³

This problem obviously required a solution. The owners tried twice to incorporate the marae block with surrounding blocks in 1964 and 1966, but encountered problems with holding meetings and gaining agreement from the majority owners.¹⁷⁴

In October 1967, a meeting of owners was held to consider two proposals. Mr Amohia put forward the first proposal, which was to incorporate the marae block with two neighbouring Ōhura South N blocks. The second proposal, put forward by Taumarunui Borough Council on behalf of the two majority owners, was to sell the block to the council for \$7,500. Seventy-one per cent of the shares in the marae block rested in the hands of just two owners who lived in Christchurch. Twelve others owned the remaining shares, but some shareholders owned as little as 0.8437 shares (or just over one per cent).¹⁷⁵

At the meeting, Mr Amohia acknowledged that the two major shareholders could pass any resolution they wanted, but he urged them to demand \$2,000 per acre, rather than simply accept the council's total offer of \$7,500 for the whole five-acre block.¹⁷⁶ A borough council representative argued that the mounting rate debt was a good reason to sell. He said he thought that Mr Amohia's plan to incorporate the land would be difficult because of the high cost of subdivision, and the fact that the area was not currently utilised. This 'quite convinced' one of the majority owners to sell to the council and reject Mr Amohia's proposal to incorporate. She thought that the land was useless to the owners in its current state; that it would take a long time to develop under incorporation; and that it was

'far better to accept a concrete offer now'.¹⁷⁷ The majority shareholders voted to sell the marae block to the borough council.

In December 1967, the Māori Land Court sat to consider the owners' resolution to sell. The borough council's spokesperson told the court that it only wanted to see the block occupied, and if the owners had firm proposals for development, the council would not have sought to purchase the land.¹⁷⁸ Those owners opposing the sale to the council asked the court to adjourn the hearing so that they could apply to partition out their interests. They particularly wanted to keep the land around the wharepuni. But the court confirmed the resolution to sell, stating that the sale would 'lead to effective use of the land and also be of benefit to owners who now are receiving no benefit'.¹⁷⁹

24.7.4 Would development assistance have helped?

The difficulties for Māori land owners of developing their multiply owned land was acknowledged and variously addressed throughout the twentieth century, and indeed until now.

One of the reasons that the borough council said it decided to purchase the block was that it was lying vacant. The majority owners also opted for sale in part because they accepted the borough council's view that it would be difficult to develop the land.¹⁸⁰ The owners tried to incorporate the marae block with other Māori land on three separate occasions as a means of developing it and paying the rates, but their efforts failed.¹⁸¹

Despite the pessimism of the court and the majority owner, though, incorporating Māori land was a means of keeping land in Māori hands while increasing its economic use. By the 1960s, the Crown saw incorporations as a vehicle for returning land in development schemes to Māori, and the Hunn report described them as a 'simple but effective method of freeing congested titles and bringing land into use'.¹⁸² From 1966, the Crown assisted incorporations by providing development loans from the Department of Māori Affairs,¹⁸³ but access to the loans was not guaranteed, and the Board of Māori Affairs was known to reject incorporations' applications when they managed blocks held on separate titles.¹⁸⁴

This could have been the reason why Mr Amohia was turned down when he sought financial assistance from the Department of Māori Affairs for the proposed incorporation of the marae block with other Māori land.¹⁸⁵ His son, Kevin Amohia Hikaia, suggested it was because the department ‘considered that there were too many marae in Taumarunui’.¹⁸⁶ We do not know.

24.7.5 Conclusion, findings, and recommendations

The Te Peka marae block was clearly a suitable candidate for Māori reservation status. The Taumarunui County and Borough Councils related that status to the obligation to pay rates, but it had broader and deeper significance than that. Making a Māori reservation was (and is) about providing a mechanism to secure important land in the hands of its traditional owners in perpetuity.

We do not know why the order in council required to formalise the Māori reservation over Te Peka marae was not obtained in the first place. We do know that the Taumarunui Borough Council sought to have the Māori reservation status lifted when it considered that too few people lived at the marae for that designation to be appropriate. When it was discovered that the designation had never been properly applied, it did not need to lift it, and simply began to levy rates once more.

This story shows how the system for protecting Māori interests in land was flawed in a whole raft of ways, which we analyse as follows:

- It was the Crown that guaranteed te tino rangatira-tanga. This meant Māori should have been protected in the ownership of any land they wished to retain.
- The Crown particularly owed a duty to protect Māori in the ownership of land of special significance. Marae are places of significance. As regards Te Peka marae, even when tangata whenua had stopped living there in numbers, it remained the site of a wharepuni. All wharepuni are wāhi tapu, but this was one where a double murder had taken place in 1949, from which time it was no longer used. What happened there made it too tapu for ordinary use.
- All marae should have Māori reservation status or a mechanism like it that puts them outside the ordinary

category of land so that their maintenance in the hands of their traditional owners is assured. That status should not be able to be lifted without the acquiescence of the whole community whose marae it is or was. It should not be able to be lifted by an entity like a local authority, nor sold by absentee owners.

- As regards the Māori reservation status over Te Peka marae, the system failed to ensure that it was properly effected in 1951. From a practical point of view, that oversight did not cause prejudice, because everyone treated the land as if it were a Māori reservation until the 1960s. That was when the council decided to levy rates on the land again, and that Te Peka marae no longer warranted reservation status. We do not know which of these came first.
- While the local authority’s approach to the land, and its involvement in imposing and lifting reservation status, was inappropriate and unfortunate, our focus is on the responsibility of the Crown as Treaty partner. Its job was to ensure that there was a mechanism easily available to tangata whenua – perhaps even automatic – such that, once this land became a marae, it was protected from external threats like the vagaries of council policy and practice as regards levying rates, seeking to apply or lift reservation status, and buying ‘unused’ Māori land.
- The reimposition of rates on the marae block led to its sale to the council, because in order for the owners to be able to pay the mounting rates debt, the land either had to produce an income, or be sold.
- Once the land was carrying debt, developing it was the only means of avoiding sale, and the owners tried their best. Incorporation was the best mechanism available, but they were defeated by the difficulties of:
 - arranging meetings of owners with the necessary quorum;
 - incorporating the land with neighbouring Māori land, especially when Crown funding was refused;
 - a system that did not facilitate the community owning title to marae land, privilege the wishes of those maintaining ahi kā roa (keeping the tribal fires burning), or provide in any way for the will of the community to be expressed in relation to marae land;

- meetings of owners where shareholders with a simple majority of shares could vote to defeat the will of the community:¹⁸⁷ although there were more shareholders in favour of keeping the marae land and trying to incorporate it to generate income to pay rates, those shareholders were powerless against two absentee shareholders who owned the majority of shares and wanted to sell;
- persuading the final meeting of owners that developing the land was a viable option when the owners knew from their experience and observation how difficult it was; and
- dealing with the situation at that meeting where the council wanted to purchase the land, and sent along a representative to persuade owners that development would not work and its offer of purchase should be accepted instead.

By creating a system that was so intractable and ineffective,¹⁸⁸ the Crown breached its guarantee of te tino rangatiratanga. These were people who wanted to keep their marae land, but external forces – the council, and the Māori land tenure system – were too hard to combat.

We are clear that this marae block was Māori land of a kind that should not have attracted rates. However, we also agree with this finding in *The Hauraki Report*:

If Maori were to be made liable for rates, then the Crown should have been equally careful to ensure that adequate assistance was offered to Maori landowners to develop their land and avoid the problems of fragmented title. The Crown should have also taken into account the considerable, often uncompensated, contribution of land for public works and national and local infrastructure made by Maori, both willingly and compulsorily.¹⁸⁹

The Hauraki Tribunal noted that the majority of the rating legislation affecting Māori land did not consider these factors, and thereby prejudiced its owners. In this case, it is clear that the council did not take into consideration the contribution northern Whanganui Māori had already made to the growing Taumarunui township, and especially the recent taking of Māori land for the



Memorial stone on corner of House Avenue and Pei Te Hurinui Drive, Taumarunui, 2014. The monument, in honour of Te Māhuri Te Rauroha, was originally unveiled in 1925 at the then newly established Te Peka Marae of Ngāti Hekeāwai, Ngāti Hāua, and Ngāti Hāuaroa. Te Māhuri Te Rauroha was a descendant of Whanganui and Ngati Maniapoto and a symbol, according to claimant Norma Turner, of the connection between the iwi. This marae replaced an earlier one that stood on land taken for the hospital in 1917. The monument was moved to its present site in 1976, after the sale of its original site. Mrs Turner said her father did not want the monument to be moved.

Taumarunui Hospital – a circumstance that lay behind the move to create a marae on this block in 1923.

We find that the Crown did not fulfil its Treaty guarantee to tangata whenua of Te Peka marae of te tino rangatiratanga. Its Māori land tenure system did not secure protection for land of this kind, including permanent reservation and immunity from rates. Nor was there a viable

option for these owners to develop their land, as there should have been.

We recommend that the particular prejudice to tangata whenua of Te Peka marae of losing their land, including their marae and wāhi tapu, is taken into consideration in settlement negotiations between the Crown and northern Whanganui iwi.

24.8 THE KING COUNTRY ELECTRIC POWER BOARD DEPOT

24.8.1 Introduction

In April 1947, the King Country Electric Power Board took six Māori-owned sections of Ōhura South N2E3G3 in Taumarunui for the site of its local depot. The claimants questioned the legitimacy of these compulsory acquisitions, arguing that the owners' objections were ignored and compensation was inadequate.

24.8.2 What the claimants said

The uri of Tūtemahurangi and Te Tarapounamu submitted that their tupuna, Āperahama Tūtemahurangi, was a veteran of the 28th (Māori) Battalion whose whānau owned one of the alienated sections. He strenuously opposed the taking, but in vain.¹⁹⁰ The whānau are still deeply aggrieved both that the King Country Electric Power Board and the Crown felt able to disregard their tupuna's opposition, and that their whānau land was compulsorily acquired. To add insult to injury, the compensation was 'a pittance'.¹⁹¹

Ngāti Hekeāwai claimed that the system used to determine compensation for Māori land that was compulsorily acquired was flawed because the Māori Land Court lacked specialist expertise in valuation, and so lacked a methodology that was reliable and predictable.¹⁹² In the case of the depot site, the court disregarded evidence about market value and instead pulled 'valuation figures out of thin air'.¹⁹³

Ngāti Hekeāwai also contended that the manner in which the land was taken limited the owners' ability to object. The order in council and proclamation were published the same day, which meant the owners had less time to raise their objections than should have been the case.¹⁹⁴

The failure of the Crown to establish and properly run a specialist arbiter or a fair process for determining compensation for Māori land, Ngāti Hekeāwai contended, breaches the Treaty principles of active protection and fairness.

The Crown made no submissions on the depot taking.

24.8.3 How was the depot site acquired?

Electric power boards were established in 1918 to supply electricity to rural areas of New Zealand. Around that time, a number of small authorities were delegated authority to manage local facilities. Under the Electric-power Boards Acts of 1918 and 1925, power boards required the consent of the Crown through the Public Works Department (in the form of an order in council) before they could take land for electric works.¹⁹⁵ They could prepare for the taking before the order was issued – including surveying the desired land and publishing a notice of intention to take – but could not take the land until the order was signed.¹⁹⁶

In October 1946, the King Country Electric Power Board issued a notice of intention to take for a depot over three acres of Māori land in lots 5 to 9 and 11B6 of Ōhura South N2E3G3, and three perches of general land in an adjoining block.¹⁹⁷ An order in council consenting to the taking was issued six months later along with the corresponding proclamation declaring the site to be taken under the Public Works Act 1928.¹⁹⁸

The Māori Land Court determined compensation for the taking in February 1949.¹⁹⁹ After hearing evidence from a number of witnesses, including the government valuer and some of the owners, the court awarded a total of £1,047 for the six sections of Māori land. As we discuss in the following section, this was more than the government valuer's assessment, but less than the owners' assessment of market value.²⁰⁰

24.8.4 The Māori owners' opposition

(1) Lot 6

Before taking land from Ōhura South N2E3G3, the power board sent its notice of intention to take to the children of Mahu (Tūtemahurangi) Parehuitao. Mr Parehuitao was then still the legal owner of lot 6, although he had

died by the time the notice was issued. It appears that the power board assumed the children would succeed to their father's interests.²⁰¹

Three of the children, Āperahama, William, and Hihiri (or Rihiri) Tūtemahurangi, wrote to the board objecting to the taking. Āperahama expressed his opposition again at a meeting of the power board in December 1946.²⁰² Āperahama's daughter, Eva Tūtemahurangi, told us that her father wanted to build a house on lot 6, and had already spent time clearing the land for that purpose.²⁰³ The board resolved that the opponents' objection should not be sustained, and the chairman was authorised to make the necessary statutory declaration.²⁰⁴ Ms Tūtemahurangi said that Āperahama tried to petition the Government, collecting Māori and Pākehā signatures and then travelling to Wellington to give the petition to the private secretary of Peter Fraser, the Minister of Māori Affairs at the time. It was, Ms Tūtemahurangi said, 'the last that was seen and heard of the petition'.²⁰⁵

(2) Lot 8

It is likely that lot 8 was also taken against the wishes of its owner. At the compensation hearing for Ōhura South N2E3G3, Meri Para, the owner of lot 8, told the Māori Land Court that she had refused two offers for the section because she wanted to live on the site.²⁰⁶ The judge later acknowledged that Meri Para was 'not prepared to sell at any price'.²⁰⁷ Therefore, although there is no evidence directly on the point of whether Meri Para formally objected to the taking of her land, we can infer that she did not want to sell. We do not know whether the power board spoke with her prior to the taking.

24.8.5 Compensation

When the Māori Land Court heard the application for compensation in February 1949, the issue was whether the power board should pay the 1942 value or the 1947 value of the land. The land was taken in 1947, but 1942 was the year that, according to the power board's interpretation of particular legislation, determined the values of the sections.²⁰⁸ The power board's argument was that, under the Finance Act (No 3) 1944, the court could only award compensation

that was equal to (or less than) the 'basic value' of the land. The Servicemen's Settlement and Land Sales Act 1943 set the 'basic value' of any land at its December 1942 value.²⁰⁹

The government valuer gave evidence on behalf of the board. He admitted that he was relatively inexperienced: he had worked in the district for only six months, and had not seen the recent offers for the taken sections.²¹⁰ The owners had no professional valuation, but three owners gave evidence of recent offers for their land. Meri Para told the court she was offered £200 for lot 8.²¹¹ Rangiao Rangitauira, the sole owner of lot 5, said she sold her section for £125 in 1946, but the transaction was not completed because of the taking. Āmiria Nukuraerae Hikaia, who had interests in lot 7, said her whānau was offered £200 for the section in 1941.²¹²

The judge determined 1947 as the appropriate point in time to fix the valuation of Ōhura South N2E3G3. He acknowledged Meri Para and Āmiria Nukuraerae Hikaia's evidence, but said that the offers they quoted were 'a little too elusive to establish value'.²¹³ He relied heavily on the sale price of lot 5, and the sales and leases of adjoining land.²¹⁴ The relevant assessments are given in table 24.1 on the next page.

24.8.6 Conclusion, findings, and recommendations

The principles outlined in our discussion on the taking of land for Taumarunui Hospital apply equally here. All of our comments and analysis are applicable, except that arguably the land taken for Taumarunui Hospital was more culturally significant because of its history as a pā, and its proximity to Titipa urupā. Nevertheless, this was land that was significant to its owners. At least some of them had specific other uses in mind for their land, and were as a result quite opposed to sale.

(1) 'In the national interest as a last resort . . . ?'

In summary, then, the taking of land for the King Country Electric Power Board depot was another case where:

- The land was taken neither in the national interest, nor as a last resort – that is, where all alternatives to taking the land compulsorily had been explored. It does not appear that any other alternatives were explored.

- The Crown is liable for any prejudice suffered as a result of the taking, because in Treaty terms the delegation to the electric power board of authority to take land was improper because it was unilateral. We note, though, that in this case the delegation was limited because of the requirement to obtain the Public Works Department's consent, so the Crown was anyway fully implicated in the decision to take the land.
- No efforts were made to negotiate with the owners of the land, and their unwillingness to sell was disregarded.
- The valuation and compensation regime was monocultural and discriminatory.

The taking therefore breached the guarantee of *te tino rangatiratanga* in article 2, and the Treaty principles of equity and active protection.

(2) *Procedural fairness*

An aspect of procedural unfairness that was legal but not Treaty-compliant was the Crown's having its own expert valuer present at the court hearing, while the Māori landowners had no professional valuation to rely on, nor a valuer present to give evidence on their behalf. This put them at a disadvantage.

The Māori landowners could presumably have obtained valuation advice, but no doubt the cost was a deterrent. We consider that the taking authority should pay the valuation and legal costs of those whose Māori land is being compulsorily purchased. Those persons have been drawn into the process against their will, and engaging in it anyway costs them time and causes them stress. They should not, in addition, have to pay their own costs. That they are required to do so exacerbates the whole situation of Treaty breach.

However, we can find no substance in the claimants' argument that because the order and proclamation were made on the same day, the objection period was somehow reduced. In accordance with the usual taking process, the power board issued a notice of intention to take around six months before the proclamation was published. The subsequent publication of the proclamation and the order in council did not reduce the usual 40-day objection period.

Block	Government valuer's opinion	Court's award
Lot 5	£100	£137
Lot 6	£70	£105
Lot 7	£120	£160
Lot 8	£120	£160
Lot 9	£100	£160
Lot 11B6	£265	£325
Total	£775	£1,047

Table 24.1: Valuation of the depot site

(3) *Compensation*

We are satisfied that the process for setting compensation of Māori land was inadequate and breached the Treaty, as noted above. Māori Land Court judges were not expert in this field, by contrast with those who determined compensation for general land in the Compensation Court.

However, as regards the fairness of this particular valuation exercise, we are as usual unable to make a definitive finding on the price arrived at, because of our imperfect knowledge of the background and surrounding circumstances. Having examined the court's decision, it appears to us that the judge did not set compensation lightly or without considering the evidence. The uri of Tūtemahurangi and Te Tarapounamu questioned whether their tūpuna might have received less compensation for their section because they objected so strongly to the taking.²¹⁵ We do not know whether this influenced the court's decision. We consider, though, that it is more likely that the Tūtemahurangi whānau received less compensation because they were the only owners not represented by counsel at the hearings.²¹⁶ In his technical report, historian Philip Cleaver told us that the court's awards were 'generally low' in cases where the owners were not represented, as they were based on the taking authority's offer.²¹⁷ It is possible, too, that the Māori owners might have done better if they

had been able to proffer their own professional valuation evidence. Presumably they did not do this for reasons of cost (see comments above, under ‘Procedural fairness’).

While the sections taken for the power board depot in Taumarunui were not the site of a marae or wāhi tapu, at least two of the owners intended to build houses on their sections and live there. The judge acknowledged that Meri Para was ‘not prepared to sell at any price.’²¹⁸ The Tūtemahurangi whānau objected very strongly. However, the compensation assessment paid scant regard to these important factors: the owners’ unwillingness to sell; their proposed use of the land themselves; and the spiritual and emotional value of the land. Also, we saw no sign of inquiry into whether the owners had interests in Māori land other than their interests in Ōhura South N2E3G3.

These failures prejudiced these owners. We recommend that the loss of Ōhura South N2E3G3 is taken into account in future settlement negotiations.

24.9 ŌHURA SOUTH G4E2

24.9.1 Introduction

When the North Island Main Trunk railway line reached Taumarunui in December 1903, it was widely expected to bring economic development and change to the region. However, its effects on Māori were decidedly mixed, as seen throughout this report. In 1917, the Railways Department took over half of the Ōhura South G4E2 block for railway purposes. Two years later, the remaining land in the block was taken at the behest of the owners, Ringi Tānoa and Tānga Taitua, who insisted that it had become ‘severed’ by the first taking. The land was offered back to claimants in 1999, but at a price that the former owners could not pay.

24.9.2 What the claimants said

The descendants of Tānoa and Te Whiutahi (Wai 764 and 1147) claimed that the Crown took part of the Ōhura South G4E2 block for the North Island Main Trunk railway from their tūpuna Ringi Tānoa and Tānga Taitua in 1917.²¹⁹ They also claimed that Tānoa and Taitua were forced into

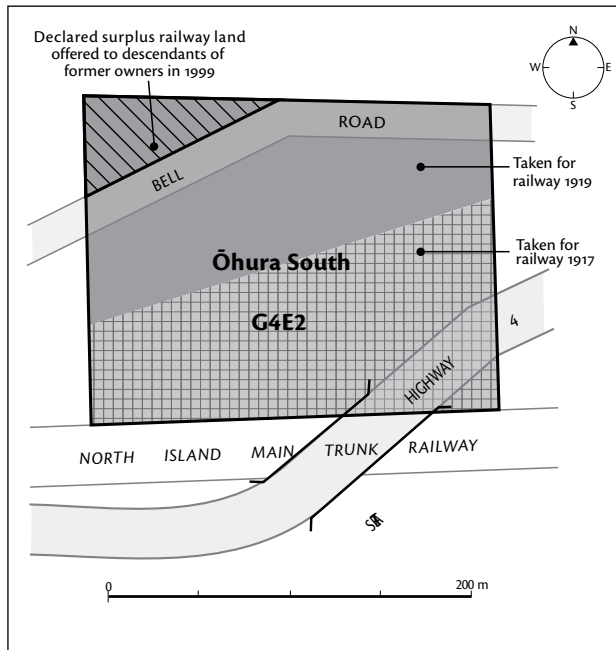
offering the remainder of the block to the Crown for the railway in 1919 because the first taking had left them with a small block that was ‘uneconomic’ for any future use.²²⁰ The claimants alleged that although Native Land Court minutes show an award of compensation to Tānoa and Taitua for the takings, no record has been found of this having been paid.²²¹

The claimants also alleged that the Crown’s actions in returning surplus railway land in the Ōhura South G4E2 block breached the duty of active protection.²²² In 1999, the Crown proposed to offer-back part of the railway land to the uri of Tānoa and Te Whiutahi if they paid market value for the property. The claimants argued that they should not have to pay for the return of Ōhura South G4E2,²²³ for the block offered back is subject to the ‘Crown’s division’ of Ōhura South G4E2 (presumably this refers to the creation of Bell Road) and therefore less usable. The block is now regarded as two sections for rating purposes, which the claimants would struggle to pay.²²⁴ In addition, there are multiple successors to Ringi Tānoa and Tānga Taitua’s interests, making the land subject to the usual challenges of multiple ownership. The claimants said that these circumstances make it fair for the land to be returned at no cost.²²⁵

The claimants sought the return of Ōhura South G4E2 in the discrete remedies process.²²⁶ However, Ngāti Hinewai claimants (Wai 1191), who descend from Taitua Te Uhi, argued that they also have interests in Ōhura South G4E2, and therefore opposed its return to the descendants of Tānoa and Te Whiutahi alone.²²⁷ This situation made this claim ineligible for the discrete remedies process, which applied only to claims without these kinds of complications.²²⁸

24.9.3 What happened to the Ōhura South G4E2 block?

Ōhura South G4E2 was created through partition in June 1905 and awarded to Ringi Tānoa and her cousin, Tānga Taitua.²²⁹ Located north of the then recently established native township of Taumarunui, the small block measured just under 10 acres.²³⁰ In 1917, Ōhura South G4E2 was cut in half when the Railways Department took just over 5½



Map 24.4: Ōhura South G4E2

acres for the North Island Main Trunk railway under the Public Works Act 1908.²³¹ Rīngi Tānoa and Tānga Taitua then asked the Crown to purchase the remainder of the block as it had become 'severed' and was uneconomic to farm.²³² The Crown took the remaining four acres of Ōhura South G4E2 in May 1919, also for railways purposes.²³³

The Native Land Court determined compensation in September 1919, awarding the owners £850 for all land taken from Ōhura South G4E2 and an additional £250 to the lessees for improvements.²³⁴ Later that year, the chief engineer of the New Zealand Government Railways wrote to the registrar of the Native Land Court acknowledging the order and indicating that Treasury would soon be sending a cheque in payment.²³⁵ The registrar confirmed the receipt of the cheque in January 1920.²³⁶ In December 1919, agents for Rīngi Tānoa and Tānga Taitua asked the registrar for compensation to be sent to them at Taumarunui. According to historians Dr Grant Young

and Associate-Professor Michael Belgrave, it is likely that compensation was sent to the Waikato–Maniapoto District Māori Land Board and then to the owners.²³⁷

In the late 1990s, a small triangular portion of the former Ōhura South G4E2 block was declared surplus to the Crown's requirements and was offered back to the successors of Rīngi Tānoa and Tānga Taitua. Another two areas of land, four perches from Ōhura South G4E1 and 3.5 acres from Ōhura South G4G2 (both taken at the same time as the Ōhura South G4E2 taking in 1917), were also declared surplus and available for return.²³⁸ Lyfestyle Research Limited, an accredited supplier of Land Information New Zealand (LINZ), carried out the offer-back process on behalf of LINZ, following the provisions set out in the New Zealand Railways Corporation Restructuring Act 1990.

In October 2002, a meeting was called between two representatives of Lyfestyle Research and the successors of Rīngi Tānoa and Tānga Taitua, many of whom are Whanganui claimants. They were provided with a legal description of the land, a description of the nature of the property, and informed that all three blocks were to be offered back at a market value of \$16,000 (not including GST).²³⁹ Ōhura South G4E2 was valued at approximately \$5,000.²⁴⁰ Lyfestyle Research then outlined the ways in which the land could be returned. The successors could:

- form a trust and purchase the land at the current market value;
- purchase equal shares in the land at the current market value; or
- grant their approval to one successor, who would then purchase the land at the current market value.²⁴¹

During the subsequent discussions, the successors objected to paying current market value for the return of their tūpuna's land. Lyfestyle Research replied that the return of land at market value was a statutory requirement; under the legislation there was no way in which the land could be returned at a lesser price.²⁴² Faced with these options, the successors declined to repurchase the land and instead applied to have it included in the regional land bank in anticipation of the Tribunal's Whanganui hearings.²⁴³

24.9.4 Could the Crown have returned the land at less than market value?

When Lifestyle Research told the former owners' successors that the land must be offered back at current market value,²⁴⁴ they were correct. The New Zealand Railways Corporation Restructuring Act 1990 makes no provision for surplus railway land to be returned at less than market value. This differs from the situation under section 40 of the Public Works Act 1981, which allows the Crown or a local authority to return land at a price less than market value if they consider it reasonable.²⁴⁵ The only alternative for the disposal company is to apply to the Māori Land Court to determine the terms and conditions of return (section 26 of the New Zealand Railways Corporation Restructuring Act 1990).²⁴⁶ Even then, the Māori Land Court is generally unable to recommend that the land be returned at a significantly reduced price: its options are to approve the application or set new terms and conditions that are 'not inconsistent with any terms and conditions so specified [in the application]'.²⁴⁷ If the disposal company wants to offer the land back to its former owners at market value, the Māori Land Court cannot make conditions inconsistent with the original application. This would usually have the effect of precluding the court from reducing the price much. The disposal company could, theoretically, apply to the court for the land to be returned at less than the market price, but is not compelled to do so.

In this case, Lifestyle Research Limited was precluded from applying to the Māori Land Court about conditions of return for Ōhura South G4E2, because the Act limits applications to the court to situations where, immediately prior to the taking, the land in question was Māori freehold land or general land that was Māori-owned, had more than four owners, and was not held in trust.²⁴⁸ Ōhura South G4E2 had only two owners at the time of the taking, so Lifestyle Research had no legal alternative to offering back the land at full market value.

Claimant Michael Le Gros told us that when the land was offered back they had 'no income'. Even if they had been able to raise the initial purchase price, they would not have been able to develop or use the land in any way.

Leasing the land was not an option as 'No-one was looking for any land to lease at the time.' Mr Le Gros also told us about the problem of the land having been divided into two rateable properties rather than one.²⁴⁹

24.9.5 Conclusion, findings, and recommendations

(1) 'In the national interest as a last resort . . .'

Most file evidence relating to the takings has been lost or destroyed. Nevertheless, if we apply the 'in the national interest as a last resort' test, we can make the following observations:

- The main trunk railway line was an important public work that was arguably in the national interest. We had no submissions on the point, but we accept at a level of principle that taking Māori land to enable completion of the main trunk might be justified.
- However, in order for the Crown to meet the standard in the test, it would also need to show that this land was only taken as a last resort. The Crown would have to show that:
 - this was the only land that would have served the purpose, because no other routes for the railway were suitable;
 - other forms of tenure (lease, licence, easement) were considered, but would not have met the Crown's need;
 - purchase by negotiation was tried, but failed, and it was only then that the Crown resorted to compulsory acquisition; and
 - it was not possible to effect the taking in a way that made the balance of the block more usable such that the owners would not have felt driven to sell that too.
- The Crown has furnished no evidence to show that its conduct met the 'last resort' aspects of the test, and our understanding of how takings for railway use were conducted leads us to the view that it is most unlikely that it did. This land was taken under the Public Works Act 1908, which did not even require the taking authority to give notice of intention to take for railway purposes.²⁵⁰ Unless they were notified informally, Ringi Tānoa and Tānga Taitua would not have known of the taking until it was gazetted in October 1917.²⁵¹

(2) Offer-back

The Crown has obligations to restore to its former owners land that was compulsorily taken for public works in circumstances that breached the Treaty of Waitangi.

In the *Te Maunga Railways Land Report*, the Tribunal stated that, as the more powerful Treaty partner, the Crown should use its power positively when offering back former Māori land. The Crown has a fiduciary obligation to ensure that the requirement to pay full market value does not prevent Māori from regaining their ancestral land.²⁵²

The Wairarapa ki Tararua Tribunal went further, finding that the ‘purchase back at a market price’ model should not be applied to Māori land. Rather, a separate regime should be established that ‘recognises the special protections of Māori landowners in article 2’. This might involve reducing the price of Māori land that is offered back, and the provision of loans.²⁵³

We agree with these Tribunals’ findings. We are satisfied that the price at which Ōhura South G4E2 was offered back made its re-purchase infeasible for the descendants of the former owners. Market price is not appropriate here because:

- the number of successors to title in this land means that it would come back to multiple owners, bringing with it the usual problems of communal ownership;
- the utility of the land was decreased when its size was reduced by the railway taking, and it is now affected by a road, and a greater rates liability;
- it is unlikely to be a profitable asset; and
- the original taking breached the Treaty, and was conducted without regard for the owners’ rights, and without trying to ensure that the balance of the block was usable.

We do not understand why the offer-back provisions in the New Zealand Railways Corporation Restructuring Act 1990 are still in force, especially as the equivalent sections contained in the Public Works Act 1981 were amended over 30 years ago.²⁵⁴ Had Ōhura South G4E2 been taken for anything other than railway purposes, the land would have been offered back under the Public Works Act, and the offer-back price could have been less than market value. This disparity is arbitrary and inequitable, and

exacerbates the Treaty breach for those whose Māori land was taken for railway purposes.

(3) Recommendations

We recommend that the Crown:

- Amend the New Zealand Railways Corporation Restructuring Act 1990 at least to the extent of removing the offer-back provisions that constrain the ability to return land to its former Māori owners at less than market price. In fact, we support the recommendations in chapter 8 of *The Wairarapa ki Tararua Report*, which call for immediate and wholesale amendment of the public works regime; and
- Offer Ōhura South G4E2 back to the successors of Rīngi Tānoa and Tānga Taitua at no cost.

24.10 OTHER TAUMARUNUI AREA ISSUES**24.10.1 Introduction**

We heard a number of claims about the Crown taking or buying blocks of Māori land in Taumarunui township and nearby Rangaroa Village for various public works.

24.10.2 What the claimants said

Towards the end of the hearing stage of the Whanganui inquiry, Albion Bell brought the Wai 1505 claim on behalf of Te Patutokotoko and Ngāti Heke.²⁵⁵ It concerned several blocks in Taumarunui and the wider Rangaroa and Manunui areas that Mr Bell says were taken from Whanganui iwi for public works. Works included a landing reserve, a river development project, and the North Island main trunk railway (see map 24.5). Ngāti Rangatahi claimants also mentioned land taken for public works in Rangaroa Village and for the landing reserve beside the Ōngarue River.²⁵⁶

The claimants said that the Crown compulsorily acquired, but did not pay for, sections 1, 2, and 3 of block VIII, and section 13 of block II, Rangaroa Village for public works.²⁵⁷ They argued that the sections are no longer used for public works, and should be returned to the hapū.²⁵⁸ After we examined this issue, however, it became clear that the claimants misunderstood the situation. This

land was part of the original Ōhura South G1 block that was awarded to the Crown in 1901. It would have been in Crown ownership at the time of the alleged taking, and so would not in fact have been acquired via public works legislation from Taumarunui hapū.²⁵⁹ We do not examine this claim further.

The claimants also alleged that part of sections 9 and 10, block v, Rangaroa Village, Part Ōhura South G4C, and Part Ōhura South G4D were alienated from their tūpuna in the early twentieth century to develop Taumarunui township and the North Island main trunk railway and were later developed into the Rangaroa Reserve. The claimants alleged that the Crown took the sections without paying compensation.²⁶⁰ They sought co-management of the reserve and assistance for its redevelopment.²⁶¹

Mr Bell said that his great-grandmother, Katarina Te Waihānea (also known as Katarina Te Āwhitu), gifted the one-acre section 10, block 11, Taumarunui Township Extension 1, situated next to the Ōngarue River, to the people of Taumarunui as a landing site for river craft. The land was not returned when it ceased being used for that purpose; a privately owned electricity transformer is now located there.²⁶² Mr Bell informed us that ‘The Lines Company, a private company owned by the Waitomo Services and King Country Power Customer Trusts, owns it.’²⁶³

The claimants also stated that the Tongariro Power Development project affected more than 14 acres of whānau land in Ōhura South M2A, near Manunui.²⁶⁴ They said that the Crown took an excessive amount of land from the block for this project, and left them with only a small area that was uneconomical for farming.²⁶⁵ The claimants sought the return of Part Ōhura South M2A.²⁶⁶

The Crown made no submissions on these claims.

24.10.3 The Rangaroa Domain and Ōhura South G4 land **(1) How was Māori land acquired for Rangaroa Domain?**

Rangaroa Village, adjacent to Taumarunui town but separated from it by the North Island Main Trunk railway, was originally created from the Crown’s purchases in the Ōhura South G1 block, and later extended to incorporate parts of Ōhura South G4. In the 1970s, several parcels of land were used to create a recreation reserve at Rangaroa.²⁶⁷

At a hearing in December 1903, Ōhura South G4C (12 acres) and Ōhura South G4D (50 acres) were created by partition.²⁶⁸ Ōhura South G4C was awarded to Marumaru Hikaia.²⁶⁹ Ōhura South G4D was awarded to four Māori owners.²⁷⁰

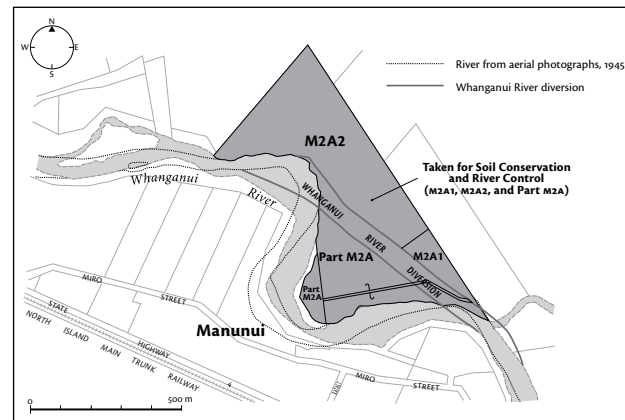
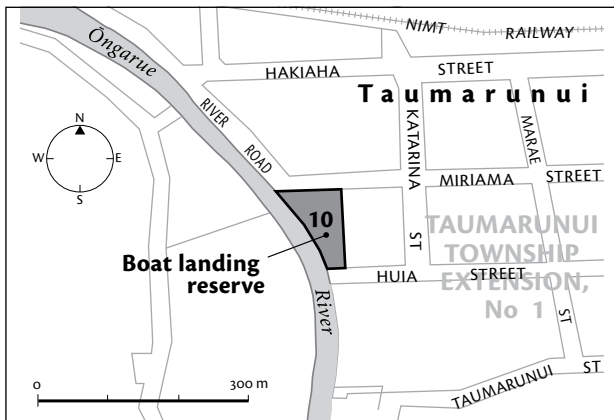
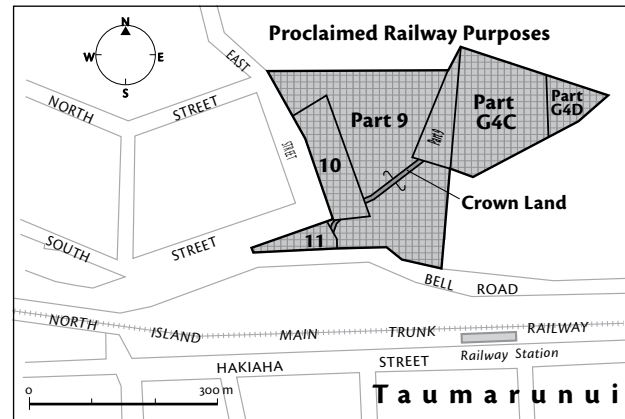
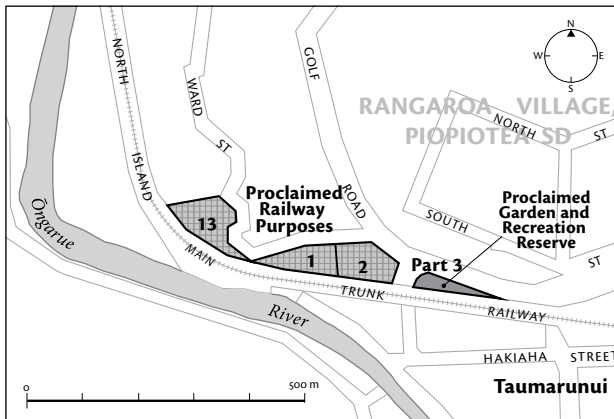
In 1907, the Public Works Department took over five acres from Ōhura South G4C and G4D for railway purposes under the Public Works Act 1905, probably as a water supply for the train engines on the main trunk railway.²⁷¹ Small additional areas were taken for similar purposes in 1915: over one acre from Ōhura South G4C, and one rood from Ōhura South G4D.²⁷²

In 1970, the Crown declared that certain land taken for the railway was no longer required,²⁷³ including the land it had taken from the Ōhura South G4 sections in 1907, and other land in Rangaroa Village sections.²⁷⁴ Then, in 1972 the Crown put this land into a recreation reserve that it set up under the Land Act 1948, and declared to be part of the Taumarunui and Rangaroa Domain.²⁷⁵ Today, the Crown owns Rangaroa Domain, but Ruapehu District Council manages it.

Sections 9 and 10, block v, Rangaroa Village also form part of the Rangaroa Reserve. The claimants said that the Crown took parts of these sections for the main trunk railway in 1907 and 1915.²⁷⁶ However, they were wrong about this. The Crown did not compulsorily acquire sections 9 and 10 under public works legislation; these were Crown land, acquired in 1901 by partition.²⁷⁷

(2) Conclusion, findings, and recommendations

There is no evidence that the Public Works Department spoke with the Māori owners of Ōhura South G4C and G4D before taking several acres of their land for railway purposes in 1907 and 1915. Indeed, the owners probably had no notice at all of the compulsory acquisition before it happened. In his report on Whanganui public works, historian Philip Cleaver stated that notices outlining the Crown’s intention to take land from the Ōhura South G4 sections were not gazetted before either of the 1907 and 1915 takings, as such notices were not required for railway takings under section 188(1)(i) of the Public Works Act 1905.²⁷⁸ Cleaver found no evidence to suggest that the



Map 24.5: Location of additional Taumarunui area issues

owners of the Ōhura South G4 sections were offered any alternatives to their land being compulsorily acquired, or that other sites or forms of tenure were considered.

The Crown apparently did not compensate the owners of Ōhura South G4 for the five acres taken in 1907. Cleaver told us that this suggested that the land was taken under the 5 per cent rule, the legislative mechanism that allowed the Crown to take 5 per cent of Māori land for road and railway purposes without paying compensation.²⁷⁹ In 1916, however, £25 compensation was paid for just over an acre that the Crown took from Ōhura South G4C in 1915.²⁸⁰ The Native Land Court minute books do not record payment

for the one rood taken from Ōhura South G4D the same year.

In this inquiry, the Crown conceded that it did not meet the Treaty standards of good faith and fair dealing when it took Whanganui land for the railway without compensating owners.²⁸¹ We add that failure to provide notice before the taking was another serious defect. But these are failures of procedural fairness. In fact, the Crown's hara (fault, sin) here is more fundamental: the taking itself was completely unjustified. It has none of the hallmarks required to meet the standards of the 'national interest as a last resort' test, and accordingly breached article 2 of the Treaty. We note



Taumarunui with the Ōngarue River in the foreground, early 1900s. A landing stage is across the river and the railway station is centre left. Claimant Albion Bell, on behalf of Te Patutokotoko and Ngāti Heke, stated that in 1901, his great-grandmother, Katarina Te Waihānea (also known as Katarina Te Āwhitu) gifted one acre next to the Ōngarue River to the people of Taumarunui as a landing site for river craft. The claimants alleged that the land was not returned to them when it ceased being used for that purpose. It is now the site of an electricity transformer and is privately owned.

that there might be an argument that building the railway was in the national interest, and certain land was required for particular parts of the North Island Main Trunk railway because no other land would do. But this land served no vital railway purpose because the main trunk remains and this land is no longer required.

Then, when the Crown determined in 1970 that the land was not required for the purpose for which it was taken, it did not allow its former owners the opportunity to regain ownership of it. Instead, it kept the land, and then decided to put it into a recreation reserve.

At the time when the land became surplus to the Crown's requirements, the Crown was not under a legal obligation to offer the land back to its former owners. Before 1981, public works legislation allowed the Crown to apply land acquired for one purpose to another purpose. However, although this practice was legal, it was not right. It was unpardonable in cases where land was taken under the 5 per cent rule, and no compensation was paid – as here, where the Crown did not pay the owners for the five acres it took from Ōhura South G4C and G4D in 1907, nor for the one rood it took from G4D in 1915. That land should have gone back to its former owners simply

on fairness grounds. When the Treaty is brought into the equation, the Crown's breach of duty is stark.

We recommend that the Crown transfers to the successors of the former owners the title to the land now in Rangaroa Reserve that it compulsorily acquired for railway purposes from Ōhura South G4C and G4D. This is an area of just over six acres, only one of which the Crown paid for. There will now be many successors to the former owners of the land, and we consider it appropriate for the land to remain in the reserve after the Crown transfers title to the relevant area. We recommend that the Crown negotiates with the new title-holders an appropriate way forward for joint governance of the reserve. The claimants talked to us about creation of walkways and sightseeing facilities for the hapū and for the Taumarunui community, and also about developing an area where the hapū could grow and source herbal remedies.²⁸²

24.10.4 Taumarunui landing reserve

(1) *The landing reserve is gifted*

Section 10, block 11, Taumarunui Township Extension No 1 lies next to the Ōngarue River. Mr Bell told us that in 1901, Katarina Te Waihānea, his great-grandmother, gifted

this land to the Crown and to the township of Taumarunui as a landing place for boats.²⁸³

We noted in chapter 17 that, in 1901, the Crown applied for a partition of its interests in Ōhura South G. The new partition, Ōhura South G1 (219 acres), comprised land that the Crown had purchased, together with land from sundry other sources: Māori land paid in lieu of survey charges; a site that Māori gifted for a school; and Te Waihānea's gift of land for the landing reserve. At the same court hearing, Te Waihānea was awarded Ōhura South G3, an area near the river, and Ōhura South G partitions G2 and G4 went to other Māori owners (see sidebar page 848).²⁸⁴

Mr Bell said that, before the railway came to Taumarunui, the landing reserve was one of the few points of access to the town.²⁸⁵ Although it operated from the beginning as a landing reserve, in fact the site was not formally reserved for this purpose until 1931.²⁸⁶ In the 1930s, it went through a number of different proclamations. In 1932, the reserve was vested in the Whanganui River Trust, but this was revoked just over six months later, and the land was revested in the Taumarunui Borough Council.²⁸⁷ In 1937, the reserve's purpose was changed to a reserve for municipal purposes.²⁸⁸ We do not know how or when the site was transferred into private ownership, but the certificate of title for the 4,540 square metre site shows The Lines Company Limited as the owner.²⁸⁹ Clearly its reserve status was at some stage removed. Whether the site was considered for return to the descendants of the donor we do not know, but it seems unlikely as Mr Bell would surely have been involved if that had happened. As the original gift was for a specific purpose that became redundant over time, proper conduct would certainly have been to ask Te Waihānea's successors if they would like the land back, or whether they were happy for it to be put to other municipal purposes. Conceptually, it is similar to the gifts of Māori land for schools: if a school closes, the Crown gives the land back to the successors of the original donors. Here, though, its delegate, the local authority in Taumarunui, sold the land.

(2) Conclusion, findings, and recommendations

The Crown no longer owns the land Te Waihānea gave for the landing reserve land; it vested it in the Taumarunui

Borough Council in 1932, and at some time after 1937, when the site became a reserve for municipal purposes, the local authority sold it. A local power company, The Lines Company Limited, is now the owner. It is private land, and we have no jurisdiction to recommend its return.

However, we are satisfied that the Crown's conduct here was not that of a good Treaty partner. It should have made provision for the land to return to the donor if at any point it was no longer required for the purpose for which it was given, and in not doing so it breached its Treaty duty to act towards its Treaty partner with utmost good faith.

We recommend that the Crown compensates Te Waihānea's successors for the value of the land at the time when it ceased to be used as a landing reserve, plus interest. It seems that the relevant year was 1937, when the reserve's purpose changed to 'municipal'.

24.10.5 River control takings

In 1948, the Crown realigned the channel of the Whanganui River near Manunui, taking 31 acres from the Māori-owned Ōhura South M2A block (81 acres), and splitting the block between the two sides of the river.²⁹⁰ At the time of the taking, the owners of the block were Mr Bell's grandfather, Tuauru Te Waihānea, and the six children of Riu Manawaiti. Riu Manawaiti was Tuauru Te Waihānea's wife, to whom he had transferred 20 acres in the block in 1925. After her death in 1945, the six children succeeded to her interests.²⁹¹

Mr Bell told us that the taking had a substantial effect on his grandfather's land. Farming became impossible as the amount of land left in his possession was not sufficient to run an economically viable farm, and the whānau lost a valuable source of income.²⁹² Mr Bell said that the severed land is currently used for grazing and a quarry operated by King Country Quarries, and was not returned to the whānau once the Crown no longer needed it.²⁹³ Currently, only five acres of the original block remain in whānau ownership.²⁹⁴

(1) How was land in Ōhura South M2A taken?

The diversion of the Whanganui River through Ōhura South M2A was prompted by the threat of erosion to the

southern bank of the river adjacent to Manunui township. Owners of residential sections in Manunui appealed to the Manunui Town Board throughout the 1940s for action to be taken to lessen the impact of erosion that endangered the Manunui Domain and their sections.²⁹⁵ In October 1946, the Manunui Town Board presented its support for a diversion to officials from the Department of Works and Development:

As you know, the river has formed a large bend and many acres of land have been washed away. It is felt that before very long the river will alter its course and may flood the whole of the area right through to the Manunui Domain.

As suggested on many occasions, the position could be remedied by the opening of a cut on the east side of the Whanganui River, and thus diverting the flow of the river from the Manunui side. Strong representations were made during the War years to have this cut opened up, and the area was inspected by Ministers of the Crown and engineers from your department. It is felt that now that hostilities have ceased, your Department may view the suggested work in a more favourable light . . .²⁹⁶

The Department of Works and Development considered three options, including a complete diversion of the river, a smaller cut through Ōhura South M2A to act as an overflow channel, and the creation of a rock wall to line the south side of the riverbank at Manunui.²⁹⁷ Engineering investigations showed that rock wall protection was the most expensive option.²⁹⁸ While some notes on the Department of Works and Development file seem to suggest that the department favoured rock wall protection, the Soil Conservation and Rivers Control Council eventually decided to fund a complete diversion of the Whanganui River through Ōhura South M2A.²⁹⁹ The Soil Conservation and Rivers Control Council carried out this project in 1948.³⁰⁰

The department gave formal notice of its intention to take land from Ōhura South M2A in November 1951, three years after the diversion was made.³⁰¹ As was usual practice at the time, the Crown acquired both the land required for

the diversion, and the severance that was created.³⁰² The takings were eventually proclaimed in March 1952, with the Crown taking 31 acres from Ōhura South M2A under the Public Works Act 1928.³⁰³ An additional 12.3 perches was taken from the adjacent block, Ōhura South M2B, for the same purpose.

Although it is possible that Tuauru Te Waihānea was contacted before the diversion was constructed, historian David Alexander considers that any discussion would have been about using his land to access and build the cut, and not about the merits or otherwise of the diversion proposal.³⁰⁴ There is no mention in the department's district office file of any approach to the Māori landowners, or to the local iwi or hapū collectively, about the use of Māori land for the project.

A compensation award was made to the owners of Ōhura South M2A, but we do not know how much or when. In December 1952, the Ōtorohanga Māori Land Court minute book records the partition application required for the taking, and simply notes that half the compensation was awarded to Riu Manawaiti's six children, and the other half to Tuauru Te Waihānea.³⁰⁵

The claimants understood that the Whanganui River was diverted through their lands as part of the Tongariro Power Development project. We think they were mistaken about this, because of the timing of the diversion. The technical appraisal of the hydro scheme did not happen until 1955, and the scheme was not approved in principle until 1964.³⁰⁶

(2) What happened to Ōhura South M2A after the taking?

We have little information about what happened to the land after the Crown acquired it. In the 1980s the Pattison family, whose property adjoined the land that was taken, gained a licence to occupy the severance area and old riverbed, and used it to graze cattle.³⁰⁷ In 1980, Wilkins & Davies, a large New Zealand construction company, obtained a licence from the Rangitikei-Wanganui Catchment Board to take excess gravel at Manunui where the Whanganui riverbed had built up downstream of the diversion constructed in 1948. Wilkins & Davies needed somewhere to crush the gravel, and proposed placing its

gravel crusher by the old riverbed cut off by the diversion. For this purpose they negotiated with Mr Pattison to use around five acres of land he held under licence, and the Department of Lands and Survey agreed to change the licence terms.³⁰⁸ Wilkins & Davies started operating at Ōhura South M2A soon after.

At the same time, Whanganui Māori increasingly opposed commercial use of the gravel in the riverbed. In late 1982, Hikaia Amohia applied to the Lands and Survey Department to use some of Pattison's licence area for cropping, and to crush and sell metal. He also expressed his opposition to the granting of licences to extract metal from the river without consulting Māori, and questioned whether Mr Pattison's licence was legal given that the Crown had acquired the land for public works.³⁰⁹

In April 1983, RF Schwass for the commissioner of Crown lands responded to Mr Amohia, discussing the proposals for the severance area and old riverbed at Manunui. He told Mr Amohia that Pattison's licence to occupy would expire in June 1983, and that the Crown would negotiate with the catchment board to define how much land was required for soil conservation and river control. In line with Government policy, Schwass thought that the resulting surplus land could then be sold to the descendants of the original owners of the Ōhura South M2A block.³¹⁰ In January 1982, the Department of Works and Development declared the severed land in Ōhura South M2A to be surplus Crown land.³¹¹ According to Mr Bell, the Minister of Crown Lands sent a letter to the Pattison family, stating that the land could possibly be returned to the Bell whānau as descendants of the original owners.³¹²

However, the offer-back proceeded no further. Wilkins & Davies protested that they would be severely disadvantaged if their licence to occupy was not renewed, and negotiated with the catchment board to continue their gravel extraction.³¹³ The catchment board requested that the Department of Lands and Survey set apart the whole of the severance area as a reserve for soil conservation and river control purposes.³¹⁴ In November 1983, the department wrote to Mr Amohia stating that, as this was an 'essential work' under the Public Works Act, 'the Board's

requirement overrides any claim by the former owners to the return of the land':

I am sorry this decision does not favour the former owners, however there is little if anything anyone can do about it as the land was declared Crown Land on the understanding that the whole or any part required by the Board would be reserved.³¹⁵

During this period, Mr Bell recalls that he wrote a letter to the then Minister of Māori Affairs, Koro Wētere, but received a response saying that Mr Wētere was unable to help, and the land could not be returned.³¹⁶

In 1984, the severed section of Ōhura South M2A and the old bed of the Whanganui River (then surveyed as section 18, block 11, Piopotea Survey District) were declared a local purpose reserve for soil conservation and river control.³¹⁷ Some gravel extraction still occurs there, and the regional council manages the site.

(3) *Conclusion, findings, and recommendations*

The compulsory purchase of Ōhura South M2A did not meet the criteria for a compulsory purchase that is justified in terms of the Treaty of Waitangi. Its purchase therefore breached the Treaty. The owners were prejudicially affected because the land comprised a significant proportion of the block. The balance block was sufficiently reduced in size to make farming there a less viable option for the whānau.

Alternative sites for the river diversion were probably not considered, and the Crown dismissed alternative means of preventing erosion that would have obviated the need to take this Māori land.

Once the land was no longer required for the purpose for which it was taken, it should have gone back to its former owners. However, at the time the Crown was under no legal obligation to return the land, and instead put it to another Crown purpose. Or at least, that is what it said. In fact, it seems that there was pressure from private interests that wanted to continue using Ōhura South M2A for purposes associated with their taking gravel from the river under licence. As a result, the land did not come back to the Bell whānau. This is the same situation that

the Wairarapa ki Tararua Tribunal characterised as legal, but ‘patently unfair’.³¹⁸ We agree with that characterisation.

We find that the takings within Ōhura South M2A for the diversion of the Whanganui River did not meet Treaty standards for public works: the diversion was not in the national interest; there were alternatives to compulsory acquisition; taking this land was not the only available means of preventing erosion; and the owners were not consulted about the taking. As such, the takings breached the plain meaning of article 2 of the Treaty.

We recommend that the Crown takes these findings into account and negotiates with the regional council and those Māori who have an interest in the site about its future management, with the aim of involving the descendants of the original owners in decisions about the site.

24.11 THE PIRIAKA PUNA

24.11.1 Introduction

Piriaka is a small community located 10 kilometres south-east of Taumarunui, adjacent to the Whanganui River, the North Island Main Trunk railway, and State Highway 4. This case concerns land taken from the Waimarino 6 block in 1905 for the main trunk railway and related works. On the land taken was a well-known puna that was a wāhi tapu used for rongoā (traditional healing practices).

24.11.2 What the claimants said

The uri of Tānoa and Te Whiutahi (Wai 764 and 1147) and Ngāti Hinewai (Wai 1191)³¹⁹ said that the Crown took land from their tūpuna for railway purposes in 1905.³²⁰ They also claimed that the Crown failed to protect their puna from contamination and pollution.³²¹

In 2009, the uri of Tānoa and Te Whiutahi applied to this Tribunal for a discrete remedy returning to them the puna and various other land blocks in Piriaka.³²² Their claim was found ineligible for the discrete remedies process when others also asserted interests in the blocks concerned.³²³

In 2010, Ruapehu District Council moved to return the land where the puna is located to the successors of the original owners. This was when Ngāti Hinewai also claimed,



Hikaia Amohia, 1972 (circa 1917–1991). In late 1982, Mr Amohia questioned the Crown’s right to lease out land that it had taken for public works purposes from Māori. In 1948, the Whanganui River was diverted through the Māori owned Ōhura South M2A to lessen the impact of erosion on the south side of the Whanganui River near Manunui. Three years later, 31 acres of the block were officially taken under the Public Works Act for this purpose. The taking included the severance that was created as a result of the diversion. In the 1980s, the land was leased to neighbouring farmers who used it for cattle grazing.

because among their number are other successors to the former owners. They objected to the terms of the agreement to return the land, because it required the former owners to repurchase the land at market value, and to maintain an agreement with the council to supply Piriaka township with water from the puna.³²⁴

We were also told that the puna had high levels of *E. coli* in the water, and that the public left rubbish there. We note these comments, but cannot make findings on them because they were not supported by evidence.

24.11.3 The compulsory acquisition of land at Piriaka

In 1905, the Crown compulsorily acquired more than 17 acres of the Waimarino 6 block for the North Island Main Trunk railway, a railway station, and roads related to the railway.³²⁵ It also took the puna located at the southern end of Waimarino 6 as a water supply for steam engines. Waimarino 6 was a block that Māori retained after the Crown got the Native Land Court to partition out the land it had purchased in the Waimarino block. We refer to the blocks that remained in Māori hands following this process as non-seller blocks. The Native Land Court granted Waimarino 6 to Tūao Ihimaera, Tānoa Te Uhi, and Taitua Te Uhi.³²⁶

The claimants told us about this and other natural puna around Piriaka that tangata whenua used and valued for their healing properties.³²⁷ Cedric Tānoa told us that

My whanau used to go bathing in that spring for healing. Before we went into the spring for healing, Maori medicine would be applied. I remember my mother took me to the spring there once after I had an accident, falling off a bike. It was always freezing, as I would be taken there when it was dark.³²⁸

Wairata Te Huia, on behalf of Ngāti Hinewai claimants, said that the puna was also a natural food source for their tūpuna:

Prior to the establishment of the Reservoir Taitua Te Uhi and [the] generation following would use this puna to gather food including kēkēwai – freshwater crayfish, watercress, kanga pirau – fermented corn immersed, and tuna – eels.³²⁹

In 1978, the Ruapehu District Council began to lease the land containing the puna from the Crown to supply water to Piriaka.³³⁰

24.11.4 The return of the puna

In the late 1990s, as part of the restructuring of the New Zealand Railways Corporation, the land where the puna was located was investigated, found surplus to requirements, and was considered for offer-back to its former owners. The offer-back did not proceed then, because of the costs involved in subdividing the puna area from the rest of the railway land.³³¹

In 2010, as a result of our hearing process, control of the Piriaka water supply was transferred to the Piriaka Community Group Incorporated for the use of the township's residents.³³² Following a Māori Land Court decision in 2011, the puna land was gazetted as Māori freehold land and as a water reserve for medical and water-supply purposes for the common use and benefit of the descendants of Taitua Te Uhi, Tānoa Te Uhi, and Tūao Ihimaera.³³³ The claimants wanted compensation for the original taking and expressed disappointment that they had to pay a purchase price of \$500 plus GST for its return.³³⁴ We do not know whether the claimants resolved their differences with the Crown about terms and conditions of the agreement, or whether they paid for the return of title to the puna land. The Crown must have transferred title in order for the Māori Land Court to make the decision it made in 2011.

24.11.5 Conclusion, findings, and recommendations

The Crown conceded that it did not meet the Treaty standards of good faith and fair dealing when it took Whanganui land for the railway without compensating the owners.³³⁵ As with other railway takings in our inquiry district, it is unlikely that Māori were consulted before the taking of the land containing the puna in 1905. The land is of significance to the claimants' whānau and hapū, and as Michael Le Gros, on behalf of the uri of Tānoa and Te Whiutahi, told us: 'I can't see that Maori would agree to give up this land, when that is where they used to bathe their sick.'³³⁶

We support the Crown's steps to offer-back to the claimants the land where the puna is located. We do not know whether claimants were ultimately obliged to pay \$500 plus GST or not, but if they were we consider that

requiring payment of even a modest sum breaches the Treaty. The Crown had the use of the land for many, many years, and did not pay the owners for the land in the first place. As the *Wairarapa ki Tararua Report* stated, the ‘purchase back at a market price’ model used by Crown agencies in returning land is not appropriate for Māori land taken for public works,³³⁷ especially where the land was taken without compensation or agreement.

We recommend that the Crown returns to the successors of Taitua Te Uhi, Tānoa Te Uhi, and Tūao Ihimaera any payment they made, plus interest.

24.12 PIRIAKA SCHOOL SITE

24.12.1 Introduction

In the Piriaka School site case, we examine the Crown’s disposal of surplus land at the former Piriaka School site. The uri of Tānoa and Te Whiutahi (Wai 764 and 1147) wanted the site kept in the land bank until their Treaty claims were settled, but the Crown sold the property to a hapū development trust. The claimants characterise the disposal process as unfair, and said that Crown officials ignored their protests, and their interests in the site. They criticise the Crown’s (in practice the Office of Treaty Settlements’ and Land Information New Zealand’s) process for banking land pending settlement, and for preserving sites of significance, especially as it applied to Piriaka School.

24.12.2 What the claimants said

The uri of Tānoa and Te Whiutahi alleged that the Crown’s method of disposal of surplus lands at Piriaka breached its Treaty obligations. The Crown did not inform them, or consult with them adequately, about the land-banking and sites of significance processes for surplus Crown land.³³⁸ They were the descendants of tangata whenua from whom the Crown originally purchased the land, but the Crown did not offer the school site back to them. Instead, it leased and sold it to the Hinengākau Development Trust, a subsidiary of the Whanganui River Māori Trust Board.³³⁹ The claimants said that although they consider the area of the site to be their tūrangawaewae, the

Crown did not give their interests the consideration they deserve.³⁴⁰ The Crown did not deal even-handedly with the various groups with interests in the site, because of the Whanganui River Māori Trust Board’s ‘mandate’ to decide on behalf of Whanganui Māori what property could be added to the land bank.³⁴¹

The uri of Tānoa and Te Whiutahi said they have little or no involvement in the current management of the site through the Hinengākau Development Trust.³⁴² Our jurisdiction of course focuses on the Crown’s conduct, and ordinarily we would not comment on the conduct of a Māori-run organisation like the Hinengākau Development Trust. However, because it is relevant to whether the claimants in Wai 764 and 1147 suffered prejudice from the decisions the Crown made, our inquiries properly venture into that domain. However, neither the Hinengākau Development Trust nor the Crown submitted much evidence on the point. We can take the matter no further than to note the dissatisfaction of the uri of Tānoa and Te Whiutahi with their role in the arrangements downstream from the Crown’s transfer of title to the school to the Hinengākau Development Trust.

The Crown made no submissions on the disposal process for the Piriaka School site, or on the role of the Office of Treaty Settlements or Land Information New Zealand in running the process for surplus Crown land that is subject to Treaty claim.

24.12.3 The Crown’s return of the Piriaka School site

Piriaka township was surveyed out of land that the Native Land Court granted to the Crown in the Waimarino block following its 1887 purchase. The Crown designated Piriaka as a township, and surveyed town sections for settlers to purchase. As part of the township, sections 1–4 and 8–12 of block VIII, Piriaka Township (together comprising over two acres) were set aside in 1904 under the Land Act 1892 for the purpose of a public school.³⁴³ Piriaka School opened in July 1903, but the Ministry of Education closed it in August 1997 due to low student numbers.³⁴⁴

In April 1998, Land Information New Zealand notified Waitangi Tribunal claimants on an Office of Treaty



Entrance to Piriaka School.
The waharoa (arch entry) was the original entrance to the school before it was moved to its current position.

Settlements mailing list that the Crown had declared Piriaka School site (and other Crown properties) as surplus. It also placed a public notice in a weekend newspaper. The claimants could apply to have sites land-banked for future Treaty of Waitangi settlements, or protected as a site of significance.³⁴⁵ The letter and accompanying attachment noted that the Piriaka School site was within the boundaries of the Whanganui claim-specific land bank, and that only applications for the protection of sites of significance would be accepted.³⁴⁶

Grace Le Gros and Cedric Tānoa found out about Piriaka School's surplus status via the newspaper advertisement.³⁴⁷ In May 1998, they lodged an application to have the site land-banked, and also made a Treaty of Waitangi claim concerning the Piriaka School site.³⁴⁸ At the same time, another claimant associated with the Hinengākau Development Trust (a northern Whanganui subsidiary of the Whanganui River Māori Trust Board focusing on education, health, and economic development) made a site of significance application for the Piriaka School site.³⁴⁹ Only the trust board was allowed to make applications

to bank sites that were in the Whanganui claim-specific land bank, so Crown officials rejected Mrs Le Gros and Mr Tānoa's application.³⁵⁰ Mr Tānoa rang the Office of Treaty Settlements for further explanation, and they told him that the Whanganui River Māori Trust Board had a government mandate that enabled it to land-bank surplus Crown land in Whanganui, and others' land-banking applications could not be accepted.³⁵¹ As Mrs Le Gros stated, 'they are the specialists so I just followed what they said'.³⁵²

Before declining their application in June 1998, Crown officials from Land Information New Zealand and the Office of Treaty Settlements discussed Mrs Le Gros and Mr Tānoa's land-banking application at length. It raised some of the complexities of the claim-specific land bank, and there were concerns about whether Mrs Le Gros and Mr Tānoa's hapū interests were covered by the Whanganui River Māori Trust Board mandate.

It was during the same period that the Office of Treaty Settlements was considering the Trust Board's site of significance application. The Office of Treaty Settlements

set up a meeting between the Hinengākau Development Trust and the Ministry of Education, and the development trust told the ministry that the land was at one time the site of a major pā and kāinga, and several important sites were located near the school.³⁵³ Crown officials came to the view that local Māori were deeply connected to Piriaka, making the land historically, spiritually, and culturally significant. In December 1998, the Crown agreed to transfer the land that comprised the Piriaka School site to the Hinengākau Development Trust at no cost, but the development trust agreed to pay \$18,000 for the buildings on the site.³⁵⁴

In December 1999, the Māori Land Court set aside the Piriaka School site as a Māori reservation.³⁵⁵ The court confirmed the details of the trust in July the same year, with 26 trustees representing the Taitua whānau (nine trustees), the hapū of Hinengākau (nine trustees), and the Tānoa whānau (eight trustees). Mrs Le Gros and Mr Tānoa's whānau were allocated three of the eight Tānoa places on the site's management trust, but they thought the group was too large and put forward only two representatives.³⁵⁶

24.12.4 Conclusion, findings, and recommendation

This is a case that calls into question the robustness of the Crown's process for holding surplus Crown land in advance of Treaty settlements. In this case, the criticism is not only of the holding process, but also of the decision-making that lay behind choosing to transfer Piriaka School land and buildings to the Hinengākau Development Trust before all claims and interests in the property were fully ventilated and assessed.

The Crown's process for holding surplus land is complex, and has changed over time. It is riddled with jargon, and novices in the field are likely to have a hard time understanding it. We looked at the communications between Land Information New Zealand, the Office of Treaty Settlements, and claimants and found them dense and difficult, with use of specialist language unlikely to provide clarity to ordinary readers.

The claimants in this particular case told us that they felt uninformed and bypassed. They knew nothing about the



Grace Le Gros, 2008. When Piriaka School was closed in 1997 and the land declared surplus Crown land, Mrs Le Gros and Cedric Tānoa applied on behalf of the uri of Tānoa and Te Whiutahi to have the site put in a land bank. The Crown, however, declined their application and sold the land to the Hinengākau Development Trust, a subsidiary of the Whanganui River Māori Trust Board. Mrs Le Gros said that due consideration was not given to the interests of the hapū and that the process lacked transparency.

'Whanganui claim-specific land bank', and did not understand its implications for their application to have Piriaka School land-banked for their claim. The Office of Treaty Settlements wrote them numerous letters, which they did not answer. The letters talked about the Whanganui River Māori Trust Board's role in the Whanganui claim-specific land bank, but not in a way that was likely to assist people who had no background or experience in the field.³⁵⁷ There is also no evidence to suggest that the Office of Treaty Settlements sought an alternative means

of communicating with the claimants when their letters went unanswered. The result was that the Office of Treaty Settlements did not communicate effectively with the claimants about their application to land-bank the school.

The Tānoa whānau, however, did communicate to the Office of Treaty Settlements their clear view that neither the Whanganui River Māori Trust Board nor the Hinengākau Development Trust represented them.³⁵⁸ The Office of Treaty Settlements took no steps to address that situation, even though one of its policy analysts advised that it would be inappropriate to vest the land in the Hinengākau Development Trust while the interests of the claimants from the uri of Tānoa Te Uhi and Te Whiutahi were yet to be determined. She recommended that discussions with both parties take place to consider vesting the site in a wider iwi grouping or eponymous ancestor.³⁵⁹ The Crown did nothing to facilitate such discussions. Officials basically left it to Mr Tānoa: a letter to Cedric Tānoa in July 1998 acknowledged his concerns about the Whanganui River Māori Trust Board representing his interests, but said that the Crown accepted the validity of the board's rohe and mandate to represent Whanganui Māori. The letter advised Mr Tānoa to contact the trust board.³⁶⁰

As we said in our Waimarino chapter, many claimants have well-founded claims concerning land in the Waimarino purchase – including Piriaka township land. We approve of the Crown's intentions in returning the Piriaka School site to Whanganui Māori. However, we are concerned that:

- ▶ the community of Whanganui Māori claimants neither understood nor approved the Crown's process for holding land pending Treaty settlements;
- ▶ the Crown did not manage its process in a way that was flexible and responsive to situations as they arose;
- ▶ it was not appropriate for the Whanganui River Māori Trust Board to be the sole conduit for putting land in the land bank;
- ▶ the Crown did not ensure it understood the tribal history of the area sufficiently to adjudicate whose interests were strongest, and whose Treaty rights were most infringed, in the area where Piriaka School was situated;

- ▶ the Crown did not convene a hui at which it would have been possible to ventilate the representation issues raised by Mr Tānoa and Mrs Le Gros, facilitate community understanding about the whole situation, and assist the interested parties to agree on a way forward;
- ▶ before transferring the property to the Hinengākau Development Trust, the Crown did not ensure that it would operate in a way that reflected the various interests in the land and buildings of Piriaka School, and that the interest-holders were happy with the arrangements; and
- ▶ the Crown did not properly evaluate the risk of choosing to return Piriaka School – a place with both a rich and complex tribal history, and strong community ties – before a full inquiry into all the claims.

It is very important that the Crown does not economise on process in settling Treaty claims. Conspicuous fairness is a vital attribute, without which the Crown runs a serious risk of creating a situation where – as here – the return of the school has not allayed the sense of grievance in part of the claimant community. In order to effect settlement in the true sense, we recommend that the Crown ensure that all its processes are transparent, well communicated, and fair.

We consider that the Crown's dealings with Piriaka School were flawed in Treaty terms and in ways that invoke its duty to uphold te tino rangatiratanga and the related value of whanaungatanga (kinship). On the topic of whakawhanaungatanga (relationships), the Tribunal said in the *Tamaki Makaurau Settlement Process Report*:

The purpose of settlements is to enable Māori to feel less aggrieved by Crown conduct of the past. Peace and reconciliation is not the obvious outcome when significant numbers are aggrieved anew by a process that does not respect them.³⁶¹

It also said:

If its well-intentioned conduct towards one creates further grievances for others, then the process has gone awry. Instead of achieving reconciliation in fact, we are heading in the other direction.³⁶²

These comments apply here – although, happily, the numbers affected were fewer. Because the Crown did not take the time to ensure good communication about what it was doing, and to engage fully with the genuine interests of those who opposed the transfer of the school to the Hinengākau Development Trust, there are members of the Whanganui claimant community for whom the return of Piriaka School made matters worse rather than better. Furthermore, their relationships with whanaunga (kin) were made more difficult. We think these outcomes were avoidable, and in failing to take the necessary steps to avoid them the Crown breached the Treaty principle of active protection.

The Crown has already amended its processes for returning Crown assets to entitled claimants, but we recommend that it spare no effort to ensure that good communication, and conspicuous fairness and openness, attend any such future undertakings.

24.13 ŌHURA SOUTH B2B2C2 AND THE PUKEHOU ROAD QUARRY

24.13.1 Introduction

In 1985, the Taumarunui County Council granted resource consent for a private quarry next to Ōhura South B2B2C2, a 120-acre block of Māori-owned land across the Whanganui River from Kākahi. Two historic urupā and an ancient pā are located on the block. The claimants, who are also shareholders in the ahu whenua trust that manages the block, told us that they were not consulted by local authorities or the Māori Trustee about the creation of the quarry or its ongoing operations. They alleged that the quarry had eroded their land and threatens their urupā.

24.13.2 What the claimants said

Ngāti Manunui (Wai 998), Ngā Uri o Tūtemahurangi and Waikura, and Ngā Uri o Te Tarapounamu (Wai 1203) all claimed that the quarry has had a devastating impact on Ōhura South B2B2C2 by increasing flooding and erosion on the block. The flooding threatens their urupā – a large and ancient burial mound – and makes it extremely difficult for the owners to farm their land.³⁶³ The claimants

alleged that the Taumarunui County Council and, later, Horizons Regional Council, failed to consider Māori interests or adequately consult the owners of Ōhura South B2B2C2 before granting consent for the quarry.³⁶⁴ The claimants argued that the Crown is ultimately responsible for this state of affairs because it delegated its environmental management responsibilities to local authorities, but then did not ensure that the authorities fulfilled their statutory and Treaty obligations to take account of Māori interests.³⁶⁵ Ngāti Manunui and the uri of Tūtemahurangi and Te Tarapounamu have been prejudicially affected.³⁶⁶

The claimants also argued that the Tongariro Power Development Scheme exacerbated the erosion caused by the quarry. We acknowledge this claim, but did not receive the hydrological evidence necessary to enable us to ascertain whether the Tongariro Power Development Scheme affected river flows so as to worsen flooding on Ōhura South B2B2C2.³⁶⁷

Ngāti Manunui also alleged that, when the Māori Trustee managed Ōhura South B2B2C2 between 1982 and 1998, his poor performance on behalf of the lessors led to a deterioration in the state of the land, and an accumulation of debt.³⁶⁸

Ngāti Hāua's claim mentioned gravel extraction and the associated erosion of Ōhura South B2B2C2 as an issue, but did not submit a detailed claim in relation to this site.³⁶⁹

The Crown made no submissions on the Pukehou Road quarry.

24.13.3 The Pukehou Road quarry

In 1985, the Taumarunui County Council gave its consent to the establishment of a quarry on block Ōhura South B2B1, directly west and downstream of the Māori-owned block Ōhura South B2B2C2.³⁷⁰ Both blocks are located on a river flat, across from the steep cliffs of Kākahi. The meandering Whanganui River is constantly reshaping this land. In times of flood, water roars down the river, hits the steep cliffs of Kākahi and spills out over Ōhura South B2B2C2 and Ōhura South B2B1 (see map 24.6).³⁷¹

We know little about how the quarry was established, or how much consultation occurred between the county council and the claimants during the consent process.

Lois Tūtemahurangi, a witness for both claimant groups, contended that the county council may have told the Māori Trustee about the quarry development, but if so the Trustee failed to inform the block's advisory trustees.³⁷² Ms Tūtemahurangi, an advisory trustee for the block during this time, told us that she heard nothing about the proposed quarry.³⁷³ The council received at least 28 objections to the quarry, but none from the owners of Ōhura South B2B2C2 or Te Iti a Mōtai Trust, which now manages the block on behalf of the owners.³⁷⁴

A neighbouring farmer, whose property was immediately west of the quarry, objected to the quarry application, and commissioned an engineer's report to support his submission. In his report, the engineer stated the quarry would likely have the following effects:

- ▶ The proposed quarry lakes would decrease the west river bank's resistance to water flow so that, when the river was in flood, the main river flow would quickly divert into the quarry lakes, and then spill over onto the neighbouring properties. The course of the river would change through this process, because the new path carved by the floodwaters would become the main river channel.
- ▶ Erosion was likely to occur unless the river bank was fortified with protective embankments.³⁷⁵

Recognising the quarry's likely impact, the county council made conditions when granting planning consent: the quarry owner must install protective gabions at locations that were vulnerable to erosion; fill and protect low-lying land downstream from the quarry; and create an outlet from the lakes to the river in the event of a flood. The original quarry owner fulfilled none of these conditions.³⁷⁶

Between 1982 and 1998, Ōhura South B2B2C2 was administered by Te Iti a Mōtai Trust, with the Māori Trustee as responsible trustee and five or six owners as advisory trustees.³⁷⁷ In 1998, the owners agreed to remove the Māori Trustee as the responsible trustee, and instead the owners nominated eight responsible trustees and six advisory trustees. Te Iti a Mōtai Ahu Whenua Trust continues to administer Ōhura South B2B2C2 on behalf of the 148 owners.³⁷⁸

Although no longer a responsible trustee, the Māori Trustee still owns interests in Ōhura South B2B2C2 that it purchased as part of the conversion programme. Established under the Maori Affairs Act 1953, the conversion programme aimed to reduce the number of owners on Māori land titles. When an owner with 'uneconomic' interests in Māori land died, the Māori Land Court could vest his or her interests in the Māori Trustee. If owners gave their consent, the Māori Trustee could also acquire any other Māori land, whether or not it was 'uneconomic'.³⁷⁹ It was this second avenue that the Māori Trustee used to acquire shares in Ōhura South B2B2C2. In 1970, it purchased 0.2117 shares in the block, or 4.5 per cent of the total shareholding, from owner Tēpa Takiwā.³⁸⁰ In accordance with the Māori Affairs Amendment Act 1987, the Trustee still retains shares in Ōhura South B2B2C2.³⁸¹ The intention is to return the shares to the owners of Ōhura South B2B2C2, but only once the revenue generated by the shares covers their value.³⁸²

24.13.4 The quarry's effects on Ōhura South B2B2C2

The river flats opposite Kākahi have always been subject to the changing flow of the Whanganui River. They are, in effect, in a floodplain. Even before the quarry was established, a nearby farmer complained that around 24 acres of his original title was now on the opposite side of the river.³⁸³ The 1985 engineer's report also said that the ground levels at the proposed quarry site indicated that the river used to run through the centre of the block.³⁸⁴ The claimants acknowledged that other factors contributed to the rapid flooding and erosion of Ōhura South B2B2C2, and identified the Tongariro Power Development Scheme as a key contributor.³⁸⁵

Certainly, it is unlikely that the quarry is the sole cause of the flooding and erosion problems on the block. However, a second engineer's report, commissioned in 1999, indicates that the quarry was a contributing factor.³⁸⁶ Before the quarry was established, the engineer found that floodwaters flowed over the grass and no significant erosion occurred because of the even gradient. However, as a result of the extraction of material from the quarry, the land there became lower, creating a decline for the river



The Tūtemahurangi whānau at a Tribunal hearing, Whararua Marae, Taumarunui, October 2008. Lois Tūtemahurangi (second from left) described the importance of Ōhura South B2B2C2 to Ngāti Manunui and the uri of Tūtemahurangi, Waikura, and Te Tarapounamu. She said that the Pukehou quarry had damaged their land. An engineer's report, commissioned in 1999, indicated that the quarry contributed to flooding and erosion on the block. Eva Tūtemahurangi (second from right) gave evidence on how the King Country Electric Power Board took her father's land for a depot in 1947. Her father, Āperahama Tūtemahurangi, owned one of six sections in the Ōhura South N2E3G3 block. She said her father came back from serving in the Second World War with the intention of building a house on the land. Instead, he received a notice that the land was being taken. Ms Tūtemahurangi said her father's objections were ignored and that the compensation was 'a pittance'.

to flow down when it breached its banks. He found that the pressure of water travelling along this path had eroded Ōhura South B2B2C2 at the point where it met the quarry lakes, and the eroded areas were regressing upstream towards the river bank.³⁸⁷ He said that none of the protective measures outlined in the 1985 planning consent had been implemented and, after re-evaluating the site, he considered that remedial measures were 'now a matter of extreme urgency'.³⁸⁸

In her brief of evidence, Ms Tūtemahurangi supported the engineer's findings:

the River is now rapidly eroding the land within B2B2C2. Very soon it will wipe out our ancient urupa at Te Arikipakewa and Te Arikiteuru and cut a new channel across our remaining land. We had a garden along the river edge only 12 years ago that is now in the middle of the new river bed. The current course of the river has meant a large part of the block is now on the opposite side of the river, separate from the main portion.³⁸⁹

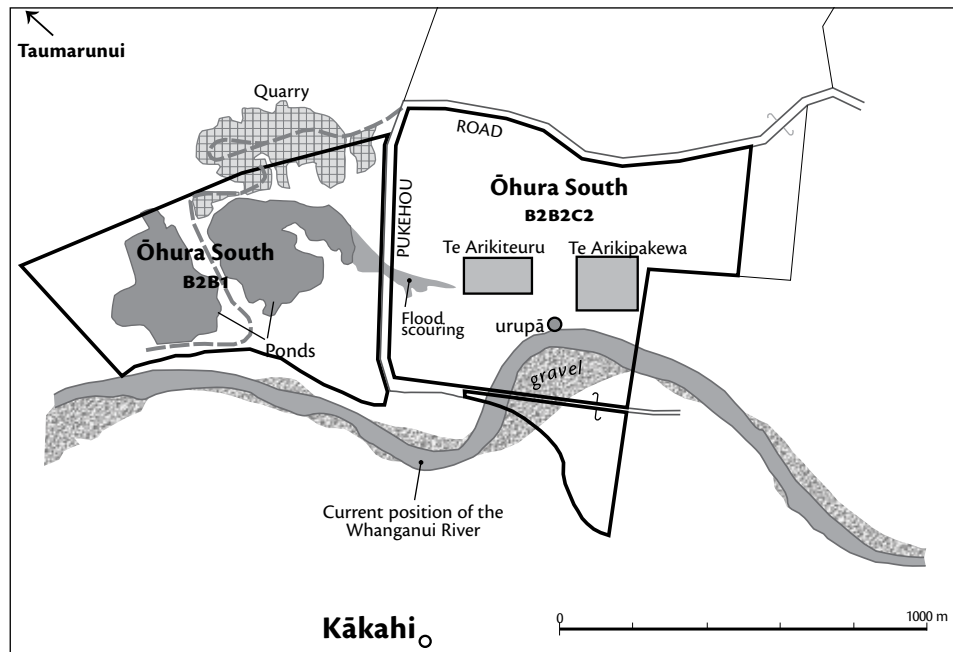
She told us that Te Iti a Mōtai Ahu Whenua Trust took the matter to the Environment Court in 1999 in an attempt

to have the 1985 conditions of consent enforced. The court appointed a mediator to work with the trust and Ruapehu District Council, but the parties were still unable to reach a resolution. The claimants also wrote to Georgina Te Heuheu (a list member of Parliament), Tariana Turia (member for Te Tai Hauāuru), and Department of Conservation officials about the lack of remedial action at the quarry.³⁹⁰ We received no evidence to suggest the Crown monitored environmental management in northern Whanganui, or took steps to actively protect Ōhura South B2B2C2 after it received notice of the problems.

Since at least 1998, Te Iti a Mōtai Ahu Whenua Trust, Ruapehu District Council (which owned the quarry from 1996 until 2010–11),³⁹¹ and Horizons Regional Council have engaged in formal and informal discussions about ways to minimise the quarry's environmental impact. Te Iti a Mōtai Ahu Whenua Trust and Horizons do not see eye to eye about the problems. The trust's focus is measures to protect their land against erosion, while Horizons seeks a cost-effective solution that reflects hydrological realities in the floodplain.

Allan Cook, the group manager of operations for Horizons Regional Council, told us that, in 2001, the

Map 24.6: Ōhura South B2B2C2 and the Whanganui River. The original flow of the river, as surveyed in 1964, travels well south of the current path of the river.



parties agreed that major diversion works were not practicable or affordable. Instead, they agreed to a low level of intervention including gravel extraction and relocation, and vegetation clearance to slow the rate of erosion on Ōhura South B2B2C2. During the resource consent application process, Horizons received a number of objections from the community and decided to withdraw the proposal.³⁹²

Horizons want gravel extracted from the river to be used to fund the remedial work. Under cross-examination, Mr Cook explained that this is based on the principle that those who benefit from remedial works should bear the costs.³⁹³ The claimants opposed these suggestions on the grounds that the gravel in the Whanganui River is their property. As Lois Tūtemahurangi explained under cross-examination:

What we have been told is that should metal be extracted from that beached area, we would receive nothing, that this would be put towards the cost of fixing it. I do not think that

is fair because we need pūtea so that this land can be brought back to its former glory. In the floods between 1997 and 2001 all the fencing has been wrecked, the land has been scoured out. We need pūtea to make that land productive again and we saw that if we were paid some form of royalty from that metal that would enable us to do that, rather than the metal just being taken away, crushed, sold off to pay for the total cost of that fixing up.³⁹⁴

Horizons says that its approach is all it can manage in terms of cost, and it seeks the agreement of all interested parties before applying again for resource consent to undertake the work.³⁹⁵ There have been meetings at Kākahī marae, and agreement has been promised in most quarters but, thus far, unanimous approval has proved elusive.

24.13.5 The Māori Trustee's management of Ōhura South B2B2C2, 1982–98

In 1982, the Māori Land Court vested Ōhura South B2B2C2 in the Māori Trustee with a group of owners as advisory

trustees.³⁹⁶ Once the Māori Trustee was in charge, though, he did not adequately protect the owners' interests, and failed to enforce two separate lease agreements. During the early 1980s, the farmer who was leasing Ōhura South B2B2C2 breached the terms of the lease by not maintaining fences, fertilising, or eradicating weeds. The owners raised their concerns with the Māori Trustee, but he 'did nothing'.³⁹⁷ The owners felt compelled to enforce the lease agreement themselves, and they got the Māori Land Court to remove the lessee.³⁹⁸ Ms Tūtemahurangi also said that the Māori Trustee failed to ensure that a second lessee kept up his lease payments, which cost the owners around \$40,000.³⁹⁹

24.13.6 Conclusion, findings, and recommendations

Pukehou Quarry should never have been permitted, given the dynamic river environment with pre-existing flooding issues for landowners, plus an engineer's report that clearly highlighted the risks the quarry would bring to the river environment, and to Ōhura South B2B2C2. Perhaps the risks could have been mitigated if the council had managed and monitored the conditions it imposed on the consent. It did not. Over the years, the level of the quarry land has gradually lowered with the extraction of thousands of tons of metal. The result is acceleration of the river flow when it is in flood; accompanying vortex effects and scouring of Ōhura South B2B2C2; and much slower drainage of floodwater than when floods occurred in the days before the quarry.

Raising the level of the quarry land to where it was previously is not feasible, so other remedial measures have been explored. Horizons has accepted responsibility for improving the situation, but not at any cost. Its first attempt to seek resource consent to ameliorate the erosion and flooding problems failed because there was no consensus among those with an interest in the matter. Horizons withdrew its application. It has since tried again to initiate a resource consent process, but this time wants parties to sign a memorandum of agreement before making the application. It does not want the process derailed by disagreement after it is initiated, because that would be too expensive. Some of the relevant parties have

Ngārahuarau

Previous generations called the area now known as Ōhura South B2B2C2 'Ngārahuarau', perhaps after a giant taniwha that lived in the nearby river. Lois Tūtemahurangi told us about its historic and cultural importance to Ngāti Manunui and the uri of Tūtemahurangi, Waikura, and Te Tarapounamu:

Ngarahuarau . . . is across the river from Kakahi, in the Ōhura South B Block. This was a traditional kainga of Ngāti Manunui and of our tipuna, Tutemahurangi. Within the lands of Ngarahuarau is the ancient fort of Ngāti Hotu, known as Te Arikipakewa, and which is now a wāhi tapu of Ngāti Manunui.

Te Arikipakewa (or Te Arika Pakewa) was one of the five Ngāti Hotu pā attacked by the joint forces of Ngāti Tūwharetoa and Whanganui during a famous battle known as Whataraparapa, or 'Staging of the Feet'.¹

yet to sign, for a plethora of personal and political reasons. Meanwhile, the flooding and erosion continue, and farming efforts on Ōhura South B2B2C2, and its ancestral burial mounds, remain in jeopardy.

The claimants are in an invidious position, deriving little economic benefit from their land, and unable to exercise kaitiakitanga as they would wish.

The Crown, meanwhile, with its Treaty duty of active protection of the land and interests of tangata whenua, is nowhere to be seen. It delegated environmental management to local authorities, and did not monitor their performance in protecting Māori landowners' interests. If the Crown had fulfilled its Treaty duty, and ensured that Māori interests were protected, the quarry would not have been established. At the very least, the conditions would have been enforced. The Whanganui River would today be taking its natural course, and the owners of Ōhura South



The Whanganui River at Kākahi in the nineteenth century. The river's tendency to vary its course and form gravel bars is apparent.

B2B2C2 would have had to put up with floods and changes in the river's course as they always had. They would, though, have been spared the exacerbating effects of the new land levels that increase water speed and encourage erosion and flooding.

In light of these findings, we recommend that the

Crown work with Horizons and the other interested parties and help to fund both the process for bringing about the remedial works, and the remedial works themselves.

As regards the part the Māori Trustee played in managing Ōhura South B2B2C2 for more than a decade, we acknowledge the claimants' genuine sense of grievance

about his poor oversight. Unfortunately, though, the case against the Māori Trustee here is too sketchy to enable us to make findings about precisely what happened, and where fault lay.

Notes

1. Document A55 (Clayworth), pp 8, 31, 79; doc A60 (Marr), pp 252, 455, 511–512
2. Submission 3.3.83, pp 12, 21
3. Ibid, p 12
4. Ibid, pp 10, 11, 13
5. Ibid, pp 8, 11–12
6. Submission 3.3.68, pp 31, 33
7. Submission 3.3.126, p 19
8. Document 14 (Stafford), p 6
9. Document J1 (Kereopa), pp 2–3
10. Document A114 (Young and Belgrave), p 120; doc J1 (Kereopa), p 6; doc J1(b), slide 8
11. Waikato–Maniapoto Native Land Court, partition order, Ōhura South A3E2C3B3C2B, 27 July 1917 (doc 14 (Stafford), p [19])
12. Ibid, pp [19]–[21]; Waikato–Maniapoto Māori Land Court, partition order, Ōhura South A3E2C3B3C2C2B1A, 2 June 1921
13. Document J15 (Crown supporting documents), pp [46]–[48]
14. Document A114 (Young and Belgrave), p 146
15. ‘Notice of Intention to take land for an Aerodrome’, 20 December 1962, *New Zealand Gazette*, 1962, no 81, pp 2290–2291; ‘Land taken for an Aerodrome in Block XIII, Tuhua Survey District, Taumarunui County’, 1 November 1963, *New Zealand Gazette*, 1963, no 73, p 1798
16. Document A114 (Young and Belgrave), p 159; doc A114(b) (Young and Belgrave addenda), p 6
17. Document A114 (Young and Belgrave), p 159
18. Document J15 (Crown supporting documents), p [47]
19. Document A114 (Young and Belgrave), p 148; ‘Taumarunui Airport Could be Built for £22000’, *Taumarunui Press*, July 1964 (doc J15 (Crown supporting documents), p [50])
20. Document A114 (Young and Belgrave), p 148
21. Ibid, pp 149–150; ‘Land Taken for Road in Block XIII, Tuhua Survey District, Taumarunui County’, 21 January 1970, *New Zealand Gazette*, 1970, no 4, p 96
22. Document A114 (Young and Belgrave), p 146; ‘Declaring Land Taken for an Aerodrome and for Road’, 16 January 1970, *New Zealand Gazette*, 1970, no 7, p 191 (doc J15 (Crown supporting documents), p [44])
23. Document J1 (Kereopa), p 7; doc J1(b) (Kereopa), slide 8
24. Document J1 (Kereopa), p 7
25. Ibid
26. Document A114 (Young and Belgrave), pp 146–147, 153–154; Public Works Act 1928, s18; Public Works Amendment Act 1948, s14
27. Transcript 4.1.11, p 126
28. Document A114 (Young and Belgrave), p 148; ‘Taumarunui Airport Could be Built for £22000’, *Taumarunui Press*, July 1964 (doc J15 (Crown supporting documents), p [50])
29. Document A114 (Young and Belgrave), pp 146, 156
30. Ibid, p 147
31. Ibid
32. Ibid, p 150
33. Ibid, p 152
34. Ibid
35. Ibid, pp 152–153
36. Ibid, p 153
37. Document J1 (Kereopa), p 5
38. Document J15 (Crown supporting documents), p [51]
39. Document 14 (Stafford), p 7
40. Document 16 (Wi), p 12. See also doc 14 (Stafford), p 7; doc A114 (Young and Belgrave), pp 140–141.
41. Document A114 (Young and Belgrave), p 156
42. See section 23.3.1(5) on ‘compensation for public works’
43. Document A114 (Young and Belgrave), pp 157–159
44. Ibid, p 158
45. Ibid, pp 147, 161–162
46. Ibid, p 161
47. Ibid, pp 163, 164
48. Ibid, p 163
49. Waitangi Tribunal, *Tauranga Moana, 1886–2006: Report on the Post-Raupatu Claims*, 2 vols (Wellington: Legislation Direct, 2010), vol 1, p 292
50. Document 16 (Wi), pp 8–9, apps c, d. Although Ngāti Urunumia were awarded 100 acres in 1892, it appears that they received about five acres more. See also LINZ, SO 13980, SO 10370, SO 13842.
51. Document A114 (Young and Belgrave), p 132
52. Submission 3.3.68, p 25
53. Ibid, pp 13–14, 16–17
54. Ibid, pp 23–24
55. Ibid, p 27
56. Submission 3.3.83, pp 14–15
57. Document A114 (Young and Belgrave), p 88; doc A59 (Oliver and Shoebridge), pp 48–59
58. Document J14 (Turu), p 7
59. Ōhura South A1 certificate of title (doc 16 (Wi), pp 6–8, app c); doc A59 (Oliver and Shoebridge), pp 51, 54, 55; doc A114 (Young and Belgrave), pp 87–88
60. Document A114 (Young and Belgrave), pp 132–136; doc A114(b) (Young and Belgrave addenda), p 1. Tininga recorded her hapū as Ngāti Hari in the 1908 electoral roll. We refer to Tūtahanga Tininga Hinerau as ‘Tininga’ as this is how the claimants referred to her in their evidence: doc J14 (Turu), p 7; doc J1 (Kereopa), p 7; doc J3 (Canterbury), p 3.
61. ‘Notice of the Taking and Laying-off of a Road’, 25 February 1907, *New Zealand Gazette*, 1907, no 25, p 947; ‘Proclaiming a Road-line laid out through Subdivisions of Ohura South and Rangitoto–Tuhua Blocks to be a Public Road’, 6 May 1918, *New Zealand Gazette*, 1918, no 68, p 1762

62. Document A67 (Shoebridge), pp 36–37; doc A114 (Young and Belgrave), p 131
63. Document A114 (Young and Belgrave), pp 131–134
64. Ibid, pp 131–132, 134–135
65. Document A59 (Oliver and Shoebridge), p 95
66. Document A114 (Young and Belgrave), p 131; doc A59 (Oliver and Shoebridge), p 97
67. Document A67 (Shoebridge), p 35
68. Document A114 (Young and Belgrave), pp 132–133
69. Ibid, p 133
70. Waikato–Maniapoto Native Land Court, partition order for Ōhura South A1B1, 19 February 1919; Sommerville to the Registrar, Waikato–Maniapoto Native Land Court, 21 December 1918, MLC-WG W1645 248 3A/9386, Archives New Zealand, Wellington
71. Document A114 (Young and Belgrave), pp 134–135
72. Document 14 (Stafford), p 6
73. Document J3 (Canterbury), p 3
74. Tūtahanga Tininga Hinerau was the grandmother of Veronica Canterbury and Terry Turu, and the grandmother of Amelia Kereopa on her whāngai side: doc J1 (Kereopa), p 2; doc J1(a), pp 2–3; doc J14 (Turu), pp 7, 12–13; doc J3 (Canterbury), p 3.
75. Submission 3.3.83, p 15
76. Applications to buy Ōhura South A1B, 24 October 1912, 20 October 1914, 19 February 1919, MLC-WG W1645 248 3A/9386 and MLC-WG W1645 259 3A/13370, Archives New Zealand, Wellington
77. President of the Waikato–Maniapoto Māori Land Board to Howarth, dated 6 February 1914, MLC-WG W1645 248 3A/9386, Archives New Zealand, Wellington
78. Document A114 (Young and Belgrave), pp 132, 134
79. Ibid, p 136
80. Ibid, p 133
81. Ibid, pp 135–136
82. Ibid, p 136
83. Ibid
84. Document J3 (Canterbury), p 3; doc 14 (Stafford), p 6; doc J14 (Turu), p 7
85. Submission 3.3.68, p 27
86. Ibid
87. Submission 3.3.83, p 22
88. Ibid, p 23
89. Ibid
90. Submission 3.3.68, p 33
91. Ibid, p 35
92. Memorandum 3.4.103, p 1
93. Ibid, p 2
94. Document 16 (Wi), p 13
95. Memorandum 3.2.564, app 1; doc 16 (Wi), p 13
96. Memorandum 3.2.564, app 1
97. Ibid
98. Memorandum 3.2.556, pp 4, 6; memo 3.2.564, pp 2–3; memo 3.4.70, p 1
99. Submission 3.4.103, pp 1–2
100. Document 16 (Wi), p 13
101. Ibid, p 14
102. Ibid
103. Ibid
104. Ibid, pp 13–14
105. Submission 3.3.83, pp 16–17; doc J14 (Turu), p 6
106. Submission 3.3.82, p 4
107. Ibid, p 6
108. Ibid, p 8
109. Ibid, pp 10–11
110. Ibid, pp 8–9, 16–17
111. Ibid, pp 18–19
112. Submission 3.3.126, p 4
113. Document A57 (Cleaver), p 234
114. Ibid, p 235
115. Ibid, p 236
116. Ibid, p 35
117. Ibid, pp 235–236
118. Ibid, pp 234, 236
119. Ibid, p 237
120. Ibid, p 238
121. Ibid
122. Ibid, pp 238–239
123. Ibid
124. Ibid, pp 241–242
125. Ibid, p 240
126. Ibid, p 243
127. Ibid
128. Document A57 (Cleaver), p 246; ‘Land taken for the Purposes of a Hospital’, 23 December 1916, *New Zealand Gazette*, 1917, no 4, pp 16–17
129. Document A57 (Cleaver), pp 247–250
130. Ibid, pp 244–245
131. Ibid, pp 245–246
132. Document J8 (Rupe), p 21; transcript 4.1.11, p 16
133. Transcript 4.1.11, p 16; doc J8 (Rupe), p 21
134. Document J8 (Rupe), p 21
135. Ibid
136. Document A114 (Young and Belgrave), p 232; transcript 4.1.12, p 214. Ōhura South N2E2 was partitioned in 1910. See Otorohanga Native Land Court, minute book 51, 7 June 1910, fols 329–330; doc A57 (Cleaver), pp 233–236; doc A160(a) (Whanganui mapbook), plate 37.
137. Document K6(b) (Jones), p [5]
138. Ibid, p [6]
139. Transcript 4.1.12, p 214
140. Document A57 (Cleaver), pp 247, 249
141. Ibid, pp 249–250
142. Ibid, p 250
143. Submission 3.3.82, p 15
144. Document A57 (Cleaver), p 250
145. Waitangi Tribunal, *The Wairarapa ki Tararua Report*, 3 vols (Wellington: Legislation Direct, 2010), vol 2, p 791
146. Document A57 (Cleaver), pp 38–39

147. Waitangi Tribunal, *The Wairarapa ki Tararua Report*, vol 2, p 790
148. Document J9 (Rupe), p 7; doc A114 (Young and Belgrave), pp 229, 248; doc K15 (Ngāti Hāua site visit booklet), p 17
149. Document K6(a) (Jones supporting documents), pp [9]–[10]
150. *Ibid*, pp [13]–[14]
151. See, for example, doc J6 (Herbert), pp 5–6; doc K11 (Hikaia), p 22, 23–24; doc J8 (Rupe), p 4; doc K8 (Turner), p 5.
152. Claimant counsel only mentioned Te Peka marae briefly. Counsel for Ngāti Rangatahi highlighted the iwi's close affiliations to Te Peka marae, and also raised rating issues in their final statement of claim, opening submissions, and closing submissions but did not link these issues to the second Te Peka site: claim 1.2.4(b), p 8; submission 3.3.40, pp 8–9; submission 3.3.84, pp 10–11, 32–33, 37–39. Counsel for Ngāti Hāua raised their connections to Te Peka, but acknowledged that Ngāti Hekeāwai has primary rights to the land: submission 3.3.102, p 13, submission 3.3.41, p 9. Ngāti Hekeāwai counsel failed to distinguish between the first Te Peka site and the second marae, focusing on the hospital site taking but then referencing evidence that relates to the second Te Peka marae: submission 3.3.38, p 9; claim 1.2.9(a), pp 2–3; submission 3.3.82, pp 7–9. For claimants' evidence see transcript 4.1.11, p 139 for Robert Herbert's explanation of links to Te Peka and transcript 4.1.12, p 30 for Kevin Amohia's explanation of rights over Te Peka – he states that Ngāti Hāua and Ngāti Hekeāwai are 'the same people' and that he sees nothing wrong in returning the land to Ngāti Hekeāwai.
153. Document K15 (Ngāti Hāua site visit booklet), p 17; doc K8(a) (Turner supporting documents), p [23]
154. Document K11 (Hikaia), app, p 27; doc J8 (Rupe), p 4
155. Document A57 (Cleaver), pp 237–239
156. Document K8 (Turner), p 5; doc K8(a) (Turner supporting documents), p [23]
157. Document J10 (Wilson), pp 2, 7; doc J11 (Bell), p 7; doc K11 (Hikaia), p [72]; Bruce Biggs and Pei Te Hurinui Jones, *Nga Iwi o Tainui* (Auckland: Auckland University Press, new edn, 2004), p 100
158. Document J13 (Wright), p 3; doc A114 (Young and Belgrave), p 229; doc K15 (Ngāti Hāua site visit booklet), p 17. Christina Tiria Jones and Bryan Wilson give Reu Hikaia's correct name as Nukuraerae: doc K6(b) (Jones), p 3; doc J10 (Wilson), p 5.
159. Document J10 (Wilson), pp 8–9
160. *Ibid*, pp 2–3
161. *Ibid*, pp 7, 9, 19
162. *Ibid*, p 9
163. *Ibid*
164. Document A114 (Young and Belgrave), p 247
165. *Ibid*, p 231
166. By that time, the boundary between Taumarunui county and Taumarunui borough had been shifted, and Te Peka lands were governed by the Taumarunui Borough Council. See 'Boundaries of County and Borough of Taumarunui Altered', 25 February 1959, *New Zealand Gazette*, 1959, no 12, p 236; doc A114 (Young and Belgrave), p 247.
167. Document K6(b) (Jones), p [8]
168. Document A114 (Young and Belgrave), p 230
169. Document K6(b) (Jones), pp [7]–[8]
170. Document A114 (Young and Belgrave), pp 231, 246–248; doc K8 (Turner), p 5
171. Document K8 (Turner), p 5
172. Actually £65 5s 4d for 1964–1965 and £65 8s 8d for 1965–1966. See document A114 (Young and Belgrave), p 248.
173. Document A114 (Young and Belgrave), p 250. Note: New Zealand adopted the decimal currency in July 1967, and the meeting of owners that agreed to sell the marae block was held three months later (October 1967).
174. Document A114 (Young and Belgrave), pp 248–249
175. *Ibid*, p 249; Māori Land Court records, ownership schedule, Ōhura South N2E3G3, lot 11 B4A, 30 January 1968
176. Document A114 (Young and Belgrave), p 250
177. *Ibid*
178. *Ibid*, p 251
179. *Ibid*, pp 251–252
180. *Ibid*, pp 250–252
181. *Ibid*, pp 248–249
182. J K Hunn, *Report on the Department of Maori Affairs* (Wellington: Government Printer, 1961), p 60 (Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims, Stage One*, revised ed, 4 vols (Wellington: Legislation Direct, 2008), vol 2, p 787)
183. Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 788; see also Wai 1200 RO1, doc G4 (Bayley, Boulton, and Heinz), pp 111–112
184. Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 788; see also Wai 1200 RO1, doc G4 (Bayley, Boulton, and Heinz), p 112
185. Document A114 (Young and Belgrave), pp 249, 251–252
186. Document K11 (Hikaia), p 24
187. Maori Affairs Act 1953, s 311
188. The meeting of owners process in the 1960s was largely unchanged from that discussed in chapter 14. A new statute, the Maori Affairs Act 1953, had replaced the Native Land Act 1909, but serious flaws remained. Once again, a minority of owners could pass a resolution against the wishes of others; a resolution was considered passed if those who voted in favour of the resolution had a larger aggregate share than those who voted against. The quorum requirements were altered slightly under the new Act, but still enabled sales to take place without the involvement of the majority of owners. Owners could still be represented by proxy.
189. Waitangi Tribunal, *The Hauraki Report*, 3 vols (Wellington: Legislation Direct, 2006), vol 3, p 1018
190. Submission 3.3.71, p 23
191. *Ibid*, pp 21–23
192. Submission 3.3.82, p 16
193. *Ibid*, p 15
194. *Ibid*, p 12
195. Electric-power Boards Act 1925, s 81(1). See also Sir Joseph G Ward, 2 December 1918, NZPD, 1918, vol 183, pp 623–633.
196. Electric-power Boards Act 1925, ss 77, 81(1)

197. 'King-Country Electric-Power Board: Notice of Intention to take Land', 17 October 1946, *New Zealand Gazette*, 1946, no 75, p 1653
198. 'Land taken for Electric Works', 9 April 1947, *New Zealand Gazette*, 1947, no 20, pp 453–454; 'Consenting to Land being Taken', 9 April 1947, *New Zealand Gazette*, 1947, no 20, p 459 (doc A114 (Young and Belgrave), p 241)
199. Document A114 (Young and Belgrave), p 243
200. Ibid, p 245
201. Ibid, p 198
202. Ibid, p 198; Helen Reilly, *Switching on the King Country: A Century of Community Achievement* (Wellington: Steele Roberts & Associates, 2010), p 74
203. Document 114 (Tūtēmahurangi), pp 3–4
204. Reilly, *Switching on the King Country*, pp 74, 229
205. Document 114 (Tūtēmahurangi), p 4
206. Document A114 (Young and Belgrave), p 244
207. Otorohanga Māori Land Court, minute book 76, 12 April 1949, fol 21
208. Otorohanga Māori Land Court, minute book 75, 7 February 1949, fol 378; Otorohanga Māori Land Court, minute book 76, 12 April 1949, fol 20
209. Otorohanga Māori Land Court, minute book 75, 7 February 1949, fols 378–379; Otorohanga Māori Land Court, minute book 76, 12 April 1949, fol 20
210. Document A114 (Young and Belgrave), p 243
211. Otorohanga Māori Land Court, minute book 75, 7 February 1949, fol 379 (doc A114 (Young and Belgrave), p 244)
212. Document A114 (Young and Belgrave), p 244
213. Otorohanga Māori Land Court, minute book 76, 12 April 1949, fols 21–22
214. Ibid, fol 22
215. Document 114 (Tūtēmahurangi), pp 4–5; submission 3.3.71, p 23
216. Document A114 (Young and Belgrave), p 243
217. Document A57 (Cleaver), p 59
218. Otorohanga Māori Land Court, minute book 76, 12 April 1949, fol 21
219. Submission 3.3.73, p 56
220. Ibid, p 57
221. Ibid, pp 56–57
222. Ibid, p 57
223. Ibid, p 91
224. Submission 3.3.73, p 57; doc 11 (Le Gros), app s
225. Submission 3.3.73, p 91
226. Submission 3.2.520, pp 2–5
227. Submission 3.2.623, p 1
228. Paper 2.3.95, p 3
229. Document 11 (Le Gros), pp 3, 16; doc F6 (Te Huia, Taiaroa, and Edwards), p 2; doc K14(a), p 3
230. Document A114 (Young and Belgrave), p 215
231. Document A57 (Cleaver), p 193; 'Additional Lands at Taumarunui Taken for the Purposes of the North Island Main Trunk Railway', 17 October 1917, *New Zealand Gazette*, 1917, no 161, pp 3982–3983
232. Document 11 (Le Gros), app s
233. Document A57 (Cleaver), p 193; doc 11 (Le Gros), app q
234. Document 11 (Le Gros), app R; doc A114 (Young and Belgrave), p 216
235. Document A114(e) (Young and Belgrave), p 8
236. Ibid
237. Ibid, pp 8, 9
238. Document 11 (Le Gros), apps s, t
239. Ibid, app u
240. Ibid, app t
241. Ibid, app u
242. Ibid
243. Document 11 (Le Gros), p 29; doc 12 (Le Gros), pp 11–12; 'Land and Property: Landbanks', Office of Treaty Settlements, <http://www.ots.govt.nz/>, accessed 17 September 2012
244. Document 11 (Le Gros), app u
245. Russell Davies, *History of Public Works Acts in New Zealand, including Compensation and Offer-Back Provisions* (Wellington: Land Information New Zealand, 2000), p 64
246. Ibid
247. Maori Affairs Act 1953, s 436(3)
248. New Zealand Railways Corporation Restructuring Act 1990, s 26
249. Document 11 (Le Gros), p 29
250. Document A57 (Cleaver), p 193
251. 'Additional Lands at Taumarunui Taken for the Purposes of the North Island Main Trunk Railway', 17 October 1917, *New Zealand Gazette*, 1917, no 161, pp 3982–3983
252. Waitangi Tribunal, *Te Maunga Railways Land Report* (Wellington: Brooker's Ltd, 1994), p 67
253. Waitangi Tribunal, *The Wairarapa ki Tararua Report*, vol 2, pp 798–799
254. Davies, *History of Public Works Acts in New Zealand*, p 58; Public Works Amendment Act 1982
255. Because this was a new claim, the claimant's position was taken from their final statement of claim (claim 1.2.62) and Albion Bell's brief of evidence (doc N18).
256. See briefs of evidence on behalf of Ngāti Rangatahi for Robert Herbert (doc J6) and Roger Hapeta (Herbert) (doc J7).
257. Claim 1.2.62, p 5. In their statement of claim, Wai 1505 claimants stated that these sections were in block 1, Rangaroa Village. Our research found that these sections were within blocks 11 and v111 instead of block 1.
258. Document N18 (Bell), paras 15–16
259. Map, Ōhura South G (ABWN W5279 8102, box 396, Tar 313, Archives New Zealand, Wellington); doc K8(a) (Turner supporting documents), pp [8], [30]
260. Claim 1.2.62, p 5; doc N18 (Bell), paras 21–26
261. Document N18 (Bell), paras 27, 40–43
262. Ibid, para 28
263. Ibid, para 34
264. Claim 1.2.62, p 5
265. Document N18 (Bell), paras 6–14

266. Ibid
267. See Native townships chapter, section 17.6.2(1).
268. Ōtorohanga Native Land Court, minute book 41, 15 December 1903, fol 359
269. Ibid; Māori Land Court records, ownership schedule, Ōhura South G4c, [date illegible]
270. Ōtorohanga Native Land Court, minute book 41, 15 December 1903, fol 359
271. 'Additional Land in Piopotea Survey District Taken for the Purposes of the North Island Main Trunk Railway', 30 July 1907, *New Zealand Gazette*, 1907, no 67, p 2303; SO 13975
272. 'Additional Land at Taumarunui Taken for the Purposes of the North Island Main Trunk Railway', 18 February 1915, *New Zealand Gazette*, 1915, no 30, p 670
273. 'Declaring Land Acquired for a Government Work at Taumarunui and not required for that Purpose to be Crown Land', 28 April 1970, *New Zealand Gazette*, 1970, no 27, p 802
274. Ibid; SO Plan 13975, LINZ
275. Document A57 (Cleaver), p 194; 'Reservation of Land and Declaration that Land be part of the Taumarunui and Rangaroa Domain', 24 October 1972, *New Zealand Gazette*, 1972, no 92, p 2418
276. Claim 1.2.62, p 5; doc N18 (Bell), paras 21–26
277. Map, Ōhura South G (ABWN W5279 8102, box 396, Tar 313, Archives New Zealand, Wellington); doc K8(a) (Turner supporting documents), pp [8], [30]
278. Document A57 (Cleaver), p 193
279. Ibid. The railway component was enacted through section 106 of the Native Land Act 1873.
280. Ōtorohanga Native Land Court, minute book 58, 21 March 1916, fol 117 (doc A57 (Cleaver), p 193)
281. Submission 3.3.126, p 5
282. Document N18 (Bell), paras 27, 40–43
283. Ibid, paras 28–29
284. Document K8(a) (Turner supporting documents), pp [1], [29], [30]; doc N18 (Bell), paras 21–36; Ōtorohanga Native Land Court, minute book 40, 3 April 1901, fols 12–13
285. Document N18 (Bell), para 35
286. 'Lands Permanently Reserved', 3 October 1931, *New Zealand Gazette*, 1931, no 73, p 2918
287. 'Vesting the Control of a Reserve in the Wanganui River Trust', 17 October 1932, *New Zealand Gazette*, 1932, no 66, p 2144; 'Revoking the Vesting in the Wanganui River Trust of the Control of a Landing Reserve, Town of Taumarunui', 15 May 1933, *New Zealand Gazette*, 1933, no 37, p 1369
288. 'Changing the Purpose of a Reserve in Town of Taumarunui', 27 October 1937, *New Zealand Gazette*, 1937, no 72, p 2407
289. Land Information New Zealand, certificate of title SA705/285, 23 September 1938
290. Claim 1.2.62, pp [1], [3]; doc N18 (Bell), para 8
291. Ōtorohanga Māori Land Court, minute book 77, 5 November 1952, fols 344–345
292. Document N18 (Bell), para 10
293. Ibid, para 14
294. Ibid, para 10
295. Document A158 (Alexander), p 113
296. Document A158(b) (Alexander supporting documents), p 456
297. Ibid, pp 457–458
298. Ibid
299. Ibid, p 458; doc A158 (Alexander), p 114
300. The Soil Conservation and Rivers Control Act was passed in September 1941, establishing the Soil Conservation and Rivers Control Council as the national authority in the control of rivers, the prevention of flood damage, and the control of erosion. Provision was also made for the council to establish local catchment boards to organise and operate soil conservation, river control, and drainage works in a district. Catchment boards were responsible for providing permits and licences for actions concerning waterways, such as gravel extraction. With the reorganisation of local government in the late 1980s, the responsibilities of catchment boards transferred to regional councils: doc A158(b) (Alexander supporting documents), p 325.
301. 'Notice of Intention to Take Land in Block 11, Piopotea Survey District, for Soil-Conservation and River-control Purposes', 6 November 1951, *New Zealand Gazette*, 1951, no 85, p 1679
302. Document A158 (Alexander), p 114
303. 'Land Taken for Soil-conservation and River-control Purposes', 24 March 1952, *New Zealand Gazette*, 1952, no 23, p 394
304. Document A158 (Alexander), p 114
305. Ōtorohanga Māori Land Court, minute book 77, 5 December 1952, fols 344–345
306. Waitangi Tribunal, *The Whanganui River Report* (Wellington: Legislation Direct, 1999), p 235
307. Document N18 (Bell), para 12; doc A158(b) (Alexander supporting documents), p 60; doc A158 (Alexander), p 158
308. Document A158(b) (Alexander supporting documents), p 60
309. Ibid, pp 66–71
310. Ibid, p 72
311. 'Declaring Land Acquired for a Government Work and Not Required for that Purpose to be Crown Land', 22 January 1982, *New Zealand Gazette*, 1982, no 7, p 268
312. Document N18 (Bell), para 12
313. Document A158(b) (Alexander supporting documents), p 78; doc A158 (Alexander), p 163
314. Document A158(b) (Alexander supporting documents), pp 79–80; doc A158 (Alexander), p 163
315. Document A158(b) (Alexander supporting documents), p 81
316. Document N18 (Bell), para 13
317. 'Reservation of Land', 21 September 1984, *New Zealand Gazette*, 1984, no 182, pp 4226–4227
318. Waitangi Tribunal, *The Wairarapa ki Tararua Report*, vol 2, p 789
319. At least two hapū known as Ngāti Hinewai feature in the upriver part of the Whanganui inquiry district. Ngāti Hinewai with claims related to Piriaka are discussed in section 2.4.3(4)(d).
320. Submission 3.3.73, p 63; submission 3.3.99, para 3.1

321. Submission 3.3.73, p 64
322. Memorandum 3.2.520
323. Memorandum 3.2.623
324. Submission 3.4.92, p 2
325. 'Land Taken for a Further Portion of the North Island Main Trunk Railway', 27 May 1905, *New Zealand Gazette*, 1905, no 52, p 1240; submission 3.3.99, p [4]
326. Document A108 (Young and Belgrave), p 36
327. Document 112 (Tānoa), p 17
328. Ibid
329. Document F6 (Te Huia, Taiaroa, and Edwards), p 13
330. Document 12 (Le Gros), app E, p [171]
331. Ibid; memo 3.2.397, p 1
332. 'Piriaka People take on their Water Scheme', *Ruaapehu Bulletin*, 27 July 2010, p 7
333. 'Setting Land apart as a Māori Reservation', 24 October 2012, *New Zealand Gazette*, 2012, no 134, p 3879; Aotea Māori Land Court, minute book 268, 27 June 2011, fol 144 (memo 3.4.92, pp [11]–[12])
334. Memorandum 3.4.92, p [9]
335. Submission 3.3.126, p 5
336. Document 11 (Le Gros), p 21
337. Waitangi Tribunal, *The Wairarapa ki Tararua Report*, vol 2, p 798
338. Submission 3.3.73, pp 77–78
339. Claim 1.2.1(b), p 6
340. Submission 3.3.73, pp 77, 79
341. Submission 3.3.34, p 10; submission 3.3.73, pp 77–78
342. Submission 3.3.73, p 79
343. 'Lands Permanently Reserved', 7 November 1904, *New Zealand Gazette*, 1904, no 90, p 2703
344. Patricia Soar, *Piriaka: The Story of a Main Trunk Settlement: Published to Commemorate the Piriaka School 70th Jubilee 1911–1981* (Taumarunui: Piriaka School Jubilee Committee, 1982), p 3 (doc 11 (Le Gros), app A); 'Closure of Piriaka School (2427) Notice', 11 August 1997, *New Zealand Gazette*, 1997, no 99, p 2326
345. Document 12 (Le Gros), app A, pp [25]–[26]
346. Ibid, app A, pp [25]–[27]
347. Document 12 (Le Gros), p 8; doc 112 (Tānoa), p 22
348. Document 12 (Le Gros), app A, p [28]; claim 1.1.25(1)
349. Document 12 (Le Gros), app A, pp [32]–[34]; transcript 4.1.12, p 81
350. Document 12 (Le Gros), app A, p [37]
351. Document 112 (Tānoa), p 22
352. Document 12 (Le Gros), p 9
353. Ibid, app A, pp [62]–[63]
354. Ibid
355. Aotea Māori Land Court, minute book 95, 13 December 1999, fols 250–251. The following April under the Te Ture Whenua Māori Act 1993, a *Gazette* notice set the land apart 'for the purpose of a marae and a place of learning through Tikanga and Te Reo Māori, for the common use and benefit of the descendants of Hinengakau': 'Setting Apart Māori Freehold Land as a Māori Reservation', 27 April 2000, *New Zealand Gazette*, 2000, no 43, pp 975–976.
356. Aotea Māori Land Court, minute book 100, 21 July 2000, fols 68–69; doc 12 (Le Gros), app A, pp [104]–[105]
357. These letters, obtained at a later date by the claimants under the Official Information Act, mention only that their application for land-banking could not be accepted because the Piriaka School fell within the Whanganui claim-specific land bank over which the WRMTB had a mandate. A very basic and brief explanation of a claim-specific land bank was given, but nowhere did the letters explain why the WRMTB had a mandate. The claimants were also informed they could submit a 'site of significance' application, but were not given any advice on how to do this. We also note that this application was due by 19 June 1998, three days after the date of the letter: doc 12 (Le Gros), app A, pp [37], [38]–[39], [55].
358. Document 12 (Le Gros), app A, p [43]
359. Ibid, app A, pp [66], [77]
360. Ibid, app A, p [55]
361. Waitangi Tribunal, *The Tamaki Makaurau Settlement Process Report* (Wellington: Legislation Direct, 2007), p 13
362. Ibid, p 102
363. Submission 3.3.14, p 14; submission 3.3.70, pp 13–14; submission 3.3.71, pp 26, 28
364. Submission 3.3.70, pp 14–15; submission 3.3.71, pp 28–29
365. Submission 3.3.71, p 26; submission 3.3.14, pp 8–9
366. Submission 3.3.70, p 14
367. Ibid, pp 16, 19; submission 3.3.71, p 27
368. Submission 3.3.70, pp 12–13
369. Submission 3.3.102, p 53; doc K7 (Taumata)
370. Document D17 (Tūtemahurangi), p 7, app A
371. 'Report on Planning Application – Proposed Quarry and Crushing Plant on Wanganui River Flats near Kahahi', doc D17 (Tūtemahurangi), app B, p 2
372. Ibid, p 9
373. Ibid, p 7
374. Ibid, app A, p 5
375. Ibid, app B
376. Ibid, p 8, app A, p 4
377. When the land was initially vested, five owners were established as advisory trustees. However, an additional advisory trustee was appointed by the court in 1989: Tokaanu Māori Land Court, minute book 64, 3 June 1982, fols 364–368; Aotea Māori Land Court, minute book 7, 12 April 1989, fol 61.
378. Aotea Māori Land Court, minute book 87, 2 November 1998, fols 192–193
379. Waitangi Tribunal, *He Maunga Rongo*, vol 2, pp 745–746
380. Document D59 (Galvin), pp 1–2
381. Ibid, p 2. The compulsory acquisition of uneconomic interests was repealed under the Maori Affairs Amendment Act 1974, and the conversion fund was abolished under the Māori Affairs Amendment Act 1987: Waitangi Tribunal, *Tauranga Moana, 1886–2006*, vol 1, pp 108–109.
382. Document D59 (Galvin), p [5]

- 383. Document D17 (Tūtemahurangi), app B, p 2
- 384. Ibid
- 385. Submission 3.3.71, p 27; submission 3.3.70, p 13; doc D17 (Tūtemahurangi), pp 5, 6, 7; doc I15 (Tūtemahurangi), p 8
- 386. Document D17 (Tūtemahurangi), app C, p 1
- 387. Ibid, app C, p 2
- 388. Ibid
- 389. Ibid, pp 10–11
- 390. Ibid, pp 11–12
- 391. Ruapehu District Council, 'Summary Annual Report 2010/11', pp 3, 8, available from http://www.ruapehudc.govt.nz/Site/Publications/Annual_Reports.ashx
- 392. Document O8 (Cook), pp 7–8
- 393. Transcript 4.1.15, p 319
- 394. Transcript 4.1.10, p 89
- 395. Document D17 (Tūtemahurangi), pp 11–14; doc O8 (Cook), pp 7–9
- 396. Tokaanu Māori Land Court, minute book 64, 3 June 1982, fols 364–368
- 397. Document D17 (Tūtemahurangi), p 15
- 398. Ibid; Tokaanu Māori Land Court, minute book 64, 3 June 1982, fols 364–368
- 399. Document D17 (Tūtemahurangi), p 15

Te Peka Pā

- 1. Document J10 (Wilson), pp 5, 15; submission 3.3.82, p 6; doc A114 (Young and Belgrave), pp 229, 232, 238, 239; doc K11 (Hikaia), p 27; doc J8 (Rupe), pp 4, 20; transcript 4.1.11, p 17; doc A160(a), pl 6; doc K6(b) (Jones), p [4]; Douglas Sutton, Louise Furey, and Yvonne Marshall, *The Archaeology of Pouerua* (Auckland: Auckland University Press, 2003), pp 230–234; Angela Ballara, *Iwi: The Dynamics of Māori Tribal Organisation from c1769 to c1945* (Wellington: Victoria University Press, 1998), pp 38–39)

Ngārarahuarau

- 1. Document I15(a) (Tūtemahurangi), p 8; doc D17 (Tūtemahurangi), p 2; transcript 4.1.10, p 90; doc A114 (Young and Belgrave), p 174

CHAPTER 25

CENTRAL WHANGANUI LOCAL ISSUES**25.1 INTRODUCTION**

In this local issues chapter, we consider seven cases in the central Whanganui region. This part of the inquiry district incorporates the middle reaches of the Whanganui River, extends across the Waimarino Plain and the Manganui-a-te-ao river valley to Tongariro National Park, and includes the three communities of Pipiriki, Raetihi, and Ōhākune. Timber milling was the dominant industry here in the early twentieth century, but today it is a gateway to the Whanganui and Tongariro National Parks and associated tourism.

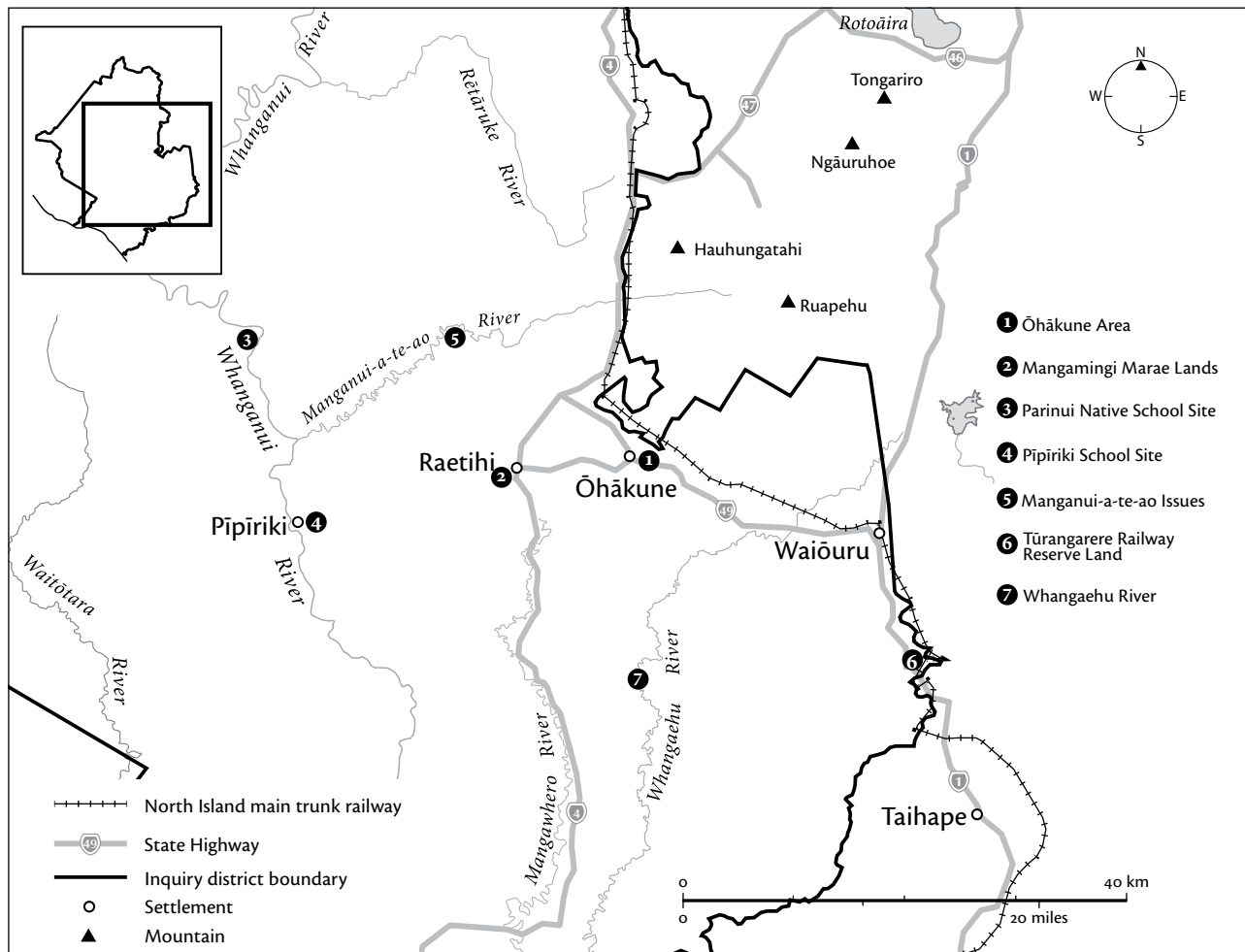
In previous chapters, we recounted the story of huge Crown land purchases, and how Māori land was used in the vested lands scheme and for so-called native townships. We saw how Crown actions contributed to the disappointingly few benefits for Māori from development schemes, and how the vested lands operated to take a considerable area out of Māori occupation for little return.

This chapter begins with local issues in Ōhākune and Raetihi, the two towns at the heart of the central region. We then travel across the rest of the district to inquire into issues at Parinui, then up the Manganui-a-te-ao Valley before continuing down to Pipiriki. Lastly, we travel east and south to Karioi, Whangaehu, and Tūranganare.

As in the other parts of the inquiry district, public works issues featured in the central region. We look at issues around the offer-back and return of surplus Crown land, especially the sites for Parinui Native School (section 25.4) and Pipiriki School (section 25.5). We also discuss how multiple public works takings affected the Pāuro Marino whānau lands (section 25.2.2). Two communities, one in the Ōhākune area (section 25.3) and the other in the Manganui-a-te-ao Valley (section 25.6), gave evidence about how land taken for public works and for reserves, together with other Crown actions, affected their communities and landholdings.

As we saw in our northern Whanganui local issues chapter, the advent of the North Island main trunk railway brought mixed fortunes for Whanganui Māori. In this chapter, we inquire into the Raetihi Branch Railway and associated public works near the Mangamingi Marae (section 25.3), and a taking for the main trunk railway line known as the Tūranganare railway reserve (section 25.7).

Finally, we look at how the management of the Whangaehu River and its catchment has led to its degradation in recent decades (section 25.8).



Map 25.1: Local issues in the central region

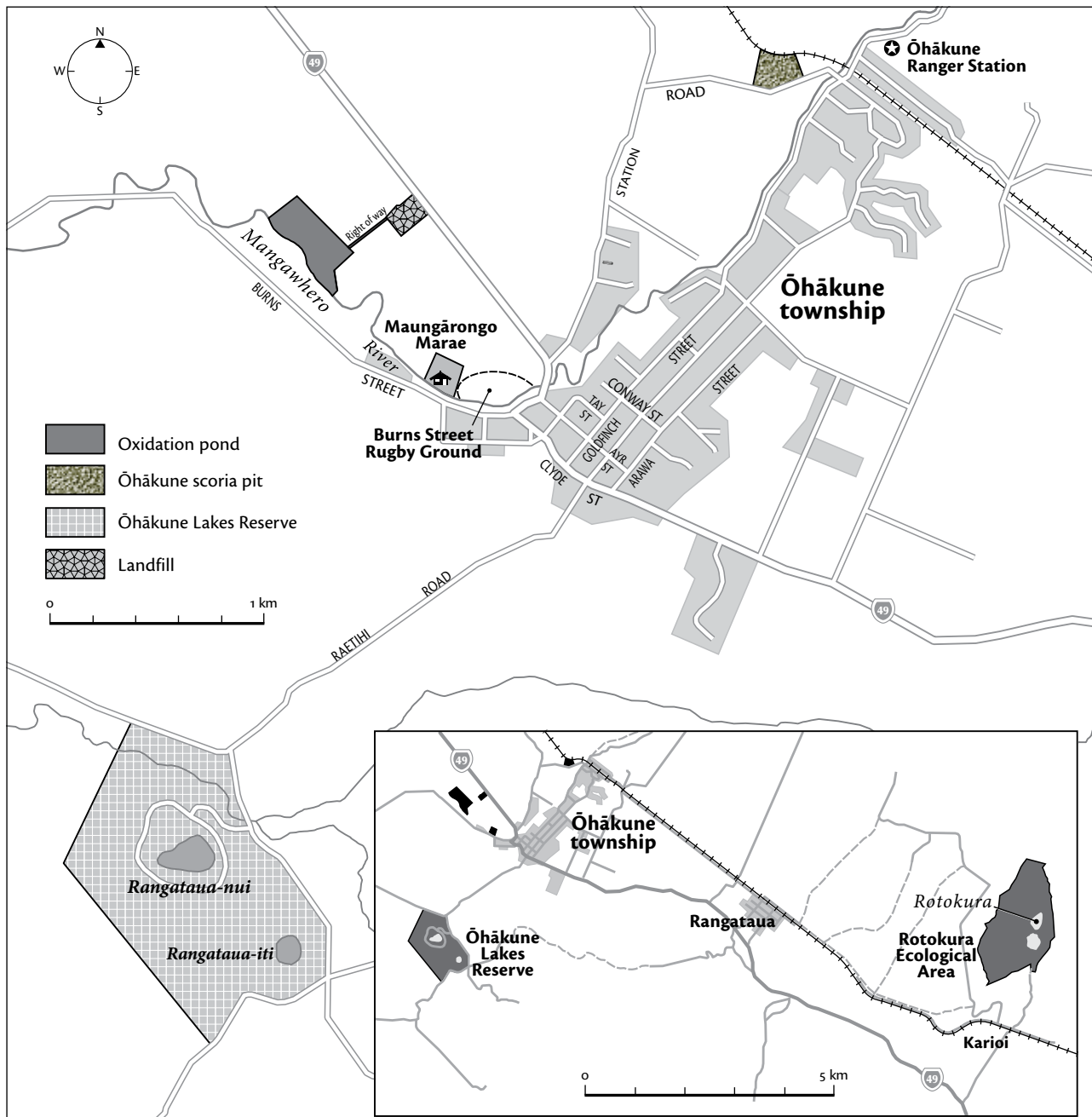
25.2 THE ŌHĀKUNE AREA

25.2.1 Introduction

The small township of Ōhākune nestles at the foot of Mount Ruapehu and Tongariro National Park. The unifying theme of the issues brought to us was the difficulty of retaining Māori land and culture in the face of burgeoning European settlement. We inquired into individual

claimants' issues against a backdrop of Treaty claims from their iwi and hapū: Ngāti Tamakana, Ngāti Rangī, and Ngāti Uenuku all have customary interests in the Ōhākune area, including the Rangataua, Rangiwaia, and northern Raetihi blocks.

The Crown has made few submissions on the specific grievances of these Ōhākune claimants.



Map 25.2: Location of Ōhākune area issues

25.2.2 Pāuro Marino whānau lands

(1) Introduction

The Pāuro Marino whānau land is in Raetihi 3B block, just outside Ōhākune. In 1904, Raetihi 3B was vested in the Aotea District Māori Land Board to be leased out for the benefit of the owners. However, no leases were taken up, and in 1919 the land board returned part of the block, Raetihi 3B2A, to its owners. Pāuro Marino's eldest daughter, Te Huinga Māreikura (also known as Mākere), established Maungārongo Marae there in 1928. The marae sits on a five-acre section that was designated a native reservation in 1939, and is very much a focal point for the Ōhākune Māori community today.¹

The trustees of the Pāuro Marino Ahu Whenua Trust and Maungārongo Marae currently manage the remaining 125 acres of Pāuro Marino whānau land, partitioned into Raetihi 3B2A2A (five acres) and Raetihi 3B2A2B (120 acres).²

The claimants questioned why the Crown permitted authorities to construct public works on this land, so close to the marae.

(2) What the claimants said

The public works takings from the Marino whānau lands are a key grievance for Ngāti Rangi (Wai 277). They believed that their land was targeted as sites for public works, and say that the size and number of takings from the Marino whānau lands are inconsistent with the Crown's Treaty obligations to Ngāti Rangi. Land was taken in the face of owners' opposition, with little consultation or compensation, and with obvious indifference to the cultural significance of the land to the Marino whānau.³ The Burns Street Rugby Ground was on their land, and for the duration of its use they were paid neither rent nor compensation. When the owners protested, they were told that if they didn't like the situation, the land could always be purchased compulsorily.⁴

This situation left the Marino whānau powerless to protect their whenua and mahinga kai. The Wai 277 claimants sought the return of land taken under public works legislation, plus appropriate compensation.⁵

Vivienne Kōpua and Patricia Hēnare also filed a claim (Wai 836) about the management of resources on Marino



Charles Māreikura, 2008. Mr Māreikura's photographs of the Ngāti Rangi and Northern Cluster hearings have been used in this report. He passed away a year after this photograph was taken.

whānau land. They claimed on behalf of Te Puāwaitanga Mokopuna Trust, the Elenore Anaru Whānau Trust, and Tira Taurerewa, and we refer to these as the Trust claimants. They told us about the dumping of asbestos in Ōhākune's former landfill on Tohunga Road, adjacent to Maungārongo Marae and the local kōhanga reo.⁶ They want the Crown to undertake remedial work on the site to remove asbestos and any other toxic materials.⁷

(3) What the Crown said

The Crown accepted that there was a series of takings from Marino whānau lands between 1961 and 1984, and it acknowledges the strength of the claimants' concerns.

Pāuro Marino and Raetihi 3B2A2

Che Wilson gave the Tribunal an account of Pāuro Marino's life, and the importance of the Raetihi block for the whānau.

An important tupuna of Ngāti Rangi, Pāuro Marino was born before 1850 and lived mainly at Rānana and Tawhitinui. He fought at the Battle of Moutoa in 1864, and was awarded the New Zealand Medal for his efforts. He later opposed the land management schemes proposed in Whanganui, protesting against Kemp's Trust and the surveying of land for the Rānana Development Scheme in the 1910s. In 1911, he

was briefly imprisoned when he protested against the Aotea District Māori Land Board's taking over and controlling of Rānana and Morikau.

In the summer, the Marino whānau stayed at places near the mountain to hunt, gather, and garden. On Raetihi 3B2A2 was a swampy, bush-fringed lake, and the Mangawhero River ran through it. Here, the whānau gathered kai: tuna (eel), kōura (crayfish), pāpera (duck), tūnga (grubs), harore (mushrooms), pikopiko (fern shoots), and wild berries.¹

Che Wilson of Ngāti Rangi, giving evidence to the Tribunal about Pāuro Marino lands (Raetihi 3B2A2) in 2009. Between 1961 and 1974, Ohakune Borough Council compulsorily purchased almost 26 acres for various purposes.



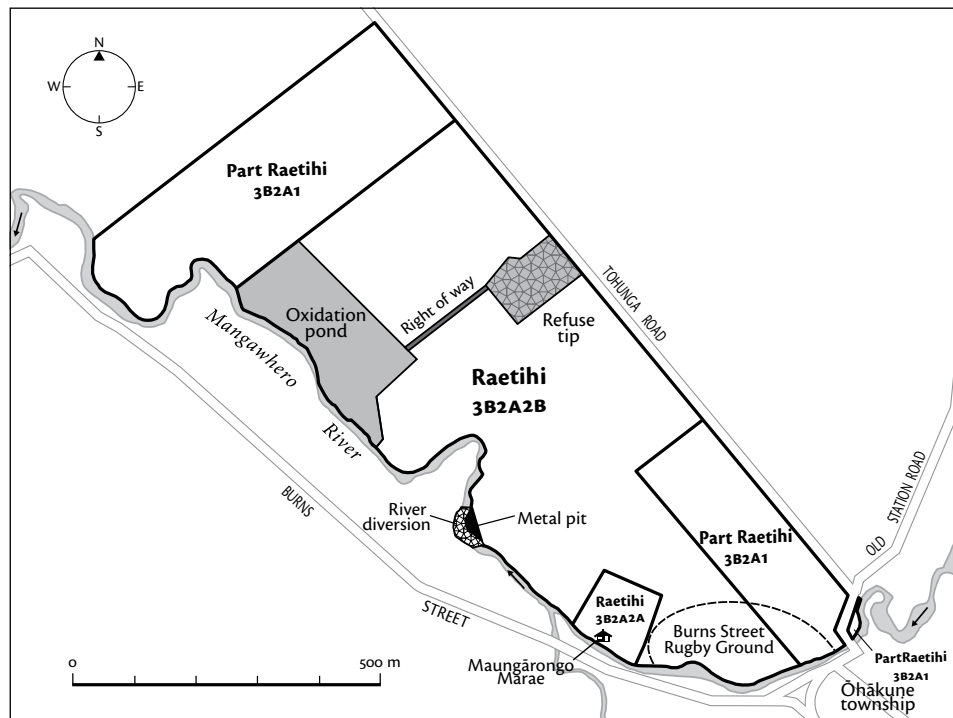
Pāuro Marino



However, it did not accept that the takings breached the Treaty.⁸ It said that it was not responsible for the Ohakune Borough Council's actions or omissions, whether as to selection of sites for public works acquisitions, or payment or non-payment of compensation.⁹ In the case of the

Marino whānau lands, the 'magnitude/scale of the takings was not such that the Crown had reason to intervene'.¹⁰

The Ruapehu District Council, the local authority that now manages the public amenities on the land taken, made no submissions.¹¹



Map 25.3: Public works takings in Marino whānau lands

(4) *Pāuro Marino whānau land taken for public works*

While under the management of the Aotea District Māori Land Board, a number of roads and access ways were constructed across the Marino whānau lands, and Ōhākune residents used one corner of it informally as a sports ground. Over time this became the main rugby ground for the town. The borough council was going to take the land, but in the end did not.

In 1919, the Aotea District Māori Land Board returned Raetihi 3B2A to its owners, and the block was further partitioned to create a marae reservation (Raetihi 3B2A2A – five acres) and a remainder block (Raetihi 3B2A2B – 120 acres).¹² Public works constructed on the remainder block in the 1950s and 1960s included a gravel pit, an oxidation pond as part of a sewerage system, and a refuse tip. Over 17 per cent of the remainder block was taken for these purposes. The details of the public works takings about which we have comprehensive information are in table

25.1, but they were not the only public works takings from this land. Others about which we have too little information to discuss or make findings were a number for roads between 1903 and 1984, notably for the former Pipiriki–Ōhākune Road and Ōhākune–Horopito Road.¹³ The Mangawhero River was also diverted in the 1950s or 1960s to run through Raetihi 3B2A2B. Apparently, this afforded better access to shingle in the riverbed, and paved the way for the taking for a metal pit in 1961.¹⁴

(5) *Our analysis*

The Ohakune Borough Council was the taking authority in most of these cases, but the Crown took land for roads in two instances. As we said in the introduction to the local issues chapters, the Crown did not evade responsibility for Treaty breaches when it delegated to local authorities the power to acquire Māori land compulsorily. It is responsible for prejudice that results from

Block	Area (acres, roods, perches)			Authority	Year	Legislation	Purpose	Compensation paid
Raetihi 3B (proposed)	19–30	0	0*	Ohakune Borough Council	1900s – 1920s	Public Works Act 1908 (proposed)	Recreation ground – Burns Street Rugby Ground	None
Raetihi 3B	3	3	38.5	Crown	1912	Native Land Act 1909	Tohunga Road	None
Raetihi 3B2A2B	2	3	7	Ohakune Borough Council	1961	Public Works Act 1928	Metal Pit	£200, paid in 1962
Raetihi 3B2A2B	5	0	0	Ohakune Borough Council	1967	Public Works Act 1928	Refuse Tip	Unknown; in 1974 compensation 'yet to be finalised'
Raetihi 3B2A2B	16	1	18	Ohakune Borough Council	1972	Public Works Act 1928	Oxidation pond	\$6,065.53, paid in 1977
Raetihi 3B2A2B	3	28	3	Ohakune Borough Council	1974	Public Works Act 1928	Extension of oxidation pond	\$6,065.53, paid in 1977
Raetihi 3B2A2B	3	0	13.2	Ohakune Borough Council	1974	Public Works Act 1928	Right of way between oxidation pond and refuse tip	\$6,065.53, paid in 1977
Raetihi 3B2A2B	0	1	28.9	Crown	1984	Public Works Act 1981	Tohunga Road realignment	Unknown; compensation certificate lodged on title

* Approximate

Table 25.1: Public works within Pāuro Marino whānau lands

any compulsory purchases by local authorities that do not meet the 'as a last resort in the national interest' test.

None of the public works takings from the Marino whānau land met this standard, because in no instance was the national interest at stake with no other alternatives available. Rather, they were all commonplace local public works for which other sites would have been equally suitable, and acquisition by means other than compulsory purchase might also have been available. The evidence is not comprehensive on this point.

Having ascertained that these compulsory purchases all breached the fundamental guarantee of te tino rangatira-tanga in article 2 of the Treaty, we now turn to whether there were any other exacerbating factors relating to procedure.

(6) Notice and negotiation

We do not know whether the taking authorities followed the prescribed notice procedures, but we did receive some information about discussions with Māori. Pressure on landowners to relinquish land to the borough council, and feelings of disempowerment resulting from the attitude of the authorities and the public works process, were common themes in whānau accounts.¹⁵

(a) *Raetihi 3B Burns Street rugby ground*: In the first two decades of the twentieth century, the land was under the control of the land board, and town residents commenced using an area near Burns Street for rugby and other sports. It became the main rugby ground for Ōhākune, and residents constructed a grandstand and access-way

between the sports field and Burns Street.¹⁶ The Ohakune Borough Council attempted in 1907, 1913, and 1915 to acquire the land for a recreation reserve under public works legislation.

The Aotea District Māori Land Board was well disposed to the use of this land for a rugby ground. It did not lease out the land so that it could be used for that purpose. Really, the board should have been managing the land for the benefit of its owners, so it had no business making decisions that instead favoured the interests of the residents of the town.¹⁷ However, it called a meeting of owners to consider a possible exchange of land for the rugby ground. The Marino whānau objected, and nothing happened. In 1919, the land board handed the land back to its owners.

The claimants told us that the pressure to relinquish the ownership of the land declined after Ōhākune's main street was moved from Burns Street to Clyde Street in the 1920s, and interest in the rugby ground waned. Thus, the Marino whānau succeeded in holding on to this land, although for many years it was used as a public reserve as if it had been acquired, and during that time owners were not paid, nor could they use it themselves.¹⁸

(b) *Raetihi 3B2A2B oxidation pond*: When acquiring land for the oxidation pond, the Ohakune Borough Council did contemplate negotiating a mutually agreed price with the owners of Raetihi 3B2A2B via the Department of Māori Affairs. But the borough council was so committed to using Marino whānau land that it told the department in January 1971 that it would simply take the land under the Public Works Act if agreement could not be reached.¹⁹

We do not know whether, in the end, the council attempted to negotiate a sale with the owners before the 16 acres were compulsorily acquired in 1972. Five years later, in August 1977, the district officer of the Department of Māori Affairs was acting on behalf of the owners to arrange compensation payments for the land taken for the oxidation pond, and made statements suggesting the council never negotiated in good faith with the owners, if

at all. In a letter to the Ohakune Borough Council, he said that the owners were 'far from happy about having their land taken for an oxidation pond'.²⁰ In January 1976, at a meeting of owners about compensation, Rangi Mete Kingi also pointed out 'that if the owners wished to object to the taking it would [have] cost them a lot of money which they did not have'.²¹

In most of the other cases, there is no evidence of discussions with the owners preceding acquisition. The whānau's views were typically recorded as part of the compensation process, some years after the initial taking.

(7) *Was it necessary to acquire this land?*

Che Wilson, witness for Ngāti Rangi, told us that in Ōhākune in the 1960s and 1970s, there was land other than Marino whānau land available for public amenities.²² This was opinion evidence, as there is no data on the availability of sites at the time, but we have no reason to doubt it. The Tribunal visited the public amenities and the town in the course of our inquiry. We noted that the land where the town is located is mainly flat, so there was no topographical reason for preferring the Marino whānau land for public works. We think it more likely that here, as in other New Zealand towns, it was considered easier, more convenient, and cheaper to take Māori land. The legislative provisions, and the nature of Māori land tenure, made it more difficult for shareholders in Māori land to object effectively. And politically, Māori landowners simply had less influence in small towns than many other landowners. The threats made concerning the rugby ground are indicative of this.

In the case of the oxidation pond, the Ohakune Borough Council originally chose a different site, but when the Pākehā landowner objected, the council withdrew. The borough council's consultant engineers wrote in a letter to the borough council in November 1970 that the Marino whānau land was the best alternative to 'someone else's developed farmland'.²³ The borough council proceeded on this advice, apparently not putting into the balance at all the negative effects on Maungārongo Marae and the Māori landowners.

(8) Was there fair compensation?

We do not know whether the prices paid for the Marino whānau land were fair in terms of the compensation methodology of the day. However, we have commented elsewhere on how monocultural that methodology was, so that even if the prices paid were market prices, the valuation had no cultural dimension (see sections 24.6.7, 24.8.6, and 25.3.6). In the case of the land for the refuse tip, we do not know whether compensation was paid at all.

(a) *Raetihi 3B Burns Street rugby ground*: The public used the Burns Street land informally and for free for many years, but even though they received no rent or compensation, the owners still had to pay rates. In 1916, the Ohakune Borough Council sued the Aotea District Māori Land Board for four years' unpaid rates on the land.²⁴

(b) *Raetihi 3B2A2B metal pit*: In 1961, the Māori Land Court awarded the former owners of the metal pit land £200 compensation for the taking. But the council deducted outstanding rates backdated to the 1953–54 financial year, leaving a balance of only £65 4s 6d.²⁵ After advice from the Māori Trustee, which at that time had authority to initiate compensation claims and negotiate awards for multiply owned Māori land, the borough council reluctantly paid the full £200 in March 1962.²⁶

(c) *Raetihi 3B2A2B oxidation pond*: Compensation for the land taken for the oxidation pond was highly controversial. There were complicating factors such as the consideration of alternative forms of payment, and large differences in land valuations. Most of the land in Raetihi 3B was farmland or bush, but its value for compensation purposes turned on its potential for agriculture. The Marino whānau wanted the land taken for the oxidation pond valued as a public amenity, which would have made the land more valuable than if it were valued as rural land. This request was refused. After prolonged negotiations, compensation of \$4,225 (plus \$1,840.53 of accrued interest) was paid, apparently covering both the original taking and the 1974 extension and right of way.²⁷

However, the value to the owners of this compensation was compromised by their having to pay for an extremely expensive connection to the sewerage system. The topography of the site for the oxidation pond left Maungārongo Marae, although only 800 metres away, below the level of the main sewer line. The marae was expected to bear the \$12,000 cost of the pumping system to effect a sewerage connection – twice the amount they had received in compensation for their land.²⁸ It was a bitter irony that these landowners had to forgo their land to benefit the community, and then could not share in those benefits themselves. Later, the district officer of the Department of Māori Affairs made this point in a letter he wrote to Ohakune Borough Council in May 1975:

As you know Raetihi 3B 2A 2B2 block has provided the site not only for the sewerage ponds, but also for the rubbish dump. In view of the extent to which the Maori land has been used to provide essential services to the Borough, any assistance which the Council may be able to provide to the Marae in the way of satisfactorily solving the present problems in relation to the sewerage (bearing in mind the limited financial resources available to the trustees) would undoubtedly assist in maintaining good community relations.²⁹

In another critical letter in August 1977, the district officer deplored the council's 'protracted and very contentious taking of Maori Land' for the oxidation pond, and its poor 'moral position' in not constructing the amenity so as to enable the marae to connect to it.³⁰ By this stage, the sewerage scheme was in place, and the officer's letters achieved nothing.

(d) *Injurious affection*: The law on land taken for public works does not limit compensation to the value of the land acquired or taken: legislation entitles owners to be fairly compensated for losses that may include permanent depreciation in the value of any retained land. This depreciation is called injurious affection.

We are not aware of any payments of this kind having been made to owners of Māori land adversely affected by

neighbouring public works, but it is quite apparent to us that public works did and does have negative effects on owners of retained land:

- the metal pit and its associated crusher produce noise and dust;
- both the refuse tip and the oxidation pond cause pollution and odour;
- building is not permitted within 300 metres of the oxidation pond, diminishing the residential potential of the remainder block;
- the proximity of multiple repellant activities makes the land in the remainder block less valuable;
- the odour, dust, and general unpleasantness compromises the enjoyment of both those living on the remainder block, and those living at or visiting the marae; and
- the refuse tip is on land that was formerly a valuable māra (garden or cultivation).

Of course, each successive public work exacerbated this loss of utility. We saw no evidence of payment for such effects, either on a case-by-case or cumulative basis.

(9) Has any land been returned?

Under the current Public Works Act, land that is no longer required for the purpose for which it was taken or for another public work ought to be offered back to the original owner or their successors, at an agreed value.³¹

(a) *Raetihi 3B2A2B metal pit*: The claimants told us that, after its closure in the 1980s, the former metal pit was not offered back to them, but was sold to a private buyer.³² We do not know whether the land was sold before or after the 1981 Act came into effect, but of course the Crown could and should have been concerned to return the land to its former Māori owners in its role as Treaty partner. There was legislative provision to do that: section 436 of the Maori Affairs Act 1953 enabled the Crown to offer-back to its Māori owners land that was compulsorily acquired.³³

(b) *Raetihi 3B2A2B refuse tip*: When the refuse tip was decommissioned in 2002 and 2003, the council offered it to the Pāuro Marino Ahu Whenua Trust.³⁴ The trust did not accept the offer because of the costs involved – both

the cost of re-purchasing the land, and the cost of remedying the environmental effects of the refuse tip.

One issue was asbestos. Ōriwa Hāpuku and her husband Henry Roach were both employed by the Ohakune Borough Council from the mid-1980s. She told us that asbestos was still buried in several areas around the land-fill site, and that she worried for the health and safety of those who lived near it.³⁵

I want the old rubbish dump to be cleaned up and for all the asbestos and other toxic chemicals to be taken out of our rohe. My concern is for all our mokopuna and their lives growing up near the tip. We have a kohanga which is not too far away from the dump.³⁶

The tip is no longer in use, but it continues to affect the environment because of activities that took place there in the past. Resource consents will be required for at least another 30 years for the discharge of leachates (liquids that contain environmentally harmful substances) and storm water into the ground.³⁷

The Ruapehu District Council's offer-back to the site's former owners would have to be on the basis that the council has ongoing access to the site so that it can manage the resource consent. It would need to monitor the site to ensure compliance with the conditions of the consent.³⁸ Another complication is that the refuse tip boundary fence extends beyond its legal boundaries.³⁹

The combination of these factors, together with the extent of remedial work that the owners want the council to do, and uncertainty about whether the Marino whānau were ever paid for the land, means that the claimants thus far have not accepted the council's offer. We find the claimants' reluctance understandable, and encourage the district council to reflect further on whether it is appropriate to require former owners to pay for the return of land for which they may never have been paid, and which has been compromised environmentally.

(10) Conclusion, findings, and recommendations

Statutes authorising compulsory acquisition for public works allowed Māori land blocks conveniently located

near towns to be targeted for unsavoury public amenities.⁴⁰ The takings from the Pāuro Marino whānau land at Ōhākune are a prime example. Whether the targeting was intentional or not, the facts here are undeniable. Quite simply, the local authority and the Crown used land in Raetihi 3B2A2B far too much, compulsorily acquiring sites for three major municipal projects, and six other public works. This whānau gave up more land than was at all fair and reasonable, and the balance of their landholdings has been adversely affected in multiple ways.

Little thought or consideration for the interests of the Māori landowners attended the various acquisitions, even though the evidence shows that the owners talked about the impacts at meetings of owners, and brought them to the attention of the borough council in the 1970s.⁴¹ Crown officials knew about the takings, because the borough council routinely went to the Māori Affairs Department first to discuss potential public works takings, establish contact details for owners, and inquire whether the department would act on the owners' behalf. The district officer for the Māori Affairs Department regularly represented landowners in compensation claims against the Ohakune Borough Council. On one occasion, the district officer saw the owners' plight and brought it forcibly to the borough council's attention, but he was a lone voice. Such officers had no institutional support to protect the Treaty interests of tangata whenua, and were powerless to effect any change of direction in either local or central government that might have helped the descendants of Pāuro Marino to keep and enjoy their ancestral land.

Consequently, we find that the Crown facilitated its own and the local authority's compulsory acquisition of the Pāuro Marino land both legislatively and administratively. It failed to protect the Pāuro Marino whānau and the Maungārongo Marae community from unnecessary cultural, spiritual, and financial loss, and breached the article 2 guarantee of te tino rangatiratanga o ō rātou whenua (the full chieftainship over their lands). Significant prejudice to the whānau of Pāuro Marino and of Maungārongo Marae resulted.

Because the local authority now owns this land, the land is private land for the purposes of our legislation. We

may not make recommendations about what the current owner of that land should do.

As far as the Crown is concerned, we recommend that it takes into account the prejudice suffered by the Pāuro Marino whānau and the Maungārongo Marae community in settlement negotiations with Ngāti Rangi.

On the issue of asbestos, we note that the chief executive of the Ruapehu District Council indicated to claimants after the Whanganui inquiry hearings that the council would welcome further information on asbestos dumping in the Tohunga Road landfill.⁴² Given the proximity of the landfill site to the Maungārongo Marae and its kōhanga reo, and our finding of the site's significance to the Marino whānau, we recommend that the Crown work with the Ruapehu District Council to ensure that any asbestos or other hazardous materials have been handled correctly.⁴³

25.2.3 Ōhākune scoria pit

(1) Introduction

In 1963, the Māori Trustee permitted the Crown to extract scoria from the Raetihi 4B block. In 1968, the Crown used the Public Works Act to acquire the site compulsorily to continue scoria mining. Mining stopped in the late 1980s, but delays in determining ownership and compensation payments meant that the land was not returned to the Māori Trustee until 1998.

Vivienne Kōpua and Patricia Hēnare on behalf of Te Puāwaitanga Mokopuna Trust, the Elenore Anaru Whānau Trust, and Tira Taurerewa (Wai 836, or 'Trust claimants') claimed that the owners of Raetihi 4B did not consent to the Māori Trustee's permitting the Crown to extract scoria from the Raetihi 4B block, nor to the Crown's taking the land.⁴⁴ They argued that the Crown breached the Treaty of Waitangi by failing to compensate landowners adequately for the extraction of gravel from Raetihi 4B between 1963 and 1967, and for failing to pay compensation when it took the land.⁴⁵

The Trust claimants are disappointed that it took the Crown over 10 years to return the land to the original owners once it was no longer required for public works purposes, and also that the Crown did not engage in a meaningful effort to identify the rightful owners of

the block, but instead passed on the complications surrounding the distribution of compensation to the Māori Trustee.⁴⁶ They sought the rehabilitation of land used for the former scoria pit, and asked that the Crown and the Māori Trustee make a determined effort to locate the owners entitled to compensation.⁴⁷

(2) *The taking and return of the Ōhākune scoria pit*

The Ōhākune scoria pit lies in the Raetihi 4B block, just north of Ōhākune (see map 25.2). By 1963, the Māori Trustee held in trust for the remaining owners of the block only 99 acres, after multiple purchases by the Crown and private individuals.⁴⁸

In December 1963, the Ministry of Works used section 17 of the Public Works Act 1928 to enter five acres of Part Raetihi 4B for the purpose of acquiring metal for urgent roading work.⁴⁹ It served notice on the occupier, lessee James Lim Yock, and sent a copy to the Department of Māori Affairs.⁵⁰ On multiple occasions, the Department of Māori Affairs raised with the Ministry of Works the matter of compensation and royalties for the gravel. There was no response. Extraction continued under section 17 until July 1968, when the Crown compulsorily acquired the site under the Public Works Act, after negotiating with James Lim Yock a settlement for the effect on him as lessee.⁵¹

Negotiation of compensation for the Māori owners stretched out over a number of years, as the Māori Trustee and the Ministry of Works contested whether it should also pay for metal extracted before the Crown took the land. In August 1970, the Crown offered \$325 in full settlement; this was the market value of the land in 1964, when the Ministry of Works first began scoria extraction. The Māori Trustee rejected the offer, and in March 1971 claimed \$6,000 from the Ministry of Works for the value of the land as at July 1968, the date when the Crown took the land, plus royalties for the metal extracted to date.⁵² After that, the matter languished.

Then, in the late 1980s, by which time it no longer wanted scoria from the site, the Ministry of Works proposed that the site should go back to its former owners, and the Crown would pay royalties for the metal taken and for legal costs incurred.⁵³ Returning the land and

paying compensation to all former owners was going to pose difficulties, because more than 1,000 unidentified people were entitled to compensation, and the Māori Trustee would bear the responsibility of distributing the money to them all.⁵⁴ When the Whanganui area office of the Department of Survey and Land Information closed in 1995, the district solicitor forwarded the file to the department's regional office, calling the case 'a nightmare' that he had been unable to resolve.⁵⁵

Finally, in January 1998, after multiple government departments debated how best to return the land, the Crown revoked the 1967 taking in accordance with section 54(1) of the Public Works Act 1981, and re-vested the land in the Māori Trustee.⁵⁶ With its agreement, the Māori Trustee was awarded \$1,500 for the metal taken from the land.⁵⁷ The Crown also paid the owners' solicitors costs of \$3,425; the solicitors had acted for the owners since the early 1970s.⁵⁸ The Māori Trustee continues to manage the former scoria pit site as Māori freehold land on behalf of its owners.

(3) *How did the Crown take the scoria pit?*

Historian Philip Cleaver, whose report for the Tribunal looked into the history of the scoria pit taking in detail, said that the Ministry of Works used the Public Works Act to maximise its interests and minimise its costs.⁵⁹ The Māori Trustee was running Raetihi 4B throughout, but does not seem to have been able to advance the owners' interests against those of the Ministry of Works. Documentary evidence suggests that, from time to time, the Māori Affairs Department and the Māori Trustee did try to interest the Ministry of Works in sorting out the Ōhākune scoria pit situation, but with a conspicuous lack of success. The result was that the Crown had the benefit of the land for a long period with no payment to the owners. Settlement was finally arranged in 1998, but then too the emphasis was on the Crown's convenience rather than on fairness for the owners. The owners did get their land back, but the total payment of \$1,500 seems very small recompense for all the years when the Crown used it and mined its resources – especially since, given the 35-year delay in payment, the \$1,500 must be seen as including

interest. The amount the Crown paid the owners' solicitors (\$3,425) should not be regarded as payment for use of the land or for the scoria, because had it not been for the Crown's use of the land, the owners would not have had solicitors' fees to pay.

In the many years during which the owners of Raetihi 4B derived no benefit from their land, sorting out what to do about the Ōhākune scoria pit mainly seems to have sat in everybody's too-hard basket. It was probably also regarded as a relatively minor problem because the amount of money at stake was not huge.

We have been provided with no good explanation as to why it took the Crown more than 35 years to pay royalties and compensation for the extraction of scoria removed since 1963. Discussion between officials from the Ministry of Works at the time indicates that the payment of royalties to the Māori Trustee was considered achievable at the time of the taking, and was recognised as a requirement under section 17 of the Public Works Act 1928.⁶⁰ In cross-examination, historian Philip Cleaver suggested that the Māori Trustee could have explored the possibility of taking legal action, perhaps in the Land Valuation Court, to speed up the compensation process and ensure compensation was paid.⁶¹ Cleaver also suggested that the Māori Trustee could have contested the amount of compensation paid in 1998, given that the offer was the same as that made in 1987.⁶²

(4) Conclusion, findings, and recommendations

The story of the Ōhākune scoria pit is a good illustration of how Māori landowners end up getting nothing out of their land, even when that land has resources on it for which there is a market – in this case, scoria.

Raetihi 4B is one of those blocks where the owners run into many hundreds, and many of the shareholdings have not been succeeded to. Such blocks are very difficult to run. No one has a sufficiently large interest to make it worthwhile for anyone to invest time and effort in managing the land, and the problem of bringing the list of owners up to date becomes insuperable. The Māori Trustee's long-standing involvement is a common response to such difficulties, but seldom provides a solution.

As we have discussed earlier in this report, the Crown enacted a Māori land tenure system that was designed to operate for its own, rather than for Māori landowners', convenience. It has many unfortunate characteristics, of which the fragmentation of title is but one. Highly fragmented titles are especially unworkable, though, and what happened on Raetihi 4B is typical. Many owners with few shares become distanced from the land, and are therefore vulnerable to exploitation. The Māori Trustee was supposed to be a mechanism for ensuring the protection of landowners' interests, but in practice the office was often inefficient, overly bureaucratic, and easily overridden. All those characteristics are evident in this case.

Once the Crown became directly involved with Raetihi 4B and began deriving benefit from it, it was incumbent on it to ensure that the owners also derived benefit. The Crown, in the guise of the Ministry of Works, did not regard itself as being under such a duty, and instead in:

- ▶ 1963: used section 17 of the Public Works Act 1928 to gain access to the land, and to the scoria, without arranging payment;
- ▶ 1968: compulsorily acquired the land for the scoria pit as a means of circumnavigating any necessity to make arrangements with the owners or the Māori Trustee to pay royalties – and again, made no payment;
- ▶ 1968 to the late 1980s: continued to use the land and its resources without payment, then once it had no further use for the land, sought to quit the situation in a way that minimised cost and effort; and
- ▶ 1998: finally exited the situation by using section 54 of the Public Works Act 1981 to revoke its earlier compulsory acquisition and re-vest the land in the Māori Trustee; and by gaining the agreement of the Māori Trustee to a total payment of \$1,500 (plus owners' solicitors costs) for the use of the land and its resources since 1963.

In the 1990s, when the Crown was finally sorting out a resolution to this fiasco, one might have expected to see a different attitude from the one that prevailed in the earlier period, when the Ministry of Works was all-powerful and simply swept aside opposition to its objectives, and when Māori interests usually had no priority. In particular, one

would have hoped to see an acceptance of responsibility for the unwieldy nature of Māori land tenure, rather than shifting the problem elsewhere. Returning title and paying compensation to the Māori Trustee did not resolve the problem – the owners of Raetihi 4B cannot benefit until they are identified. In this present era, the Crown should be prepared to help sort out the problem of actually delivering benefits to those who are entitled, by materially assisting in the huge task of updating the owners list. Too often, underlying these hopeless title situations is a kind of institutional shrug that implies that others (such as the Māori owners) have been inept or ignorant, and that is why they are in the situation they are. In fact, the tenure system itself makes these outcomes almost inevitable, and unfortunately that system is now too entrenched for meaningful change to be at all likely. The Crown should try to alleviate the problems where it can – and especially in situations like this one, where the Crown's own conduct was poor over many years, and where it derived benefit from the land and the owners did not. For the Crown to approach the matter otherwise is to engage in a particularly reprehensible kind of Treaty breach: creating a tenure system that makes it difficult for Māori landowners to protect their interests; exploiting that vulnerability to use their resources and take their land; then fix the situation by taking the necessary legal steps, but doing nothing to ensure that those entitled actually derive benefit from the use the Crown has had of their land.

As regards the role of the Māori Trustee in this case, we agree with the Tauranga Moana Tribunal. It found that in establishing the Māori Trustee, the Crown was obliged to ensure that it carried out its role in the best interests of Māori landowners.⁶³ Here, the Māori Trustee allowed itself to be bureaucratically bullied, did not insist on royalties, and then, after more than three decades of non-payment, accepted meagre compensation.

Before closing on this topic, we should briefly say what is so obvious as almost to go without saying: the Crown's compulsory acquisition of Raetihi 4B was not one that was in the national interest as a last resort. It therefore breached the Treaty – the more so as it was probably in fact a purchase in bad faith: the Ministry of Works saw

buying the land as a cheaper and more convenient option than paying the owners royalties for the scoria extracted from their land.

The Crown also breached the Treaty by bureaucratically bungling the task of paying the owners proper compensation and royalties over a period of more than three decades. This was a flagrant failure to actively protect the interests of the scoria pit's Māori owners.

We recommend that the Crown:

1. assist with the rehabilitation of the land used for the former scoria pit;
2. review the compensation paid to the owners of Raetihi 4B, including inquiry into:
 - (a) whether there was payment for injurious affection arising from the scoria pit; and
 - (b) whether interest was, or should have been, accounted for;
3. make further payment to those entitled, if the compensation was as inadequate as it appears to have been;
4. embark on, and fund, a project of working with the owners, claimants, and hapū to update the list of owners of Raetihi 4B so that those entitled can receive benefit from the use that the Crown derived from their land from 1963 to 1998.

25.2.4 The Crown and te reo Māori place names

(1) Introduction

A number of claimants shared concerns over the naming or incorrect spelling of Māori places across the Ōhākune area. Trust claimants (Wai 836) told us that local authorities changed street and place names in the Ōhākune area in the early twentieth century from te reo Māori to English. This was offensive and distressing to them, as their place names were statements of their identity and their connection to the area, as well as a reminder of historic events and whakapapa associations with the landscape.⁶⁴

Ngāti Rangi claimants (Wai 151, Wai 277, Wai 554, Wai 569, and Wai 1250) also made claims concerning the naming of Maungārongo Marae, and allege that the Crown prevented them from naming their marae correctly on official documentation when it was registered in February



Raymond Hāpuku, 2008. When Ōhākune was established in the 1890s, many of the roads were given Māori names. These names, Mr Hāpuku told the Tribunal, had special significance to Māori. In 1914, following a public meeting, the Ohakune Borough Council decided to change the Māori road names to those of British rivers. The claimants said that this was done without consulting Māori and was offensive to them.

1939.⁶⁵ The claimants said that this had a detrimental impact on Ngāti Rangi identity.⁶⁶

(2) Ōhākune street names

Ōhākune was established in the 1890s as a permanent camp for railway and road construction workers. Sections within Ōhākune were surveyed in the early 1900s as the main trunk railway approached the town, and many of the roads in the township were given Māori names. Raymond Hāpuku told us that every street name meant something to Ōhākune Māori.⁶⁷ For example, Tonga Street

Original name	Current name
Mākōtuku	Raetihi
Waiōuru Road	Clyde Street
Tonga Street	Conway Street
Taru Street	Tay Street
Titiroa Street	Ayr Street
Awatea Street	Goldfinch Street
Pākau Street	Arawa Street
Urunga Street	Thames Street
Urupā Street	Tyne Street
Ūpoko Street	Foyle Street

Table 25.2: Changes to Ōhākune street names

represented the southern access into Uenuku Tūwharetoa land, and Pākau Street told of the significance of timber milling to the area.⁶⁸

Soon after the town’s establishment, members of the Ōhākune community began to express dissatisfaction with the street names. The *Waimarino County Call* of 19 June 1914 reported that:

The residents of Ohakune are seeking an alteration of street names on the grounds that the present Maori names are meaningless, lacking in euphony and conducive to confusion in pronunciation.⁶⁹

A public meeting decided to replace Māori street names, mostly with names of British rivers. This happened formally at a special meeting of the Ohakune Borough Council under Mayor George Goldfinch on 2 July 1914.⁷⁰ No one talked to the Māori community about it, although they opposed and disliked the new names, feeling that their language and their history were being replaced.⁷¹

(3) ‘Ōhākune Model Pā’

Maungārongo Marae was established in 1928, after Te Huinga Māreikura applied to the Native Land Court to



Rotokura with Ruapehu in the background. Rotokura is about nine kilometres east of Ōhākune and is part of the Rotokura Ecological Reserve and Karioi Rāhui, currently managed by the Department of Conservation. It is a wāhi tapu, and an area of spiritual significance to Ngāti Rangi iwi.

set aside five acres of her whānau land as a native reservation (Raetihi 3B2A2A).⁷² In 1939, both the marae and papakāinga were formally registered as 'Ōhākune Model Pā'.⁷³ Che Wilson told us that Crown authorities insisted on this name, rather than the Ngāti Rangi name 'Maungārongo'.⁷⁴ Ngāti Rangi took this as a slight to their mana and identity.⁷⁵ Maungārongo became the official name in 1957, which many mātua (older generation) remember as 'a time of joy and recognition'.⁷⁶

(4) Rotokura

The Department of Conservation (DOC) manages Rotokura, a lake located about nine kilometres east of Ōhākune, as part of the Rotokura Ecological Reserve and Karioi Rāhui.⁷⁷ Raana Māreikura told us that Rotokura is a

wāhi tapu of Ngāti Rangi iwi. The name 'Rotokura' is said to refer to the 'sacred gifts' of Ruapehu, and the descendants of Māreikura and the followers of the Māramatanga make annual pilgrimages to the lake.⁷⁸ Mrs Māreikura stated:

We were brought up knowing about the healing waters of Rotokura and for a long time it was only us that knew about it because you could only get to it by walking through the bush. Rotokura is the source that comes from the mountain and the mountain itself is the poutokomanawa [centre ridge pole of the meeting house] and it has many, many kōrero.⁷⁹

Mrs Māreikura said that there was a period when the Crown – DOC and Land Information New Zealand

were named – promulgated the name ‘Rotokuri’ instead of Rotokura and did not refer to Ngāti Rangi about the lake’s correct name. Some cadastral maps still call the lake ‘Rotokuri’.⁸⁰ Rotokura and the Rotokura Ecological Reserve are correctly named in the current 2009 Land Information New Zealand topographic map, but the previous 2002 edition said ‘Rotokuru Ecological Reserve’.⁸¹

(5) Conclusion

If anyone ever wondered whether names are potent, the Wanganui/Whanganui debate should have put the matter beyond doubt.

We agree with these observations of the Wairarapa ki Tararua Tribunal:

When settlers came to this country, they soon began renaming the landscape. It is an aspect of the assumption of power inherent in colonisation. . . . Somehow, settlers felt able to approach the places they were newly occupying as though nothing and no one had gone before: they were the people who counted, and their language and their names were more important. Misspelling and mispronouncing Māori names is simply another manifestation of this attitude.⁸²

It is not hard to see why streets named after British rivers and important Europeans had resonance for Pākehā settlers. More difficult is understanding why those Pākehā did not understand, and respect, that places in Ōhākune already had names – names that Ōhākune Māori had known for a long time, and were meaningful to them because they evoked their whakapapa and history.

Contrary to the sense of entitlement implicit in the 1914 newspaper article quoted above, it never was acceptable for Pākehā nomenclature to override pre-existing Māori choices. It certainly is not acceptable now. The Crown and local authorities today routinely discuss with Māori any proposed changes to Māori place names. Recognition of te reo Māori as an important aspect of our national identity has also grown over time. As the Tribunal for the Wai 262 claim reported, New Zealanders now see te reo Māori as shaping our collective identity at the same time as it sustains Māori cultural identity.⁸³

The correction of place names in the Ōhākune area has been slow in coming, but it has occurred in some areas, as evidenced by the restoration of the rightful names of Maungārongo Marae and Rotokura. We hope that this will continue, including consideration of returning street names in Ōhākune to their pre-1914 names. More broadly, we trust that these days, the role of tangata whenua in Ōhākune is sufficiently understood and respected that they can work together with the Crown and local authorities responsible for the management of significant places, to explore how tangata whenua history can be better represented in the place names of Ōhākune.

The evidence about the name changes and how they came about is insufficiently detailed for us to make findings about Crown Treaty breach. However, we concur with the Wai 262 Tribunal’s view that the promotion of te reo Māori in New Zealand is the responsibility of both the Crown and te iwi Māori.⁸⁴ We consider that it would enhance Treaty relationships if the Crown were to formally require local and regional authorities to advance this aspect of partnership when naming new places, and in restoring the correct Māori names for places that have Māori names already, or had them previously.

25.2.5 The Department of Conservation and environmental management

(1) Introduction

The Ōhākune Lakes Reserve is a scenic reserve located three kilometres south-west of Ōhākune. It comprises two volcanic lakes – Rangataua nui and Rangataua iti – surrounded by native forest. Ngāti Raukawa attacked an ancient Whanganui village here in the early 1800s, and the area is a wāhi tapu (see chapter 2).⁸⁵

Ngāti Rangi (Wai 151, Wai 277, Wai 554, Wai 569, and Wai 1250) and Te Uri o Tamakana (Wai 1072, Wai 1073, Wai 1189, and Wai 1197) both made claims regarding the management of the Ōhākune Lakes Reserve. They criticised DOC’s lack of engagement with Māori values and tikanga in their decision-making processes. Ngāti Rangi claimed that they have little involvement in the management of significant lands and resources within their rohe, and neither legislation nor policy requires DOC to give up

Keith Wood before the Tribunal, 2008. Mr Wood gave evidence on how Ngāti Rangi interests in the Ōhākune Lakes Reserve were not recognised until the 1990s.



any of its decision-making authority to tangata whenua.⁸⁶ Te Uri o Tamakana said that the Crown has not recognised or respected their relationship with the Rangataua lakes.⁸⁷

Te Uri o Tamakana also told us about the information panels in DOC's ranger station at Ōhākune, which they say gave the public inaccurate and misleading information about Ōhākune iwi.⁸⁸ They sought the removal of the panels, and further and better engagement with DOC.⁸⁹

(2) Rangataua nui and Rangataua iti (Ōhākune Lakes Reserve)

The Ōhākune Lakes Reserve was originally part of the Rangataua South block (11,127 acres). Three owners sold the whole block to the Crown in September 1881.⁹⁰ In 1892, the lakes reserve was surveyed as part of the partition of small farm settlements in the district, and was later set aside as a public recreation reserve at the request of Ōhākune settlers.⁹¹ Over time, the reserve has been used as a sanctuary for native and imported game, and as a cemetery.⁹² The local domain board and the Ōhākune Lakes Scenic Board both separately managed sections of

the reserve until the restructuring of local government in the mid-1990s. Since 1993, DOC has been in charge.⁹³

Ngāti Rangi told us that, before the mid-1990s, DOC did not liaise or consult with them about management of the reserve.⁹⁴ This later improved, but Ngāti Rangi remain concerned about DOC's ability to authorise activities in the reserve without notifying them.⁹⁵ This happened when, without their knowledge, DOC permitted researchers from Massey University to study Rangataua nui.⁹⁶

Because the lakes are wāhi tapu, Ngāti Rangi found it offensive when they were used recreationally, for instance when school groups went there for picnics.⁹⁷

(3) The Ōhākune ranger station

We heard evidence from Paul Green, conservator for DOC's Tongariro-Taupō conservancy, about the information panels in the DOC ranger station at Ōhākune. He told us that when DOC upgraded displays at the Ōhākune ranger station, it wanted to include information about tangata whenua. It approached Ngāti Rangi for information, and co-ordinated contact with each marae that



Ōhākune Lakes Reserve with Ruapehu in the background, 1914. The scenic reserve contains two lakes (Rangataua nui and Rangataua iti) and is the site of an attack on an ancient Māori village by Ngāti Raukawa in the early 1800s. The land is therefore tapu. However, the Crown did not recognise the significance of the lakes to Ngāti Rangi until the mid-1990s.

selected a kaumātua or kuia to tell their story.⁹⁸ However, it seems that there were iwi that were either left out of the process, or felt that they were. Te Iwi o Uenuku told us that the information panels at the ranger station were created without consulting them, and the information about them was misleading.⁹⁹ Paul Green told us that since becoming aware of these concerns, DOC embarked on discussions that would lead to changes in the displays so that they met the expectations of all groups.¹⁰⁰

At the time when Mr Green gave us his evidence (2009), DOC's relationship with Uenuku and Tamakana was in its early stages. Developing these relationships was a priority for his conservancy, Mr Green told us, and redesigning the Ōhākune ranger station displays was one way of moving things forward.¹⁰¹

(4) Conclusion, findings, and recommendations

The Rangataua lakes are wāhi tapu of significance to Ngāti Rangi and Te Uri o Tamakana, and possibly also to other iwi groups in the Ōhākune area. In the decades since the land went into a reserve under the control of local

authorities and then the Crown, tangata whenua have been unable to exercise their cultural norms for wāhi tapu.

Ōhākune Lakes Reserve is Crown land, but before it came into public ownership, iwi of this district lived there, gathered there, hunted there, fought there, and died there, mai rā anō (from time immemorial). It became wāhi tapu because of events which took place two centuries ago. That past was not obliterated when the land came into Crown hands; it will always remain part of the fabric of Aotearoa/New Zealand. Recognising and respecting Māori history and culture is an integral part of the concept of partnership between the Crown and Māori. When the Crown owns land like this, it must honour the special nature of what happened there. That involves working closely and respectfully with those whose forebears owned it, and were its kaitiaki. They remain its kaitiaki, despite its Crown title. The Crown must be creative and open in order to construct a partnership that allows that kaitiaki role to be fully and meaningfully expressed.

The lack of partnership in its dealings with the Ōhākune Lakes Reserve in the past leads us to a finding that the

Crown breached this Treaty principle in its management of this land and the two lakes.

We understand that DOC has, since our inquiry ended, made structural changes that involve new policy, practice, and personnel. We cannot comment on the Treaty compliance or otherwise of the new regime, but as regards Ōhākune Lakes Reserve, we simply recommend that our findings about partnership, history, and culture are factored into arrangements for management of the reserve arrived at through discussion between DOC and tangata whenua.

We make no findings on the display panels at the ranger station. We regard the incident as a hurdle DOC faced in its journey to better relationships with tangata whenua of the region. We considered its approach to resolving the issue was generally sound, and we encourage it to continue to work with the different iwi groups to find solutions that honour the mana of them all.

25.3 MANGAMINGI MARAE LANDS

25.3.1 Introduction

Mangamingi Marae hosted the Whanganui Tribunal for two weeks of our hearings. Just two kilometres from Raetihi township, the marae boasts a beautifully restored whare tupuna called Tamakana, from which we could see two of the sites about which there are claims. The first is the Raetihi Branch Railway cutting that once ran in front of Mangamingi, traces of which are still visible. The second is Pākihi Road (formerly Lakes Road), which skirts the eastern edge of the marae before crossing the Mangawhero River.

Unfortunately, the evidence supporting these claims was scant, and the Tribunal's investigations only filled in some of the gaps. As a result, we can report only to a limited extent.

25.3.2 What the claimants said

Ngāti Rangi claimed about the takings from Mangamingi Marae, but witnesses who gave evidence on them whakapapa to Ngāti Tamakana, Ngāti Uenuku, and Ngāti Rangi.¹⁰²



Mangamingi Marae. Two issues were raised by Ngāti Rangi concerning Mangamingi: the condition of land that was returned to them (after having been originally taken for the Ōhākune–Raetihi railway line in 1914 and 1918) and the taking of land for Pākihi Road, which cut through the marae. The claimants alleged that no compensation was paid in either case, and they pointed out that part of the Pākihi Road land was now used to stockpile metal and park machinery and was thus no longer used for the reason for which it was taken.

The Crown compulsorily acquired land from the Mangamingi Marae block for the Ōhākune–Raetihi railway line. The claimants questioned the use of public works legislation to acquire the land and contended that there was no evidence that compensation was paid.¹⁰³ The land was eventually returned to the marae, but the claimants argued that it should have come back to them in its original condition. To cover the restoration project, they sought the payment of 'back rental monies or compensation for all the years of operation of the railway'.¹⁰⁴

The second aspect of the claim related to land taken for Pākihi Road, which cuts through Mangamingi Marae. The claimants alleged that again there was no compensation. The land was manifestly no longer required for the

purpose for which it was taken, because part of it was used to stockpile metal and park machinery. They wanted the land back.¹⁰⁵

The Crown made no submissions on the Mangamingi Marae claims.

25.3.3 The Raetihi branch railway line

The history of Raetihi branch railway line is closely intertwined with the rise and fall of the region's timber industry. At the beginning of the twentieth century, the densely forested land between Raetihi and Ōhākune drew a number of milling firms with their sawmills, their bush workers, and the intention of cashing in on New Zealand's apparently insatiable demand for timber.¹⁰⁶

Timber rights were in demand. After the Native Land Court awarded title in the Raetihi blocks to Māori with interests there, a number of European farmers and speculators were keen both to purchase and lease Raetihi sections. Initially, the Māori owners benefited from the boom, granting the newly arrived firms cutting and milling rights over their land (see chapter 21 for a discussion of the extent to which Whanganui Māori benefited from the timber industry). In 1911, part of the Mangamingi pā block (at that time, Raetihi 2B2B3) was leased to the Pākihi Sawmilling Company for a period of seven years for 'timber cutting'.¹⁰⁷

But the milling firms struggled to transport felled logs out of the region, for heavy timber loads turned the partially metalled roads into muddy quagmires in wet weather.¹⁰⁸ Local millers successfully lobbied the Government for a branch railway to run between Raetihi and the main trunk line at Ōhākune.¹⁰⁹ The work of surveying the Raetihi branch began in 1908, and four years later the first sod was turned.¹¹⁰

According to local historian Merrilyn George, the Public Works Department surveyed six different routes before settling on the second route, which Ōhākune locals favoured because it passed seven mills.¹¹¹ To connect Raetihi and Ōhākune, the branch line had to traverse the Raetihi and Ngāpākihi blocks. Between 1912 and 1917, when the railway was being constructed, over half of Raetihi subdivisions and the entire Ngāpākihi block were

still in Māori ownership.¹¹² We do not know whether the Public Works Department weighed up the impact of the different routes on Māori landholdings before settling on route 2, but it is unlikely that any route could have avoided Māori land.

As the railway was built, the Public Works Department took land under the Public Works Act 1908 from the Raetihi 2B and Ngāpākihi blocks. In July 1914, the department compulsorily acquired almost 3.5 acres from Raetihi 2B2B3 for the Raetihi branch and associated roading.¹¹³ In 1918, it took another 2.5 roods in order to extend the railway road.¹¹⁴ Today, the land that was taken forms the northern boundary of Part Raetihi 2B2B3B2, where Mangamingi Marae is located.¹¹⁵

The branch line opened in late 1917.¹¹⁶ For the next 50 years, trains shuttled passengers and freight along the Raetihi branch, passing right in front of Mangamingi pā. Mangamingi kaumātua Hune Boy Rāpana recalled that, when he was a child,

Although Mangamingi was not an official railway station, the train would stop here to drop off or pick up whanau and iwi who were attending tangi or hui at the Pā. They would travel from Taihape, Ōhākune, Raetihi and other places. Kuia would karanga from the train as they got off in response to our kuia calling from the marae.¹¹⁷

By the time Mr Rāpana finished high school and moved away from Mangamingi in the 1950s, both Mangamingi and the Raetihi branch line were in decline. By then, most of the indigenous timber had been cleared, and the milling firms moved out.¹¹⁸ The passenger train made its last journey between Ōhākune and Raetihi in December 1951.¹¹⁹ In late 1967, the last stands of timber along the branch line were felled, and the railway was closed on 1 January 1968.¹²⁰

Mr Rāpana told us that the railway tracks were lifted after the line closed, but the cutting created by the tracks was not filled in. The former railway land was returned to Mangamingi, and is now part of the marae car park. However, the marae had to pay to fill in the cutting in order to use the land.¹²¹

25.3.4 Did the Crown talk to the people of Mangamingi about the land wanted for the railway?

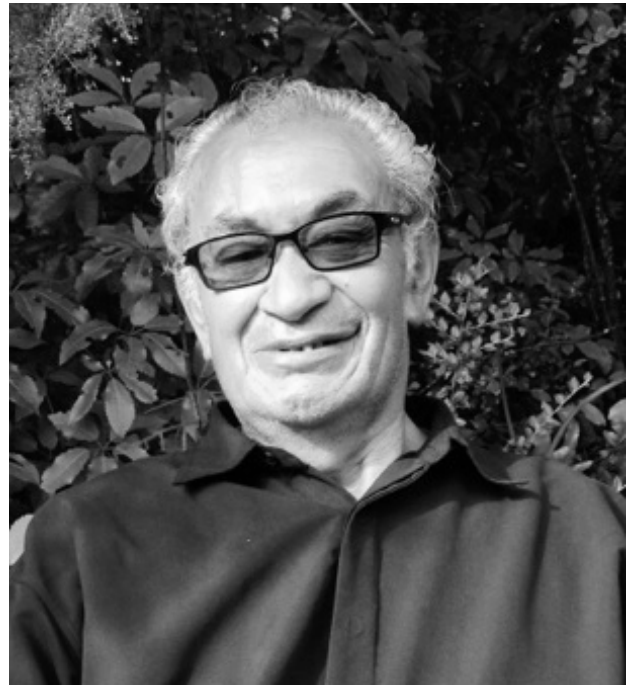
We do not know whether Mangamingi owners and residents were involved in early discussions about the Raetihi Branch Railway line prior to 1908, but it seems unlikely. In her local history of Ōhākune, Merrilyn George says that, as the surveying party moved closer to Raetihi in July 1908, 'local Māori' objected on the grounds that they had received insufficient notification about the survey. When Mr John Chase, representing the Māori owners, approached James Carroll about the proposed line, he was told that both Māori and Pākehā would benefit from the railway and should therefore support the development.¹²² We located archival evidence that Mr Chase later met with the Raetihi Chamber of Commerce, where he spoke on behalf of Mangamingi Māori and referred to an earlier meeting with Carroll.¹²³ Details of his speech were not recorded. Once work on the branch line began, discussions between the Crown and those at Mangamingi focused on the impact of the line on Mangamingi's electricity supply and ability to access neighbouring land.¹²⁴

25.3.5 Was compensation paid for the marae block?

The Crown paid compensation for land taken from the marae block, but only after considerable delay, and by means of dubious process.

Archival evidence indicates that the Department of Public Works applied to the Native Land Court for a determination of compensation as early as June 1917, but then delays ensued.¹²⁵ First, the application was not correctly gazetted and had to be re-published.¹²⁶ Then the Native Land Court decided to move the hearing from Marton to Raetihi, where most of the owners lived, so that they could attend.¹²⁷ The court did not determine compensation until 26 January 1921, well after the takings in 1914 and 1918.

The Native Land Court did not set compensation for the owners of each section of the Raetihi and Ngāpākihi blocks through which the branch line passed, but instead awarded a lump sum of just over £624. In September 1921, the Public Works Department transferred the £624 to the Native Trustee to be held until the Native Land Court decided how it should be allocated.¹²⁸



Kaumātua Hune Boy Rāpana. Mr Rāpana gave evidence to the Tribunal about the railway line at Mangamingi Marae.

In February 1922, the court decided that the claimants' lawyers' costs should be subtracted from the compensation. In December of the same year, the court determined the allocation of compensation for the owners of land taken from the affected Raetihi and Ngāpākihi land blocks, and ordered the Native Trustee to pay the sum to the Aotea District Māori Land Board for distribution.¹²⁹ The court authorised the land board to take a commission for distributing the money.¹³⁰ The owners of the Raetihi 2B2B3 blocks were awarded just over £25. We do not know how, when, or whether the land board distributed the £25 (with or without the land board's commission deducted) to the Mangamingi owners.

25.3.6 Conclusion, findings, and recommendations

A dearth of evidence limits our ability to make findings on some aspects of the Mangamingi claims.

Here is a brief summary of what we know about land taken from the marae block (Raetihi 2B2B) for the railway:

- the Mangamingi community objected to the railway branch line going through their land;
- their objection was not heeded;
- their land was compulsorily acquired for the Raetihi–Ōhākune branch line in 1914 and 1918;
- the railway track ran a stone's throw from the whare tupuna;
- in December 1922, the owners of the Raetihi 2B2B3 blocks were awarded compensation of just over £25, which was supposed to have been deducted from a lump sum of just over £624 which the Native Land Court ordered the Native Trustee to pay to the Aotea District Māori Land Board for distribution;
- the Aotea District Māori Land Board may or may not have received the funds from the Native Trustee, may or may not have distributed the funds in the amounts determined by the court, and may or may not have deducted commission for distributing the money;
- the railway closed in 1968, the tracks were lifted, and the former railway land was returned to its former Māori owners; and
- the marae subsequently paid to fill in the cutting so that it could use the land.

On the basis of these facts, we find that:

- This was not a compulsory purchase where the national interest was at stake, and where the land in Raetihi 2B2B3 was taken as a last resort.
- The railway branch line did benefit the local Māori community by improving transport for people and goods, and supporting local industry. However, the loss of amenity to the Mangamingi whānau arising from the line passing through the pā could have been avoided if the route had been changed even slightly – so that it ran on the other side of the road, for instance.
- In general – and the more so in circumstances like this, where the Māori community objected, and went so far as to take their protest to Wellington – the Crown was under an obligation to take all possible steps to minimise the negative impacts of compulsory purchases on the owners of the land. There is no evidence to suggest that

the Crown did anything to mitigate the loss of amenity at Mangamingi pā arising from the railway track running through the marae land. Having visited the site, we consider that relocating the line so that it was further from the marae would not have been difficult or expensive. Even 50 metres further away would have made a difference. The Crown's decision to lay the track where it did was culturally insensitive and unnecessary, and showed disregard for any duty of partnership.

- The Crown acquired four acres and 14.3 perches from Raetihi 2B2B3. Whether or not the owners actually received the compensation of £25 that they were awarded, the award was low. Using the Reserve Bank inflation calculator, we estimate that £1 in 1922 is equivalent to \$100 in 2015. On that basis, £25 had a similar buying power in 1922 to \$2,400 in today's money.
- No account was taken of the special value to the owners of land that was effectively part of the pā. The Native Land Court awarded the compensation as a lump sum, so clearly did not attribute value to the unique characteristics of individual blocks.
- Other poor aspects of the compensation process were:
 - it took too long (the compensation award did not come through until nearly five years after the purchase);
 - the owners' solicitors' costs were deducted from the compensation, whereas the Crown should have borne the costs of the process – which included legal representation for those whose land it compulsorily acquired against their wishes; and
 - the Aotea District Māori Land Board was allowed to claim commission for distributing the compensation, which potentially reduced the compensation further.
- Once the railway was closed, and the former owners got their land back, the Crown should have ensured that it was restored to its original condition. At least, it should have made sure that that land was in a usable state.

Thus, the Crown did not honour its guarantee of te tino rangatiratanga in article 2 of the Treaty, and breached its duty of active protection. We recommend that these failings are taken into account in the settlement negotiations between the claimants and the Crown.



The Otunui steamer
delivers timber for Parinui
Native School, 1928

On the claim about Pākihi Road, we make no findings. The parties did not present evidence on the formation or realignment of the road, and our additional research shed no light on this. As a result, we cannot say when the road was realigned, how much land was taken for the realignment, which legislation was (or was not) used, or any other material details that would enable us to analyse what happened.

25.4 PARINUI NATIVE SCHOOL SITE

25.4.1 Introduction

The claimants told us that their tūpuna gave five acres as a site for Parinui Native School, and the Crown did not give back the land after the school closed down in 1940. Parinui is a small Māori community on the Whanganui River, 25 kilometres up-river from Pipiriki.

We look into how the Crown disposed of the school site, and whether its actions accorded with Treaty principles. There is too little evidence to enable us to reach definite conclusions, but we make suggestions as to how the Crown and claimants can work together with the Māori Land Court to resolve this claim.

25.4.2 What the claimants said

Geraldine Taurerewa and the descendants of Te Hore Nukuraerae (Wai 1594) said that Tunga Epotume and Rori Te Hore, daughters of Te Hore Nukuraerae (Nukuraerae whānau), were tūpuna of the claimants. They gave an area of five acres and eight perches made up of parts Taumatamāhoe 2B2B15A2 and 2B2B15A3 as a site for Parinui Native School.¹³¹ Te Hore Nukuraerae's children lived, and had interests in, land at Parinui on the Taumatamāhoe 2B2B block, and were intimately connected with the area.¹³²

After the closure of the school in 1940, the Crown failed to respect the gifting of the school site, and did not return the land to the Nukuraerae whānau.¹³³ At the time of hearings, claimants believed that the Ministry of Education still held the land.¹³⁴ The claimants sought the return of the former school site at Parinui to their whānau.¹³⁵

The Crown made no specific submissions on the Parinui Native School site.

25.4.3 Parinui School and the Taumatamāhoe block

Parinui is situated in the Taumatamāhoe land block, and is now almost entirely surrounded by the Whanganui



The newly built Parinui Native School, 1928. Land for the school was gifted by Māori landowners in the Taumatamāhoe block. In 1941, the building was transported to Matahiwi. In 1954, the Māori Land Court ordered the return of the school site to the beneficial owners. The order, however, was not implemented, and today it is uncertain who owns the land.

National Park (see section 20.3.5). We were told Parinui was once the home of Uenuku Tūwharetoa, and marae associated with both Tamahaki and Ngāti Ruru. Wai 1594 claimants whakapapa to Ngāti Ruru who cite the Taumatamāhoe block as part of their traditional rohe.¹³⁶

Māori-owned Taumatamāhoe 2B2B15A was partitioned into three sections in 1919, after a Crown purchase in the area. Taumatamāhoe 2B2B15A1 was awarded to the Crown, with 2B2B15A2 and 2B2B15A3 remaining as Māori freehold land. The Nukuraerae or Hore (also written as 'Hōri') whānau were recorded as owners of Taumatamāhoe 2B2B15A2 and 2B2B15A3, and continued to farm the land awarded to them as non-sellers after the partition.¹³⁷

Locals petitioned Māui Pōmare (Member for Western Māori) for a school in the district. When the Parinui community first selected a site for the school in 1921, it identified a four-acre section that was to come from Tunga Epotume's interests in Taumatamāhoe 2B2B15A3.¹³⁸ GM Henderson, an inspector of native schools, visited Parinui in March 1926. Estimating that there would be about 30 children at the school, he recommended to the Director of Education that a school should be set up.¹³⁹ It was decided that a further acre was required for the school site, and

Tunga Epotume's sister, Rori Te Hore, gifted some of her interests in the neighbouring Taumatamāhoe 2B2B15A2. Henderson's letter to the Director of Education included a sketch of the expanded site and an agreement in Māori and English in which Rori Te Hore and her brother Amokawa Te Hore consented to the gift.¹⁴⁰ In line with contemporary Crown policy, the community agreed to clear the school site of scrub and gorse, fence it (supplying 'good totara posts' and battens), supply house blocks, and organise the transport of materials from the river landing to the school site.¹⁴¹

In 1926, the Crown formally declared that it had acquired four acres and 0.8 perches of land in Taumatamāhoe 2B2B15A3, and one acre in the adjoining section Taumatamāhoe 2B2B15A2, for a native school under the Public Works Act 1909 in accordance with native schools legislation.¹⁴² Parinui Native School opened in 1928, seven years after Parinui Māori first petitioned the Crown.

The Parinui Native School roll fluctuated at times, but never rose higher than 16, half the number that Henderson estimated in 1922.¹⁴³ The Department of Education recorded the roll as 10 in 1935, dwindling to seven by April 1940.¹⁴⁴ The school closed on 7 June 1940 when only three



Rosita Dixon, 2008. Ms Dixon gave evidence on the effect of the closure of Parinui Native School on whānau at Parinui in the 1940s.

pupils remained on the roll, and it was recorded that only three families were living in the area.¹⁴⁵ The buildings were removed in 1941 and transported to Matahiwi. The school's closure particularly affected those families who still lived at Parinui. Rosita Dixon recalls that her whānau had to move from their ancestral land to Pipiriki in order for her to continue her education.¹⁴⁶

The school closure in 1940 followed depopulation of small Māori settlements like Parinui during the 1930s depression, as people shifted to be nearer to relief work.¹⁴⁷ The claimants told us that Te Hore Nukuraerae's whānau, and other residents of Parinui, moved to town in the mid-twentieth century.¹⁴⁸ The Ngāporo Rapids tragedy also played its part in the reduction in the school roll around May 1940 (see box).

25.4.4 What happened after the school closed?

In 1954, Frederick Walker, a land purchase officer for the Public Works Department, made an application to the Māori Land Court for the former school site to revert to

Tragedy at Ngāporo Rapids

Rosita Dixon told us about the tragedy that took place at the Ngāporo Rapids (located on the Whanganui River between Pipiriki and Parinui) on 6 May 1940, and its lasting impact on the Parinui community:

The *Ohura* (riverboat) was doing a trip down the river, full with stock that were being transported to stock yards. On board was Captain Andy Anderson, his nephew, and the deckhands Amokawa Te Hore, Bobby Gray, and George Ropata. Tragedy struck at the Ngāporo Rapids, when all the stock moved to one side on the boat, causing it to capsize. Only Captain Andy Anderson and his nephew survived. The bodies of Amokawa Te Hore, Bobby Gray and George Ropata were swept downstream. Though the whole community at Parinui went in search for the bodies, only Amokawa Te Hore was ever found. The community searched for ages, but the other two men were not found.¹

Rosita Dixon saw the accident as the catalyst for the closure of Parinui Native School:

When we returned from the search, the school was closed. By the time the search had been completed, the teacher had informed the Ministry of Education that everybody had left and nobody was attending the school.²

the Māori owners, under section 7 of the Native Purposes Act 1943. Walker informed the court that he understood that the school site had been a gift from the Māori owners, so there had been no compensation. Walker asked that the land be returned to the owners, also without compensation. The court recorded no objections, and ordered reversion of the school sections in the owners of Taumatamāhoe 2B2B15A2 and 2B2B15A3 without any payment.¹⁴⁹

The minutes do not record whether the owners of Taumatamāhoe 2B2B15A2 and Taumatamāhoe 2B2B15A3

were present at the hearing, or were made aware of the re-vesting. It appears, though, that they did not know what was going on.

We know little of what happened to the school site after 1954. In 1970, Rangi Te Hore handed over the lease of Taumatamāhoe 2B2B15A2, 2B2B15A3A, 2B2B15A3B, and other adjacent Māori land, to Thomas Treanor, his adopted son. Mr Treanor farmed the land at Parinui, travelling there by boat from Pipiriki, and by 1976 had 700 ewes on approximately 1,000 acres.¹⁵⁰ He leased and farmed these sections until at least the mid-1980s. The blocks that once made up the school site remain in Māori ownership today.

It is unclear whether title to Taumatamāhoe 2B2B15A2 and Taumatamāhoe 2B2B15A3 has ever been amended to include the 1954 Māori Land Court re-vesting order. Taumatamāhoe 2B2B15A2 was consolidated in 2007 and a new certificate of title issued in 2008.¹⁵¹ The title diagram attached to the 2008 certificate of title excludes the one-acre part of the school site that should have been consolidated into this block. Neither was the school site ever consolidated into any part of the partition of Taumatamāhoe 2B2B15A3 into sections A, B, and C that happened in 1928.¹⁵²

25.4.5 Conclusion, findings, and recommendations

We find that in this case, the Crown attempted to return the former Parinui Native School site to its former Māori owners. We do not know why it took over 13 years to apply for the re-vesting order, but it is likely that the Second World War gave rise to administrative delays.

There appears to have been a failure of process where staff did not implement the Māori Land Court's order to re-vest the land. While the fault seems to have lain principally with the bureaucratic processes of the Māori Land Court, we also consider that, as a first step, the Crown should have notified the owners that the future of the Parinui Native School site was being determined. This communication failure resulted in the descendants of the former owners believing for more than half a century that the Crown still owned the land. In fact, the formal position concerning the school site's ownership remains unclear, because of the state of the title documents to which we have referred.

Not monitoring the process of re-vesting, and not telling the successors of the land's former owners about what was happening, constituted a Crown failure to actively protect these Māori interests.

We recommend that the Crown supports and funds the owners of Taumatamāhoe 2B2B15A2 and 2B2B15A3 to apply to the Māori Land Court for an investigation into the 1954 re-vesting of the Parinui School site, and to effect whatever rectification is required.

25.5 THE PĪPĪRIKI SCHOOL SITE

25.5.1 Introduction

Pipiriki was set up as a native township on Māori land in the 1890s, and vested in the Crown (see section 17.5.2). It was later managed by the Aotea District Māori Land Board, and then the Māori Trustee. In 1960, the land comprising the town was transferred to the Pipiriki Incorporation.¹⁵³

This case is about the Crown's transferring ownership of the Pipiriki School site to this Incorporation in 2009, which some claimants say was inappropriate.

25.5.2 What the claimants said

The Pipiriki Incorporation on behalf of Ngāti Kurawhatia (Wai 428) and the Tamahaki Council of Hapū (Wai 555, Wai 1224) initially raised claims concerning the Crown's failure to return the school after it closed in 2006.

Near the end of the Whanganui hearing process, Gabrielle Whitu and Boy Cribb submitted a separate claim (Wai 2204) to the Tribunal, to address aspects of the Wai 555 and Wai 1224 claims that were specific to their whānau.¹⁵⁴ They relied on evidence about the Pipiriki School site in support of those claims.¹⁵⁵

Ms Whitu and Mr Cribb's claim criticised the way the Crown dealt with the school site. They said that the Crown did not carry out a proper investigation to ensure that the land went back to the descendants of those who gifted it, and in particular overlooked their ancestor's participation in the gift.¹⁵⁶ Tamahaki claimants in Wai 555 and Wai 1224 and Ms Whitu and Mr Cribb in Wai 2204 said that vesting the land in the Pipiriki Incorporation bypassed the

descendants of Mokopuna Tirakoroheke Taurerewa, who was one of those who gifted land for the school.¹⁵⁷ This breached a condition of Mokopuna Tirakoroheke and others' gifting of the land: if no longer required for the school, the land was to be returned to the donors or their descendants.¹⁵⁸

Because the land is now owned by the Pipiriki Incorporation, it is land that is privately owned. This Tribunal can hear claims about land in private ownership, but cannot recommend its return to former owners.¹⁵⁹ Privately owned land cannot form part of a Treaty settlement.¹⁶⁰ Ms Whitu, Mr Cribb, and Tamahaki claimants (claimants in Wai 555, Wai 1224, and Wai 2204) are not shareholders in the Pipiriki Incorporation, and they are upset about a situation that denies them a say in how the school site, in which their tupuna was a part owner, is used and managed in the future.¹⁶¹

The Crown made no specific submissions on the Pipiriki School site. In response to the presiding officer's direction in March 2008, the Crown informed the Tribunal that the Crown was in the process of returning land gifted for Pipiriki School.¹⁶² It stated that it would take reasonable steps to identify the successors of the original donors, so that an agreement could be reached as to the value of the improvements on the site.¹⁶³

25.5.3 Pipiriki School

In 1894, the Pipiriki community agreed to establish a native school, which opened in 1896 on section 2, block VII, Pipiriki Township.¹⁶⁴ By the 1950s however, the school site was no longer regarded as suitable, and a new school was deemed necessary to replace the ageing school buildings. The site of the original school was returned to the Pipiriki Māori Land Committee (the precursor to the Pipiriki Incorporation) to be used for community purposes.¹⁶⁵

In August 1953, the Pipiriki community met with representative owners of the Pipiriki Māori Township, the Ministry of Works, the Department of Māori Affairs, and the Department of Education to discuss obtaining a suitable section of land for a new school in the township.¹⁶⁶ During the meeting, the Māori beneficial owners decided to gift blocks v and VI of Pipiriki township to the Crown



Robert (Boy) Cribb, 2008. Mr Cribb told the Tribunal that the Crown had not done enough to identify the descendants of those who gifted the land for Pipiriki School.

for a new school on the condition that the land was returned once it was no longer needed as a school site. The agreement also stated that the Crown would be compensated for any buildings it erected on the land.¹⁶⁷

There are different understandings about the gift of the land. Ngāti Kurawhatia told us that their ancestors gifted land for the new Pipiriki School in 1953. Te Whetūre Gray, in evidence for the Pipiriki Incorporation, recalls that land for the school was gifted under the name of Maggie Wallace (Tohuwai Warahi or Tohuwai Tūirangi). The new school site included land where Mrs Wallace had

The two-roomed Pipiriki Māori School in 1960, a year after it was opened. The school was closed in 2006 owing to its declining roll. The school site, which had been gifted, was returned to the Pipiriki Incorporation. Claimants such as Robert Cribb, however, argued that the Crown did not properly identify all the descendants of the original owners, to whom the site should have been returned.



previously lived, and because she was a revered kuia of Ngāti Kurawhatia, it was decided that she should sign the gift agreement on behalf of the donors.¹⁶⁸

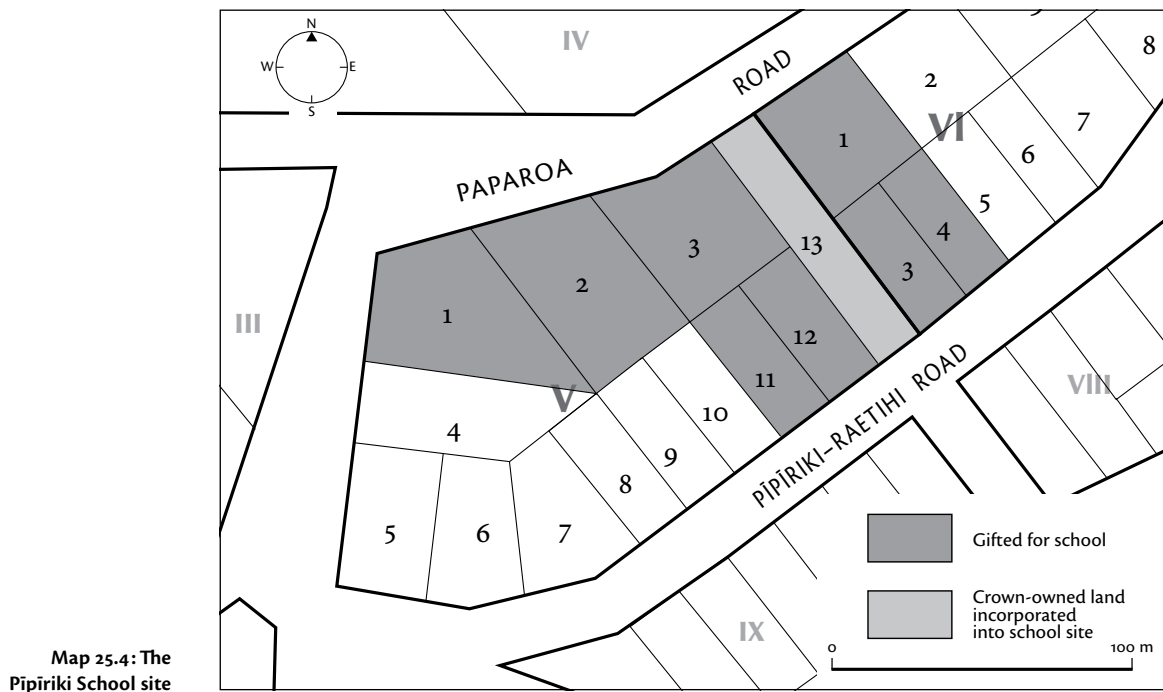
As we have noted already, however, Ms Whitu, Mr Cribb, and Tamahaki claimants believe that their tupuna Mokopuna Tirakoroheke Taurerewa was among those who gifted land for Pipiriki School in 1953.¹⁶⁹ Mokopuna Taurerewa is an ancestor common to a number of claimant groups in the central region, many of whom claim an interest in the township through her Tamahaki ancestors.¹⁷⁰ As part of its title investigation in 1898, the Native Land Court awarded some shares in the Pipiriki Native Township to both Mokopuna Tirakoroheke's grandfather Taurerewa Tūwharetoa, and great-grandfather Uenuku Tūwharetoa.¹⁷¹

In fact, the land used as a school site was a gift from all of the beneficial owners. At the time of the establishment of the second Pipiriki School, the Māori Trustee managed the town, and almost all of the sections within it, on

behalf of its several hundred beneficial owners. Interests were undivided in all but a few sections. Some owners lived on reserves set aside for Māori within the town, and some leased other town sections.

Although the owners agreed to gift the land for the new Pipiriki School, transfer to the Crown was effected under the compulsory acquisition provisions of the Public Works Act 1928. Thus, sections 1 to 3 of block v, and sections 1, 3, and 4 of block vi, Pipiriki Township were formally gazetted in 1955 as land taken for a Māori school. More land was soon needed to enlarge the playground, so in 1957 sections 11 and 12 of block v were gazetted for this purpose. A compensation assessment came before the Māori Land Court on 20 May 1957. The court was satisfied that the land's owners had made a gift to the Crown for a school site, and determined that no compensation was payable.¹⁷²

Section 13, block v, Pipiriki Township lies between the sections of Māori land gifted for the school. It was taken originally for a road as part of the 1895 Township



Map 25.4: The
Pipiriki School site

agreement, but the road was never formed. In 1957, this section was gazetted in two schedules, the first declaring the road closed, and the second declaring the land for a Māori school under the Public Works Amendment Act 1948.¹⁷³ The effect was simply to put the land to a different purpose from that for which it was originally acquired. As the Crown already owned it, there was no question of compensation.¹⁷⁴

The new two-roomed Pipiriki School was opened in 1959.¹⁷⁵ It was initially a boost to the settlement, but the roll gradually declined from the mid-1960s.¹⁷⁶ Pipiriki School was closed in February 2006, with the land declared surplus to Crown requirements on 6 December 2006.¹⁷⁷

25.5.4 How did the Crown go about returning the land?

After the school closed, details of the property were forwarded to Land Information New Zealand (LINZ) to manage the disposal process under section 40 of the Public

Works Act 1981.¹⁷⁸ Section 40 of the Act outlines how land taken for a public work can be offered back to the former owners of the land, or their successors.

The Pipiriki School site was also evaluated under the Crown's 'gifted land policy'. Approved by Cabinet in 1995, this policy recognises the Government's intention to return to its donors or their successors gifted land that is no longer required.¹⁷⁹ In the case of the Pipiriki School site, LINZ would reimburse the Ministry of Education for the value of the school land, so that it could be returned to the descendants of the original owners.¹⁸⁰ Gifted land policy does not cover the costs of improvements on the land, and LINZ is entitled to recover the value of these from the person or people to whom the land is returned.¹⁸¹

LINZ used a property company called DTZ as its agent to carry out the section 40 reporting procedure for the Pipiriki School site.¹⁸² The 2002 'Disposal of Gifted Land: Accredited Supplier Standard 24', produced by LINZ for

external agencies such as DTZ, outlines a series of 25 steps to be taken as part of the implementation of gifted land policy and the potential return of gifted land to its donors or their successors.¹⁸³ These include establishing whether the land was gifted; identifying the components of the gift; determining the current market value of the land; locating the donors; and communicating with all concerned in order to come to a satisfactory agreement.¹⁸⁴

In August 2008, DTZ prepared a stage 1 report, recommending that the land be offered back at nil value to the descendants of the original owners under gifted land policy, with the school buildings offered at current market value (\$85,000).¹⁸⁵ In January 2009, DTZ prepared a Stage 2 report that identified Pipiriki Incorporation as the 'Beneficially Entitled Persons' to whom the land should be returned.¹⁸⁶ The incorporation accepted the ministry's offer, and the freehold title to the school site was transferred to the Pipiriki Incorporation in July 2009.

25.5.5 Conclusion, findings, and recommendations

At the heart of Ms Whitu, Mr Cribb, and the Tamahaki claimants' complaint about the return of the Pipiriki School site to the Pipiriki Incorporation lies a simple proposition: the land should have gone back to successors of the former owners of the gifted land, but it did not. That is because, they say, their tupuna was one of the donors, and at least some of her successors – for example, Ms Whitu and Mr Cribb – are not beneficiaries of the Pipiriki Incorporation.

Determining whether, and to what extent, the Crown's process for return of the land fell short involves (1) tracing the interests of Uenuku Tūwharetoa, Taurerewa Tūwharetoa, and Mokopuna Tirakoroheke in land gifted for the school in 1953; and (2) determining whether those entitled to succeed to those interests derive benefits from the Pipiriki Incorporation, to which the Crown transferred the land. We do not have the expert and detailed evidence that would enable us to make that determination.

We are in no doubt that this matter is important to Ms Whitu, Mr Cribb, and the Tamahaki claimants, but the Crown did not engage with their claims with respect

to the school land in any meaningful way. For example, it did not provide copies of the Stage 2 DTZ report that might reveal the extent to which the Crown explored the questions posed in the previous paragraph, or uncovered answers to them. It is an unsatisfactory situation where the Crown allows Tribunal claimants to vent their frustrations about processes that they say adversely affected them without sufficiently involving itself to enable the Tribunal to come to an informed view. We do not consider it acceptable simply for the Tribunal to make no findings, for that both rewards the Crown's non-involvement and leaves the grievances in the claim unresolved.

We are satisfied both that the successors of the donors of the school land are entitled to derive benefit from the interests in the land that the Crown has returned, and that the Crown did not manage its re-vesting process with any intention to exclude any of those successors from benefiting from the return of the school site. However, it seems on the evidence before us that it may unwittingly have done so.

We recommend that the Crown work with Ms Whitu, Mr Cribb, and Tamahaki claimants (that is, claimants in Wai 555, Wai 1224, and Wai 2204) to commission research that will enable an informed view to be reached on:

- ▶ the interests of Uenuku Tūwharetoa, Taurerewa Tūwharetoa, and Mokopuna Tirakoroheke in land gifted for the school in 1953; and
- ▶ whether those entitled to succeed to those interests derive benefits from the Pipiriki Incorporation.

If, as a result of the investigation, it appears that successors to interests of donors of the land are excluded from benefiting from the return of the land to the Pipiriki Incorporation, the Crown will have breached both:

- ▶ the agreement with the donors on the basis of which the school land was gifted to the Crown; and
- ▶ the principles of the Treaty, in failing to actively protect the interests of those who are entitled to derive benefit from the return of the school land, but in fact do not.

If this is the situation, the Crown should negotiate with those entitled an alternative means for them to derive benefit.

25.6 MANGANUI-A-TE-AO ISSUES

25.6.1 Introduction

The Manganui-a-te-ao, the ‘Great River of the World’, has its source in numerous streams and small rivers that flow west from the slopes of Mount Ruapehu.¹⁸⁷ The main course of the river flows south-west, cutting a magnificently deep gorge through rugged hill country, meeting the Whanganui River near Tieke, at the edge of the Whanganui National Park, 21 kilometres upstream of Pipiriki.¹⁸⁸ The river valley’s microclimate and fertile flat land meant it was a ‘natural food bowl’, ideal for growing crops and supporting a large population.¹⁸⁹ Traditionally, this tucked-away valley was a refuge for those needing protection.¹⁹⁰

In 1887, most of the Manganui-a-te-ao Valley was reserved as Waimarino 3 for 50 Māori individuals from a number of different iwi and hapū.¹⁹¹ The 18,350-acre block straddled the Manganui-a-te-ao, following the river’s northeasterly direction for approximately 16 kilometres.¹⁹²

In 1907, the owners of Waimarino 3 applied to the Native Land Court for partition, and 19 separate blocks resulted.¹⁹³ Many of these have been sold, with only a few key partitions remaining in Māori hands.¹⁹⁴

In 1949, three roods and 28 perches of Waimarino 3L3C were set aside as a papakāinga known as Waitahupārae. Waitahupārae includes an urupā that tangata whenua used for well over a century before it acquired reserve status.¹⁹⁵

The theme that underlay the particular cases brought to us was the difficulty for tangata whenua to retain their land when, throughout the twentieth century, the Crown and local authorities repeatedly acquired their land compulsorily for various public works.

25.6.2 What the claimants said

Claimants Ngāti Ruakōpiri and Ngāti Tūmānuka (Wai 1072 and Wai 1197), and Tamahaki and the descendants of Uenuku Tūwharetoa (Wai 555 and Wai 1224), all told us of their links to the Manganui-a-te-ao area. (For an outline of the tribal occupation of this area, see chapter 2.) The claims concern the establishment of roads across Waimarino 3 blocks and the Crown’s acquisition of land for Mākākahi Road School. Ngāti Ruakōpiri and

Ngāti Tūmānuka claimants also told us about Waimarino County Council’s use of five acres of Waimarino 3M5 for a gravel pit in the 1970s.

In their submissions about Waimarino 3 roads, claimants alleged that 209 acres were taken for roading purposes from Waimarino 3 over a period of 60 years.¹⁹⁶ In most instances, little consultation occurred and no compensation was paid.¹⁹⁷ The claimants argued that the Crown had both a legal and a Treaty obligation to compensate Māori owners for these takings, and the Māori Land Court later exaggerated the practical difficulties of returning the land when it determined that no compensation was payable.¹⁹⁸

Claimants from Tamahaki and Uenuku Tūwharetoa also separately raised roading issues in the Waimarino 3 block – notably, a taking of three acres in 1927 under the Public Works Act 1908. They told us that this unformed road runs across Māori land including an Uenuku Tūwharetoa marae.¹⁹⁹ They are particularly aggrieved about this incursion on an area of cultural significance.²⁰⁰

The Mākākahi Road School taking was in 1935. The claimants said that the Crown breached Treaty principles when it compulsorily acquired two acres from Waimarino 3L1, did not pay proper compensation, and did not return the land to its former owners once it was no longer required for educational purposes.²⁰¹

Claimants from Ngāti Ruakōpiri and Ngāti Tūmānuka also criticised the Waimarino County Council’s acquisition of a five-acre section from Waimarino 3M5 for a gravel pit in 1972.²⁰² Of the five acres taken, the gravel pit occupies only a small part. Thus, said the claimants, the area taken was excessive, and furthermore the council pressured the owners to accept the inadequate price offered.²⁰³

25.6.3 What the Crown said

The Crown addressed some of the specific Manganui-a-te-ao grievances in their submissions, saying that claimants overstated both the extent of land taken, and the Crown’s role in the takings.²⁰⁴ The research of the Crown’s historian, Brent Parker, revealed that the Crown was not the taking authority in most of the compulsory purchases. The Crown advanced its standard position that it is not

responsible for what local authorities and the Native Land Court did.²⁰⁵

The Crown told us that most of the road lines in the Waimarino 3 block were not public works acquisitions, but were set aside by the Native Land Court in 1907 in order to provide access to Waimarino 3 partitions.²⁰⁶ It was not responsible for the court's decision to create road lines, or to award compensation.²⁰⁷

The Crown accepted, though, that it acquired around 40 acres in Waimarino 3 for roads under the Public Works Act and by Governor's warrant, and paid compensation in some cases.²⁰⁸

The Crown also provided information about the land used for Mākākahi Road School.²⁰⁹ Contrary to the claimants' belief, the Crown did not acquire the land compulsorily from Māori: a Pākehā landowner, who purchased shares in Waimarino 3L1 as Māori freehold land, donated land for the school in 1935. At the time, public works acquisition was considered the simplest way to give effect to the landowner's gift and transfer title to the Crown.²¹⁰ The Crown accepted that neither the Māori Land Court minutes for the 1953 partition of the block nor later correspondence explicitly mention the area of the school site being deducted from the European landowner's shares on partition. However, it said (1) that effecting the deduction of shares was the responsibility of the Māori Land Court, and the Crown should not be held responsible for any failure to do this properly; and (2) the absence of evidence that the deduction of shares occurred does not mean that it did not occur.²¹¹

The Crown contended that it is not responsible for the Waimarino County Council's acquisition of land for the Manganui-a-te-ao gravel pit.²¹²

25.6.4 Waimarino 3 roads

(1) Introduction

Both claimant counsel and Crown historian Brent Parker provided information on roads in Waimarino 3. Initially planned for the benefit of owners of Māori land, road lines in Waimarino 3 developed in a haphazard fashion into roads that everybody used. As table 25.3 demonstrates, multiple legislative provisions and taking authorities had



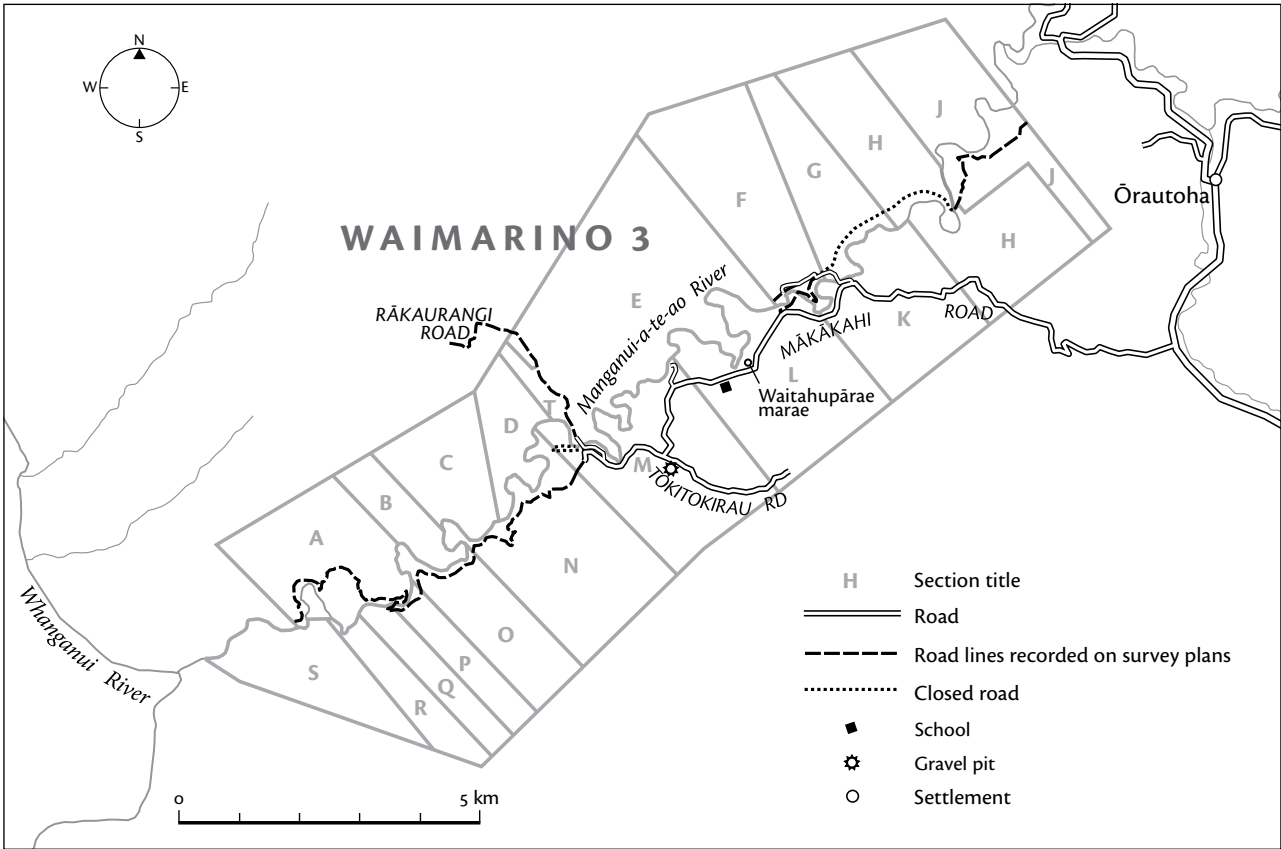
The Manganui-a-te-ao River near its confluence with the Whanganui River, circa 1908. The Waimarino 3 block straddled the river.

a hand in creating roads in Waimarino 3. We attempted to tally the number of acres and how they were taken, but the record of how and how much is far from complete.

The biggest land loss happened in 1907, when the Native Land Court partitioned Waimarino 3, and set apart 169 acres as road line.²¹³ Seventy-four acres of this road line was developed in the early 1900s, mostly for Mākākahi Road, and was eventually declared a road in 1967.²¹⁴ Of the balance, 71 acres has not become road, but retains 'paper road' status; on 23 acres the road line was cancelled and the land was transferred either to the original owners or to the owners of adjacent land.

Area (acres, roods, perches)			Current status	Created by
71	0	26.3	Road line	Native Land Court
75	0	33	Legal road	Road line declared road by Native (Māori) Land Court (Native Land Amendment Act 1913, s 49; Maori Affairs Act 1953, s 422)
23	1	8	Legal road	Public works taking through Public Works Act 1908
16	2	0	Legal road	Public works taking through Governor's warrant of 16 May 1900
23	0	16	Freehold general land	Former road line vested in original owners or owners of adjacent land (Maori Affairs Act 1953, ss 423, 424)

Table 25.3: Current status of roads within Waimarino 3



Map 25.5: Manganui-a-te-ao local issues

Between 1900 and 1927, the Crown compulsorily acquired 40 acres from Waimarino 3 blocks under various Public Works Acts and by Governor's warrant to provide access to other land blocks.

The claimants' key concerns were the current status of the unformalised 'road lines' or paper roads; that there was no compensation for Mākākahi Road; and that a road was planned to run through Waitahupārae Marae.

(2) What are 'road lines', and who creates them?

A road line is a formal survey of a road's path. Road lines are often simply that: lines recorded on survey plans. The road itself need not be formed. Roads that exist only as lines on paper – that is, where no physical road has been built – are often called paper roads.

While New Zealand was being settled and developed as a colony, settlers' demand for surveys to be done and titles to be issued often outstripped the capacity of the Government, Native Land Court, and surveyors to respond. Partitions and access roads were often drawn directly onto paper survey plans, rather than executed on the ground.²¹⁵ These roads were not always formed because the way settlements developed was sometimes not as planned or expected. Road lines criss-cross rural New Zealand to this day.

What is the status of these roads that were planned and drawn, but never came to fruition? Their management has largely fallen to local authorities, which simply allow local landowners to use the land. Many unformed roads are so much a part of the surrounding farmland that they have never been considered a public thoroughfare. However, local authorities can at any time declare a road line available for public use as a road, and then build the road.²¹⁶

(3) Road lines in Waimarino 3

When it partitioned Waimarino 3 in 1907, the Native Land Court used its powers to create private roads on the newly partitioned land.²¹⁷ It directed that each new partition would have 'where necessary private rights of way so as to have access to roads, whether made or to be made; Govt., county or otherwise'.²¹⁸ A road line, which later became Mākākahi and Tokitokirau Roads, was surveyed

along the Manganui-a-te-ao River in 1911, affording access to most divisions and to the adjacent Waimarino A sellers' reserve.²¹⁹ Partition surveys were finally completed by 1914, and the chief judge of the Native Land Court was able to sign and issue the partition orders, which depicted the road lines across each partition. The land area of the road line was deducted from each partition, but still remained part of Waimarino 3, and Māori freehold land.²²⁰

There was little evidence about how the road lines developed from 1907. It appears that local authorities maintained the section known as Mākākahi Road as a public road for many years, providing the only access into the district. A public school was also built along Mākākahi Road in the 1930s.

The status of the road lines came to the attention of the Māori Land Court in 1966, leading to the realisation that Mākākahi Road was not legal as a public road. The court found that the road line was surveyed when the partition orders were made, but was not 'declared', and so remained part of Waimarino 3 and Māori freehold land.²²¹ Pursuant to section 422 of the Maori Affairs Act 1953, the Māori Land Court recommended to the Minister of Works and Development that a series of road lines that had become Mākākahi Road and Tokitokirau Road be declared legal roads.²²² The court found that no compensation should be paid for the roads once they were legalised: the Māori owners had not protested when road lines evolved into public roads, and their own blocks benefited both from the roads' existence and maintenance by the local council.²²³ The court also considered that it would be difficult to ascertain the names of all the contemporary owners, or successors to the original owners, and the cost of doing so would be out of proportion to the amount of compensation that might be awarded.²²⁴ The Minister of Works published a notice effecting the decision of the Māori Land Court in the *Gazette* in 1967.²²⁵

The remaining road lines have never been legalised as roads. In 1969, the owners of Waimarino 3G and 3H got back 23 acres when they applied to the Māori Land Court to have the unused road lines cancelled, and vested in the owners of the surrounding block. Seventy-one acres remain as road lines across Waimarino 3 blocks.²²⁶

(4) Public works acquisition for the road that bisected Waitahupārae Marae

Rangimārie Ponga for Tamahaki and Uenuku Tūwharetoa told us that, in 1927, three acres of land was taken from Waimarino 313C under the Public Works Act 1908 for a road.²²⁷ The taking ran through the centre of Waitahupārae Marae and kāinga, splitting the land in two.²²⁸ The claimants argued that the road serves no purpose, as it has never been formed, and ends at a bluff and a 90-metre drop to the Manganui-a-te-ao River. They said that the community would never have agreed to the road.²²⁹

Compulsory acquisition of land for the road line bisecting the marae appears to have anticipated construction of a bridge over the Manganui-a-te-ao at this location. The Crown used the Public Works Act for the purpose, on behalf of the Waimarino County Council. We do not know the facts about important matters such as whether the landowners consented, or whether alternative sites were considered.

In February 1928, the Native Land Court heard an application to assess what compensation the Waimarino County Council should pay. The court minutes discuss valuation in terms of location and improvements, without mentioning the fact that the road would cut across the kāinga. It was noted that Parekōtuku Ngātāpapa (also known as Parekōtuku Edmonds) objected to the taking, but did not attend the compensation hearing. No other Māori owners were present.²³⁰ The court awarded £30 compensation, to be paid to the Aotea District Māori Land Board for disbursement to the owners.²³¹

The claimants wrote to the Ruapehu District Council between 1989 and 1990 seeking the return of the unformed road over the marae. Ruapehu District Council apparently replied that it was evaluating what to do with surplus road lines in the district.²³² Landowners were granted an encroachment licence over the land, which gave them permission to use the land, but not to own it.²³³

(5) Conclusion, findings, and recommendations

(a) *Compensation for private road lines on Waimarino 3 that became public roads:* Previous Tribunals have found that the provision of road access to land was an essential

part of developing a district.²³⁴ Māori actively sought the advantages that would come with roads, and needed road access to newly created partitions.

When the Native Land Court created road lines on Waimarino 3 as part of the partition process, it was setting up the potential for owners of Māori land to create roads to access their land. The road lines were on land that continued in Māori title, but when roads were formed on Waimarino 3, they began to be used – and maintained by the local authority – as if they were public roads.

When this situation was brought to the attention of the Māori Land Court in 1966, it referred to section 422(2) of the Maori Affairs Act 1953, which was drafted for this very situation. It empowered the Māori Land Court to recommend to the Minister of Works and Development that land used as a road ‘be declared to be a road’. The Act left it to the judge to decide whether or not to make the recommendation subject to the payment of compensation to those whose land interests were affected.

As regards these roads on Waimarino 3, the Māori Land Court seems to have regarded the task as a kind of administrative clean up, since everyone had proceeded previously on the basis that the roads were already public roads – including the owners of the Māori land on which they had been formed. As a result, it did not see the transfer of the road, and the land, out of private and into public hands as a moment when compensation was owed to those who owned the land.

The court also had a practical reason for not awarding compensation. Without specifying how much compensation was likely to be payable, it considered that it was likely to be too little to justify the effort and expense of finding the possibly many hundreds of beneficial owners.

The Tribunal’s job is to assess the conduct of the Crown against the standards implied in the Treaty of Waitangi. Constitutionally, the conduct of the judiciary is not the conduct of the Crown,²³⁵ so it falls outside our jurisdiction to comment on the conduct of the Māori Land Court judge in this case.

However, the legislation is at fault here: the Crown constructed the legal context within which the judge was operating. It should not have been possible for the Māori

Land Court to recommend that the land be declared a road without giving all whose land interests were affected the right to be heard on the matter, and especially on whether compensation was payable.

Section 422(2) of the Māori Affairs Act 1953 gave the Māori Land Court discretion whether to recommend that land used as road should be declared to be a road, and whether compensation should be paid to those whose land interests are affected. In this arrangement, there is no agency at all for the owners of the Māori land in question – not even a requirement that they be notified after the fact. This creates the possibility that the fate of Māori owners' land is determined by the court and the Minister of Works and Development, without those owners being informed that this determination might happen, is happening, or has happened.

As to payment, the provision creates no expectation that landowners whose land has been used for road will be paid; simply, the Māori Land Court's recommendation that the road is declared a road 'may' be subject to compensation. Although the 5 per cent rule, discussed in chapter 23, created a legal environment where using Māori land for road without paying owners was commonplace for some decades, that era was long gone by the mid-twentieth century. As the *Ngati Rangiteaorere Claim Report* found, the taking of land without compensation amounts to confiscation: 'Whatever the merits of compulsory acquisition, as a last resort, there can be no justification of the failure to pay compensation.'²³⁶ For a provision like section 422, redolent of colonial high-handedness, to be entering the statute books in 1953 was surely an anachronism.

This provision, which authorised expropriation without notice or compensation, breached the guarantee in article 2 of te tino rangatiratanga.

(b) *The return of land in Waimarino 3 no longer required for roads*: Treatment of land no longer required for roads has been inconsistent. While the unused road lines attached to Waimarino 3G and 3H were returned to the owners of the surrounding Māori land, other road lines were not.

All owners of land in the Waimarino 3 block should have

been treated the same as owners of land in Waimarino 3G and 3H. There is no reason that we can see for unused road lines to remain in limbo – that is, as Māori freehold land, but not vested in any particular owners. We encourage the Crown and council to work with landowners who wish to have road lines on their partitions removed, and take the necessary steps to restore the land to their ownership.

(c) *The road line bisecting the kāinga*: The only good thing to be said about the road line bisecting Waitahupārae Marae and kāinga, for which the Crown, on behalf of Waimarino County Council, compulsorily-acquired land, is that the road was never constructed as it was intended for an approach to a bridge that was never built.

In an analogous situation, land was compulsorily acquired for a road across Hurunui-o-Rangi Pā near Carterton, of which the Wairarapa ki Tararua Tribunal said:

The council was not interested, it appears, in involving the people of the pā in what was planned for their land. Its actions showed a complete disregard for the things that Māori hold most dear – the integrity of marae and the tapu of urupā. Such disrespect goes to the heart of relationships.²³⁷

Compensation seems to have been awarded in the Waitahupārae Marae case (£30), but every other aspect of this acquisition was flawed:

- It was a minor, local public work for which any compulsory acquisition was unjustified, and to take land for a planned road through a marae was a flagrant disregard of te tino rangatiratanga.
- The Manganui-a-te-ao runs through a long river valley so it is hard to imagine that there were no other places to locate a bridge and an access road. If the Crown or council had considered alternatives, taken into account at all the cultural implications of running a road through a marae, or tried to negotiate the matter with tangata whenua, their culpability might have been less. There is no evidence that any such steps were taken here.
- It must have been apparent a long time ago that the bridge was not going to be built, and that the land taken

for the road would not be needed for that purpose. The land should have gone back to its former owners, or their successors. The Ruapehu District Council's lack of action once the issue was brought to its attention in about 1990 was particularly negligent.

We recommend that the Crown work with the Ruapehu District Council to investigate all unused road lines across Māori land in the Waimarino 3 block taken under the provisions of the Public Works Act and determine whether they are able to be returned to their parent blocks under the relevant legislative provisions. We recommend that the Crown fund any necessary applications to the Māori Land Court.

25.6.5 Mākākahi Road School

(1) Introduction

Here, we discuss the Crown's acquisition of land for Mākākahi Road School, a public school that opened sometime after 1935. The claimants alleged that, in 1935, the Crown took a two-acre section from the 1,226-acre Waimarino 3L1 block under the Public Works Act 1931 for the school site.²³⁸ At the time, Waimarino 3L1 was Māori freehold land owned by the Kurukaanga and Edmonds whānau and a European farmer, Henry Pike, who had purchased shares in the block from other Māori owners. Information about this acquisition came both from Crown historian, Brent Parker, and the claimants.²³⁹

(2) The Crown's acquisition of the school site

In April 1934, the District Senior Inspector of Schools wrote to the Secretary of the Wanganui Education Board about a proposal to establish a school on Mākākahi Road:

Mr Pike is prepared to give a site. I inspected the piece of land offered, and found it quite suitable; two to three acres are available. The title is somewhat uncertain and would need careful investigation.²⁴⁰

In November 1934, the secretary wrote to the director of education to inform him that the site had been surveyed, and that the Education Board's solicitors considered that:

the cheapest and most expeditious way of obtaining a title will be for the Board to proceed under the Public Works Act. Although Mr Pike, the donor of the site, is purchasing the freehold, the exact location of his interest has not yet been determined by the Native Land Court.²⁴¹

The Education Board's architect and surveyor both reported to the Public Works Department that the proposed site was not occupied, and on 11 April 1935, a notice was published in the *Gazette* taking the site under the Public Works Act 1928 for the purpose of a public school, and vesting it in the Wanganui Education Board.²⁴² The proclamation taking the school land was registered over the two certificates of title held by Pike and the Māori owners, rather than being processed through the Native Land Court as a separate partition application. In July 1935, a certificate of title for the school site was issued to the Wanganui Education Board.²⁴³

At the compensation hearing on 14 August 1935, Pike stated that he wished to make a gift of the school site and that he wanted it to be taken from the portion of the block that would be allotted to him on partition. Because it was a gift, there was no compensation, but the Education Department paid £2 10s on behalf of Pike to the Survey Department towards repayment of a survey lien over the Māori portion of the block.²⁴⁴

It was not until 1953 that the Māori Land Court partitioned Pike's shares out of the Waimarino 3L1 block. Pike and the Māori owners agreed the boundaries of the partition, and at the partition hearing the school site was certainly discussed, because the section's memorial schedule recorded the court's intention to make an 'allowance' for the school site.²⁴⁵ The court partitioned the block so that 733 acres 2 roods 4 perches went to Pokaiana Te Kurukaanga and the seven members of the Edmonds whānau as Waimarino 3L1A, and the remainder – recorded in the court's minutes as 'the balance of the block' without stating the area – went to Henry Pike as Waimarino 3L1B.²⁴⁶

The school site should have been deducted from Henry Pike's Waimarino 3L1B area, but it was not. Instead, the deduction came from Waimarino 3L1, the parent block,

which meant that the Māori owners of that block unwittingly contributed to the gift of land for the school.

The work of historian Brent Parker enables us to ascertain what happened. According to the original title record, Henry Pike bought around 489 shares (or 40 per cent) of Waimarino 3L1, which equates to 491 acres 25.66 perches.²⁴⁷ Māori owners retained approximately 731 shares (or 60 per cent) of Waimarino 3L1, which equates to 734 acres 3 roods 17.02 perches.²⁴⁸ If the Māori Land Court had deducted the school site from Henry Pike's land as it should have, Henry Pike's land in Waimarino 3L1B would have reduced by 2 acres 35.2 perches, and the Māori owners' combined landholding would have remained unchanged.²⁴⁹ However, the court subtracted the 2 acres 35.2 perches from the total area of Waimarino 3L1 before the new partition was calculated, so that the school site was taken from both Pike and the Māori owners. As a result, Waimarino 3L1A, the partition owned by Te Kurukaanga and the seven members of the Edmonds whānau, was 1 acre 1 rood 13.02 perches smaller than it should have been, and Henry Pike's Waimarino 3L1B was a corresponding amount larger than it should have been.

Mākākahi Road School closed between 1963 and 1966. A *New Zealand Gazette* notice in 1971 transferred the site from the Wanganui Education Board to the Crown under section 5(6) of the Education Lands Act 1949 in order to enable the Crown to dispose of the site.²⁵⁰ A certificate of title to the school site was issued in February 1973 to private purchasers.²⁵¹

(3) Conclusion, findings, and recommendations

The partitioning of the block was not done properly, because the effect was to take the school site out of the whole block rather than out of Mr Pike's portion of the block. The Māori Land Court's error effectively made half the school site a gift from Mr Pike, and the other half an expropriation from the Māori owners of Waimarino 3L1 (which amounted to just over an acre).

Having decided to use compulsory acquisition as the best means of effecting Mr Pike's gift of land for the school, it was incumbent on the Crown to make sure

that the process was undertaken properly. There are two respects in which the Crown failed: officials working in the Māori Land Court failed to give effect to the court's order by subtracting the land for the school site only from Mr Pike's partition (Waimarino 3L1B) rather than from the parent block (Waimarino 3L1), and officials working in the Public Works Department failed to ensure that the school land came only from the donor's land rather than from all the owners' land.

Officials appreciated that subtracting the school land from a multiply owned block of Māori land was not a simple matter, and letters written in 1934 urged the need for 'careful investigation'.²⁵² The Crown's approach, though, was slipshod. Gaining sound title for the school was not attended to until 1953, 20 years after the land was gifted. The delay probably contributed to the error, because it is unlikely that the officials originally involved in establishing the school would have still been employed by the Māori Land Court or Public Works Department.

We find that the Crown's failure to ensure that the land transferred matched the terms of the gift prejudiced the Māori owners of Waimarino 3L1: they unwittingly gave up more than an acre of their land to the school site. There was both an error of Māori Land Court staff in subtracting land from both 3L1A and 3L1B rather than from 3L1B only, and failure by officials in the Public Works Department and the Education Department to ensure that title for the school site reflected the land interests that Mr Pike gifted.

As the school site is now in private ownership, we cannot recommend its return. However, we can and do recommend that the Crown compensates the successors of the Māori owners of Waimarino 3L1 in 1934 for the expropriation from them of 1 acre 1 rood 13.02 perches, including interest.

25.6.6 Waimarino 3M5 gravel pit

Rangimārie Ponga claimed on behalf of Tamahaki and Uenuku Tūwharetoa about pits along the Manganui-a-te-ao from which councils extracted gravel for road metal.²⁵³

In 1972, the Waimarino County Council bought a pit located in the Waimarino 3M5 block. The claimants said

that the council bought too much land and that it told the owners that, if they did not sell at the council's price, the land would be taken under the Public Works Act.²⁵⁴

When we looked into the Waimarino County Council's purchase of this land, we found that the relevant Māori Land Court minutes from June 1971 paint a rather different picture.

The owners of Waimarino 3M5 had legal counsel, a Mr Hawkins. Mr Hawkins told the court that the owners agreed to the sale. The court summoned a meeting of owners, and Mr Hawkins reported to the court in October 1971 that the meeting had voted unanimously to sell to the county council, and the council would pay the cost of the survey. The court confirmed the resolution, and ordered the county council to settle with the Māori Trustee. Four acres and three roods were transferred to the council for the sum of \$336.²⁵⁵

This was therefore a purchase where the owners were legally represented, and the price appears to have been negotiated. The lawyer would have told his clients what was going on, and they had the opportunity to attend a meeting of owners. There is no evidence of coercion.

Whether the county council was flexible about the price, whether the price was fair in terms of the values of the time, and whether the owners would have preferred to sell less land than the four acres they sold, we do not know. However, it was not a compulsory acquisition. On the face of it, the owners' lawyer should have been able to negotiate on their behalf.

From what we have been able to ascertain, therefore, there was nothing untoward about this transaction. That said, however, in order to be sure we would need to know more about the process, and how the price was arrived at. There may have been factors that were not captured in the written record.

We therefore make no findings or recommendations.

25.7 TŪRANGARERE RAILWAY RESERVE LAND

25.7.1 Introduction

The Pohe whānau claim (Wai 1632) concerned just over three acres of land in the Raketāpāuma 2B1 block taken for

the North Island Main Trunk railway in 1905. The claimants said owners had no notice of the taking and received no compensation, and the whānau did not find out that they no longer owned the land until nearly 30 years later.

25.7.2 What the claimants said

The Pohe whānau sought the return of the three-acre block on which their great-grandfather, Ropoama Pohe, once lived.²⁵⁶ The land is now part of the Tūranganui railway reserve, which is located between the Hautapu River and the railway line. Claimant counsel characterised the original taking as excessive and nothing less than 'legal theft'.²⁵⁷ Ropoama Pohe received neither notice of nor compensation for the taking, with the result that the Pohe whānau remained ignorant of the alienation for some 30 years.²⁵⁸

The grievance is sorely felt. Three generations of the Pohe whānau have sought the return of the land, but the Crown has rebuffed their requests. Claimant counsel rejected New Zealand Railways Corporation's assertion that the land is needed for railways operations, because the claimants lease the land.²⁵⁹ If the land is available for long term lease, how can it be said that New Zealand Railways Corporation needs it for railways operations?²⁶⁰ The three acres are significant because of their 'history, cultural and spiritual link' to their tupuna, and the Pohe whānau wants the land back.²⁶¹

During our hearing process, the Pohe whānau applied to have the land returned to them as part of the discrete remedy process,²⁶² but the claim did not meet the criteria of that process. The Crown no longer owns the land; its current owner is the New Zealand Railways Corporation, a State-owned enterprise. This circumstance takes this claim outside the scope of the discrete remedy process.²⁶³

The Crown made no submissions on the taking of land for railways purposes in Raketāpāuma 2B1.

25.7.3 Land taken for the Tūranganui railway reserve

In August 1905, the Crown took approximately 52 acres from Raketāpāuma 2B1 for the main trunk railway under consolidated public works legislation of 1894.²⁶⁴ The taking included the residence of Ropoama Pohe who, from



Part of the Tūrangerere railway reserve, circa 1908. In 1894, 52 acres were taken for railway purposes. This land included a three-acre section located between the railway line and the Hautapu River, where the Pohe whānau lived.

the 1860s until his death in 1926, lived and worked on a three-acre section of Raketāpāuma 2B1 that was located between the railway line and the Hautapu River.²⁶⁵

Legislation required all owners to be notified of a railway taking, but also said that any failure to notify the owner 'shall not invalidate any Proclamation taking the land'.²⁶⁶

In a letter to the Native Trustee in November 1934, Ropoama Pohe stated that he was not aware of the full extent of the 1905 taking. His son, Whatarangi Ropoama Pohe, later said that although his father knew that approximately 50 acres of land had been compulsorily acquired for the railway – the main trunk railway effectively ran through his backyard, so he must have realised that some land had been taken²⁶⁷ – he did not know that it included his own residence. He continued to live there, and urged his son to build a house on the same section.²⁶⁸

After his father's death, Whatarangi continued working the land in the belief that it belonged to his whānau. He

dismantled the two cottages that Ropoama had built on the section, and established a hay paddock in their place. It was not until 1934 – almost 30 years after the land was taken – that Whatarangi learned that the Crown owned the section.²⁶⁹

Although not well off, Whatarangi travelled to Wellington to petition the Prime Minister personally.²⁷⁰ At their meeting on 19 March 1935, Whatarangi asserted that his father was not notified that the Government intended to acquire this land, and no compensation was paid.²⁷¹ He argued that since the land was apparently not required for railway purposes, the Railways Department should return it to his father's estate.²⁷²

Whatarangi's request was not granted. Although the government department that managed the land, New Zealand Government Railways, acknowledged that the original proclamation could be revoked in March 1935, it concluded that 'it is primarily a question of whether the land can be spared and whether the granting of Pohe's



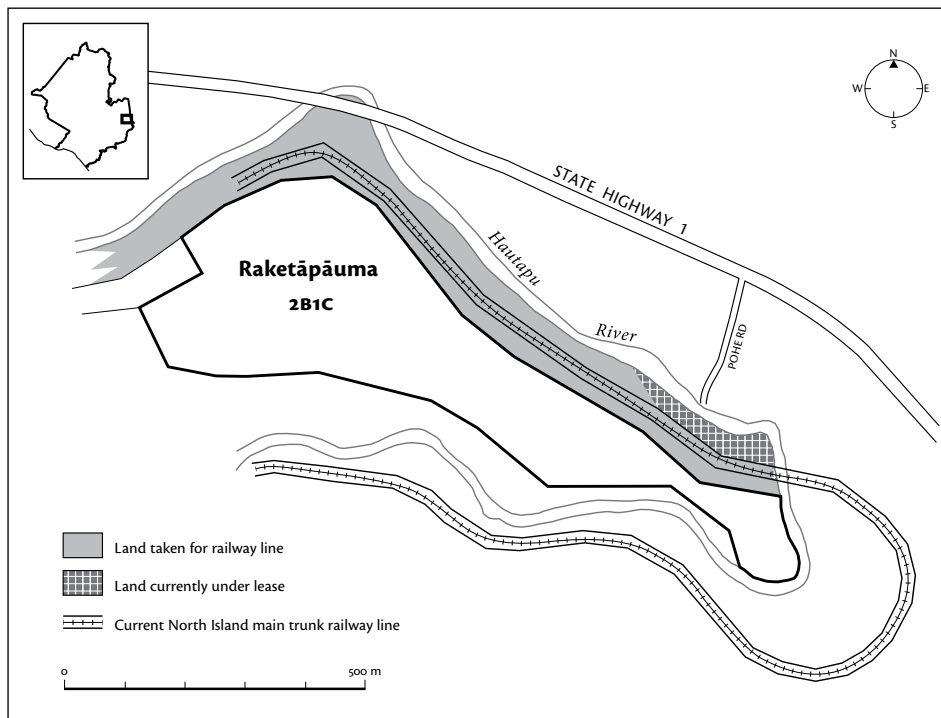
Members of the Pohe whānau, 1914. *Left to right:* Harimate Pohe, Whatarangi Ropoama Pohe, Honoria Maraea Pohe, Porokoru Patapu Pohe, Ngakua Paipa Pohe, Ropoama Pohe, Para Peretini Rewi, and Te Kuia Pohe Rewi. In 1905, Ropoama Pohe's residence was included in the taking of 52 acres for the main trunk railway under consolidated public works legislation. He, and then his son, Whatarangi Ropoama Pohe, lived and worked on the land until the mid-1930s, when Whatarangi discovered that the land on which they lived and worked had been taken. While the legislation had a requirement to advise owners of the taking of their land, omitting to do so did not invalidate the taking. The Crown's response to the discovery that it had not compensated nor notified the owners was to lease the land back to the Pohe whānau. The land was not used for railway purposes but today it remains unclear whether it is currently surplus to the requirements of the New Zealand Railways Corporation.

request would lead to further such applications from natives similarly situated'. Other factors were administrative inconvenience such as survey costs and the building of a level crossing.²⁷³ Whatarangi was offered a lease. With no other option, in June 1935 he signed a lease for an annual rental of one peppercorn (if demanded) that permitted use of the land for cropping or stock only, 'from year to year unless or until determined'.²⁷⁴

In the nineteenth century, the Crown often took more land for railway purposes than was required for immediate operational requirements. The amount was based on two estimates: how much was needed for existing demand;

and what would be required to meet traffic increases in the future. As it appears to have done at Tūranganare, the Crown sometimes took extra land to enable the department to protect structures like railway bridges.²⁷⁵ At the end of the nineteenth century, the department began the practice of leasing out land it had acquired that was not in constant use. By 1895, it had arranged some 656 leases of this type, usually involving only small plots.²⁷⁶

Since the 1990s, the State-owned enterprise New Zealand Railways Corporation has owned the Tūranganare railway reserve.²⁷⁷ Around 1993, the corporation used the section to access the North Island Main Trunk railway to



Map 25.6: The Tūranganui railway reserve

install an electrification system. It appears that the Pohe whānau and New Zealand Railways Corporation reached an agreement whereby the whānau would continue to lease on the peppercorn basis.²⁷⁸

In 1997, Hari Benevides, the great-granddaughter of Ropoama Pohe, asked New Zealand Railways Corporation to return the land. In May 1997, the company's lease manager wrote to the Pohe whānau to inform them that the land was not surplus. It was needed for 'soil stabilisation works', and could be used for bridge replacement.²⁷⁹ Trans Rail Limited would allow the lease to continue only until such time as the land was required for rail purposes.²⁸⁰

25.7.4 Legal analysis

Having ascertained that the Crown's actions in taking the Pohe whānau land raised Treaty issues, we needed to determine the current status of the land for the purposes of the Tribunal's jurisdiction.

The creation of the New Zealand Railways Corporation was part of a policy initiative in the 1980s to transfer commercial enterprises out of Crown hands. We have established that the land in question remains Crown land, however, and the Tribunal therefore has jurisdiction under section 6(3) of the Treaty of Waitangi Act 1975 to recommend to the Crown that it compensates for or removes any prejudice to the claimants who brought this claim concerning their whānau land.

What follows is an unusually detailed account of how we came to this conclusion, necessitated by the complexity of the legislative provisions for railways land.

The New Zealand Railways Corporation Restructuring Act 1990 enabled the New Zealand Railways Corporation to be restructured and to permit railway assets and liabilities to be vested in the Crown or transferee companies. Without detailing the legislation in its entirety, we now record that we have determined:

- ▶ The New Zealand Railways Corporation was not a Crown transferee company, so land transferred to it did not require a memorial providing for resumption upon the recommendation of the Waitangi Tribunal, and was not subject to the compulsory resumption provisions in sections 8A to 8H of the Treaty of Waitangi Act.
- ▶ The binding powers of the Tribunal were intended to apply only to land or interests in land transferred to a State-owned enterprise listed in schedule 2 of the State-Owned Enterprises Act 1986. The New Zealand Railways Corporation was a schedule 1 State-owned enterprise, so the Tribunal's binding powers do not apply to corporation land. Of note is the fact that land subject to resumption was to have a memorial on its title to the effect that it was subject to resumption. As far as we have been able to ascertain from the New Zealand Railways Corporation, the Pohe whānau land does not have a title (apparently not uncommon for railway land), and therefore could not be memorialised.
- ▶ Section 6 of the New Zealand Railways Corporation Restructuring Act provides for railway assets and liabilities to be vested in the Crown or a Crown transferee company. Land such as the Tūranganui railway reserve, which was retained by the corporation, was not subject to section 6. The *Te Maunga Railways Land Report* of 1994 noted that the Crown's protection mechanisms were for Crown-owned railway land that had been declared surplus, protecting that land from sale without reference to Māori claimants.²⁸¹ There has never been a decision to declare the Pohe whānau land surplus, and there has never been any question of selling the land. It remains Crown land.
- ▶ The New Zealand Railways Corporation is not a statutory entity, a Crown entity, or a Crown entity subsidiary for the purposes of the Public Finance Act 1989. The Crown took approximately 52 acres from Raketa-pāuma 2B1 by proclamation that was duly published in the *New Zealand Gazette*.²⁸² The proclamation states that the land was required for a further portion of the North Island Main Trunk railway per section 167 of the Public Works Act 1894. Section 167(f) of that Act provided:

The Proclamation, when gazetted, shall be conclusive evidence that the land therein referred to, and the soil of any road or street therein referred to, is vested in Her Majesty in fee simple, freed and discharged from all mortgages, charges, claims, estates, and interests of what kind soever, for the use of the railway, and that any part of any road or street thereby closed has ceased to be a public highway.

This provision was re-enacted under the Public Works Act 1928 (section 216(f)) and effectively remains under the Public Works Act 1981 (section 37(3)). The land in question was and remains vested in the Crown. The New Zealand Railways Corporation Act 1981, the New Zealand Railways Corporation Restructuring Act 1990, and the State-Owned Enterprises Act 1986 did not change that status in any way.

- ▶ Support for this conclusion lies in the New Zealand Railways Corporation Act 1981, which defines 'railway' as including:

All land belonging to the Crown, or forming part of any public reserve within the meaning of the Reserves Act 1977, upon which any Corporation railway is constructed, or which is or is reputed to be held or used in connection with or for the purposes of the Corporation, and all land which is under the control of the Corporation or which is held by the Corporation or under lease, licence, or otherwise for the purposes of the Corporation.

In addition, section 5(1) of the New Zealand Railways Corporation Act provides:

5. Transfer of property contracts and liabilities to Corporation—(1) All real property or interests in land vested in or held or occupied by the Crown for railway purposes immediately before the date of commencement of this Act shall, on that date, be occupied, and used by the Corporation for railway purposes, subject to any leases, rights, easements, and interests subsisting in respect of that land.

Together, these confirm that the Act intends the corporation to occupy and use all real property that the Crown holds for railway purposes. It does not provide for land to be transferred to or vested in the corporation. Parliamentary debates on this issue confirm the intention for corporation land to remain Crown land.²⁸³ Thus, we conclude that the Crown land that the corporation uses for railway purposes remained, and continues to remain, Crown land.

- The land in question is Crown land, and not 'private land' as defined in section 2 of the Treaty of Waitangi Act. It is therefore subject to no preclusion of recommendation by the Tribunal.

25.7.5 Conclusion, findings, and recommendations

The Tūranganui railway reserve was taken under section 167 of the Public Works Act 1894. This legislative regime and actions taken under it prejudiced the Pohe whānau: Ropoama Pohe was not properly notified of the taking, and as a result believed he continued to own the section where he lived.

The Crown discovered its failure to notify and pay compensation to the Pohe whānau in 1935 as a result of Whatarangi Pohe's meeting with the Prime Minister. In our view the peppercorn lease arrangement entered into was an inadequate response. The Crown should have done its utmost to return to the whānau at least the three acres where Ropoama Pohe lived in 1935. The reasons for not doing so prioritised convenience over the legitimate interests of the whānau in retaining this small area. By 1935, the Crown had already had 30 years' ownership of the Pohe land without payment. A small amount of administrative cost and inconvenience was a small price to pay for setting matters to rights. Acceding to Whatarangi Pohe's request might have set a precedent, as officials feared – but, in situations of this kind, a good one. Returning small areas of land important to whānau Māori was precisely the kind of step a good Treaty partner should have been taking. It is apparent that these three acres are not vital to the railway. No doubt having land that acts as a buffer around the railway is optimal for operational reasons, but in particular circumstances like this, those operational reasons should

prevail only in circumstances where the railway absolutely cannot do without them. The long-standing lease of this land, interrupted it appears by only one operational requirement in about 1993, is a strong indication that such circumstances do not apply here. If it were considered imperative to retain the ability to access the land for such eventualities as the work that occurred in 1993, retention of an easement over the subject land would probably suffice. We saw no evidence of the Crown at any time looking into alternatives to its owning the freehold of this land.

At the time of the taking, Raketāpāuma 2B1 was not in the sole ownership of the Pohe whānau.²⁸⁴ However, it is apparent that Ropoama Pohe, and Whatarangi Pohe after him, occupied and cultivated the land in question in the belief that they owned it. Then, once they learned that ownership had passed to the Crown, Whatarangi Pohe and his uri (descendants) after him sought the return of the land on behalf of this whānau who have leased the land on a peppercorn rental for the best part of a century. We thus have evidence of this whānau occupying the land for about 150 years. Although the Pohe whānau had no partition of these three acres, the evidence is strong that their interests in that small area predominated.

(1) Finding

We find that the failure to notify Ropoama Pohe about the compulsory acquisition, the failure to pay compensation, and the failure to give back the land in the 1930s when Whatarangi Pohe travelled to Wellington to resolve the matter, mean that the Crown breached the principles of the Treaty of Waitangi. We find the Pohe whānau claim to be well founded.

(2) Recommendation

We recommend that the Crown returns to the Pohe whānau the land that, as far as we are aware, remains the subject of a peppercorn lease arrangement between New Zealand Railways Corporation and the Pohe whānau (regardless of whether or not that peppercorn lease arrangement remains in place). The area of the claim is 3 acres 3 roods, one of four parcels of land that the Crown compulsorily acquired in Raketāpāuma 2B1 in 1905.²⁸⁵

25.8 WHANGAEHU RIVER

25.8.1 Introduction

The Whangaehu River is the second longest river in our inquiry district, flowing for over 160 kilometres first eastward across the Rangipō Desert, then to the Tasman Sea south-east of Whanganui.

The claimants had many concerns about the Crown's confiscation of Māori rights to manage waterways in their rohe, its delegation of management rights under the Resource Management Act 1991, and the pollution of waterways. The Whangaehu River featured prominently.

The Whangaehu River has its source in Te Wai-ā-Moe (the crater lake of Mount Ruapehu). This makes its sulphuric waters more acidic than other waterways that flow from the mountain, and Ruapehu's eruptions and lahars inevitably damage aquatic life in the river. However, we were told that at other times the river's acidity follows a seasonal cycle, being lowest in winter and early spring when water on the mountain is locked up in snow and ice. Freshwater tributaries also gradually dilute acidity as they connect with the main flow of the river.

25.8.2 What the claimants said

The core of the Ngāti Rangi claim (Wai 151, 277, 554, 569, and 1250) was the assertion that their interests in, and knowledge of, the unique ecosystems of the river have been marginalised and ignored. They said that Ngāti Rangi has had minimal involvement in decisions affecting their taonga awa.²⁸⁶

The Crown's delegation of authority over resource management to local authorities puts Ngāti Rangi in a position where they cannot exercise te tino rangatiratanga over the Whangaehu River.²⁸⁷ The Crown does not ensure that the resource management framework gives appropriate effect to the Treaty of Waitangi, and nor does it ensure that local authorities uphold Treaty principles and guarantees.

The Crown and its delegates have not, Ngāti Rangi said, recognised their mātauranga (customary learning). They have seen traditional knowledge as inferior to that of scientific and technical experts who come from a western scientific background, and have disregarded it in decision-making about the river's protection and management.²⁸⁸

The experts and the Crown have wrongly labelled the river as dead, and have assumed it can therefore be polluted and diverted.²⁸⁹ Its streams were diverted for the Tongariro Power Development, and effluent and run-off from the Karioi Forest and pulp mill, farming, and market gardening have polluted it.²⁹⁰ Diversion of the Whangaehu River's tributaries for the Tongariro Power Development, in particular, resulted in a decline in fish populations, and has detrimentally affected Ngāti Rangi's ability to use it for customary purposes.²⁹¹

25.8.3 What the Crown said

In submissions on environment policy and practice, the Crown said that it has a duty to sufficiently inform itself about the cultural and spiritual relationships of Whanganui Māori with their taonga when pursuing or implementing policies that may impinge upon those relationships. The Crown accepted that it should take those relationships into account to avoid or minimise prejudice, but noted that there is 'no general obligation (Treaty or otherwise) for the Crown to prevent all environmental effects that may be perceived as adverse by the claimants'.²⁹²

In submissions about local government, waterways, and environmental policy and practice, the Crown denied that it is responsible for the actions or inactions of those acting with delegated authority, such as local government. Within the contemporary legal framework, the Crown claimed that there is substantial potential for the views of Māori and their concerns to be considered in local government decision-making processes.²⁹³

As for the Tongariro Power Development's effects on the Whangaehu River, the Crown considered that its actions and legislation authorising the construction of the Tongariro Power Development was a valid exercise of its powers under article 1 of the Treaty of Waitangi.²⁹⁴ It emphasised the development's national and local significance in meeting New Zealand's energy needs.²⁹⁵ It relied on technical witnesses' evidence to refute claims that the Tongariro Power Development significantly altered the Whangaehu River. Ecologist Wayne Donovan concluded that the Tongariro Power Development had a relatively minor and localised effect on district-wide freshwater



Che Wilson and Keith Wood
during Ngāti Rangi site visits,
March 2009

fisheries. A survey of fish species in the Whangaehu catchment demonstrated that trout, tuna, and kōura (freshwater crayfish) were able to access tributaries of the Whangaehu River, despite the downstream effects of the Tongariro Power Development, and sometimes high levels of acidity.²⁹⁶ The Crown also cited the findings of the Tongariro Power Development Hearing Committee and the Environment Court, which both accepted that reductions in the quantity and quality of habitat for fish in the Whangaehu River system were localised, and that impacts on native fish populations in the Whangaehu were ‘very minor at most’.²⁹⁷

25.8.4 Ngāti Rangi’s relationship with the Whangaehu River

The Whangaehu River is a special river for Ngāti Rangi: ‘a living waterway, a living highway for migratory fish, a living awa and he awa matua [primary river] o Ngāti

Rangi’.²⁹⁸ As a taonga tupuna (ancestral treasure), the river is inextricably interlinked with their identity and their spiritual, cultural, and economic well-being.²⁹⁹ The waters of the Whangaehu River, flowing from Matua te Mana (Mount Ruapehu) and Te Wai-ā-Moe (Ruapehu’s crater lake) are likened to the blood of their atua flowing across and through their land, connecting and sustaining everything in the form of mouri.³⁰⁰ As Keith Wood described:

The Whangaehu descends from Te Wai-ā-Moe and brings these healing waters down to the heart of Ngāti Rangi. The Whangaehu is also the means by which the mana of our maunga is carried down to the lands of our people through the lahar events that regularly take place and through the continuous flow of the waters from Ranganui and Papatūānuku, uniquely combined to provide the ultimate life essence to the land and our people. In essence, it is the mana and mouri of our mountain being brought to us.³⁰¹

Te Wai-ā-Moe (the crater lake of Mount Ruapehu). The lake is the source of the Whangaehu River, and its sulphuric waters are more acidic than other waterways that flow from the mountain.



In evidence for the National Park inquiry, Turuhia Edmonds stated that Whangaehu literally means ‘in surges’ and could refer to the surges of acidic water that flowed down from Te Wai-ā-Moe into the Whangaehu.³⁰² Ngāti Rangi regard the Whangaehu River as the ‘sweat gland’ of Ruapehu. They have used the wai tōtā (sulphuric waters) of the river for centuries to heal skin ailments.³⁰³ Several sites along the Whangaehu River where the acidic water mixes with wai māori (fresh natural waters) from tributary streams are special places for bathing and healing. The wāhi tapu at the confluence of the Whangaehu River and the Wāhianoa Stream is an example.³⁰⁴

Ngāti Rangi also recognise the Whangaehu River as a pathway for native fish species, in particular tuna. They say that fish migrated up and down the river when the river’s acidity was low. When acidity became ‘too toxic’, life shifted ‘out into the clear waters in the side streams.’³⁰⁵ Over time, the toxicity decreased again, and life returned to the Whangaehu.

For Ngāti Rangi, the species that live in the Whangaehu River are taonga: integral parts of the iwi that have unique and precious qualities, and are of spiritual, cultural, and economic significance.³⁰⁶ They believe that when their awa

is adversely affected, it has a negative impact on the mana and wairua of the people.³⁰⁷

Ngāti Rangi are kaitiaki (guardians) of their taonga tupuna, with a responsibility to nurture and protect these resources for the benefit of future generations. As part of their kaitiaki role in their rohe, Ngāti Rangi has set out their relationships with their environment and waterways in resource management plans. Ngāti Rangi’s relationships with waterways have been recognised since 2002 in the ‘Ngāti Rangi Waterways Management Policy Document 2002.’³⁰⁸ Horizons Regional Council assisted Ngāti Rangi to create this document and provide an iwi perspective.³⁰⁹ In December 2012, consultation was underway with iwi members about Ngāti Rangi’s draft natural resource management plan.³¹⁰

We also recognise that the Whangaehu River is not a taonga for Ngāti Rangi alone, and that for iwi of the lower reaches of the Whangaehu, the river is also vital to their way of life. We heard from Ngāti Rūwai, Ngāti Hine, and Ngāti Waikārapu (Wai 1107) who told us that the treasured fishery of the Mangawhero River is dependent on the quality of the water in the Whangaehu River. Ngāti Rūwai, Ngāti Hine, and Ngāti Waikārapu maintain that

the degradation of the Whangaehu River is a key factor in the decline of their own taonga.³¹¹

A number of claimant witnesses spoke about the effect of development projects on the Whangaehu River and the species that live within it. Tūrama Hāwira said:

I often speculate as to the detrimental effects the reduction of fresh water flow, due to the diversions by the TPD, actually has on the Whangaehu river. Compounded with discharge from the Pulp and Timber mills, as well as the run off of sprays and artificial fertilisers used by farmers and market gardeners, it is inevitable that there is an adverse effect upon the natural flow and condition of the Whangaehu River.³¹²

Keith Wood echoed these sentiments:

You add the chemicals and discharge from the WPI pulp mill and you have got a compounding problem. The thing for us is we cannot work out which component makes the biggest contribution so we are kind of blaming everybody and looking forward to maybe some collaborative research to try and identify things better for ourselves and the consent holders to come up with a better solution to the problem.³¹³

These situations have partly arisen because of the characterisation of the river as 'dead' and not worth protecting. Che Wilson told us:

Today authorities and others call the Whangaehu River a 'dead' river because they could not get any water out of it for farming because of the sulphur content. They have assumed because it was 'dead', that it was okay to pollute and take water from its tributaries believing that it will have no impact on the rest of the catchment.³¹⁴

25.8.5 The impact of development projects on the relationship between tangata whenua and the river

(1) *The Tongariro Power Development Scheme*

This was an ambitious scheme that the New Zealand Government conceived in the 1950s to generate electricity from the energy of the rivers and streams that flow from the mountains of the central volcanic plateau. Constructed

between 1960 and 1983, its structures extend from the southern flanks of Mount Ruapehu to the southern point of Lake Taupō, and provide water to the Tokaanu, Rangipō, and Mangaio hydroelectric power stations.³¹⁵ The water that the scheme diverts produces approximately 5 per cent of New Zealand's annual electricity demand.³¹⁶ The electricity company Genesis Energy is the current operator.

Our inquiry here is concerned with the effect of the scheme's eastern diversion on the tributaries of the Whangaehu River. A series of structures in the eastern diversion directs the full water flow from at least 22 of the Whangaehu River's upper tributaries to Lake Moawhango for hydroelectricity generation.³¹⁷ Apart from periods of flood, no water flows into the Whangaehu River from the diverted tributary streams.³¹⁸ By the time the Whangaehu River reaches the Karioi recording station, its flow is about 20 per cent less than it was before the scheme was built.³¹⁹

Tūrama Hāwira told us that the diversion of water has reduced both the physical area of habitat for tuna, and made the Whangaehu River more acidic and unsuitable for tuna migration.³²⁰ Ecologist Wayne Donovan reported that the diversion of streams for the eastern diversion removed a 27-kilometre-long stretch of habitat for aquatic life.³²¹ Keith Wood stated that the windows of opportunity for tuna migration using the Whangaehu River were reasonably short, 'but by taking more freshwater out you limit those opportunities and reduce them even further'.³²² He suggested that letting more water bypass the Tongariro Power Development intakes, allowing more fresh water into the Whangaehu River around the time of the seasonal migration, would help alleviate this problem.

The Tribunal's *Whanganui River* and Central North Island reports, and most recently its National Park Report, all discuss issues around the establishment and development of the Tongariro Power Development.³²³ The National Park Tribunal focused on this topic most closely, and found that the scheme adversely affected the Whangaehu River and its tributary streams. Although the Whangaehu River was excluded from the scheme, the National Park Tribunal found that it lost the water of the tributaries that diluted its acidity. This put the tuna heke

(eel migration), in particular, at risk. The Crown therefore breached the Treaty guarantee to Māori of undisturbed possession and enjoyment of their fisheries for as long as they wished to retain them.³²⁴

The process of renewing resource consents to operate the Tongariro Power Development has seen some progress towards advancing tangata whenua interests there. The Environment Court found that Ngāti Rangi considered their taonga tūpuna sacred 'in the fullest meaning of that word', and that the most damaging effect of the diversion had not been on the physical river itself, but on the spirituality of Ngāti Rangi people.³²⁵ The court acknowledged the significant gap between western science and mātauranga, and recognised the need for dialogue between the scientific experts and Māori witnesses so that a full exploration of the issues and options could take place.³²⁶ In December 2010, after lengthy court engagement between the parties, the Ngāti Rangi Trust (representing Ngāti Rangi iwi) and Genesis Energy signed a relationship agreement. Part of that agreement was to investigate and implement a 'connecting flow' on the Tokiāhuru, Wāhianoa, Mākāhikatoa, and Tomowai Streams, all tributaries of the Whangaehu River.³²⁷ The 'connecting flow' is to reconnect the mouri of the waterways on the Wāhianoa aqueduct by ensuring that there is a continuous and visible flow 'from the mountains to the sea'.³²⁸ In February and March 2011, research began to determine the water volume required to establish a connecting flow on the four tributaries.

(2) The Karioi pulp mill

The claimants alleged that Horizons Regional Council permitted the Winstone Pulp International pulp mill at Karioi to discharge wastewater and stormwater into the Whangaehu River.

Since beginning production in 1978, the mill has taken water from the Tokiāhuru Stream, one of the main tributaries of the Whangaehu River, and discharged treated wastewater into the Whangaehu River approximately 700 metres upstream of the Tangiwai rail bridge.³²⁹ Dr Charlotte Severne recounted how the Whangaehu's waters near Tirorangi Marae, downstream from the mill's discharge site, had previously been used for treating skin

ailments. Since the construction of the mill, 'Ngāti Rangi no longer visits this site due to the aggressive odour, and grease like substance on top of the water'.³³⁰

Keith Wood told us that the mill's effluent is a mixture of residues of wood fibre and chemicals used in the pulp production process.³³¹ The discharged water is discoloured and produces foam on the surface of the river for some distance downstream from the discharge site. Dr Severne reported that when she undertook a field survey in February 2009, she saw foaming and excessive slime growths downstream of the discharge site.³³² The mill sprays a chemical onto the foam to make it disappear, but this is a cosmetic measure rather than a solution.³³³ Dr Severne also noted that this pollution did not comply with the conditions of the discharge permit, and sometimes the mill operated on an expired permit.³³⁴

Keith Wood acknowledged that Winstone's had been 'quite proactive' in trying to find a better system for dealing with this waste, working with Ngāti Rangi to find ways to mitigate the problem, and trialling other discharge solutions.³³⁵

(3) Agriculture and market gardening

Ngāti Rangi claimants also told us of the pollution to the Whangaehu River caused by agricultural activities, especially commercial vegetable growing. Surface erosion from cultivated land and run-off from vegetable washing facilities adversely affect waterways in the Whanganui region.³³⁶ Ngāti Rangi claimed that this has contributed to the decline in the fishery and the deterioration of water clarity and quality, and increased the growth of slime and algae in the Whangaehu River and its tributaries.

The claimants were also concerned with how Horizons Regional Council allocates water rights to farmers and market gardeners. Keith Wood told us that water rights for irrigation are allocated on a 'first come first served' basis that did not consider Ngāti Rangi interests.³³⁷ He explained that, under Horizon's resource management plan, up to 20 per cent of the low flow level of the waterway can be allocated without notification.³³⁸ Horizons gave national vegetable growers A S Wilcox and Sons Limited a non-notified consent in February 2008 to abstract water for irrigation



The Wāhianoa River, above and below the intake (upper and lower image, respectively), circa 2008. The river is one of at least 22 tributaries of the Whangaeahu River that were diverted to Lake Moawhango for the Tongariro Power Development Scheme. The scheme decreased the volume of water in the Whangaeahu River, detrimentally affecting aquatic life.

Winstone Pulp International pulp mill discharge, Whangaehu River, 2008. Claimants such as Che Wilson, Keith Wood, and Tūrama Hāwira described the cumulative effect of water diversion, waste water and stormwater discharges, spray runoff, and artificial fertilisers on the Whangaehu River.



for 12 years from six tributary streams of the Whangaehu River.³³⁹ As the total amount of water extracted from the river was under the 20 per cent threshold, Ngāti Rangi were not informed of the application and had no opportunity to raise concerns about its potential impact on the waterway.³⁴⁰ In March 2008, Horizons issued abatement and infringement notices and fined a local grower with links to Ngāti Rangi, Sprout Central Limited, for abstracting water from local streams without resource consent.³⁴¹ Keith Wood's view was that water allocations from the Whangaehu River under the Resource Management Act are captured by commercial businesses ahead of Ngāti Rangi interests.³⁴²

25.8.6 Conclusion, findings, and recommendations

The Whangaehu River and its tributaries are taonga of Ngāti Rangi, and vital to their way of life. The waterways have always sustained them economically, socially,

spiritually, and culturally. This awa tupuna has a unique adaptive ecosystem, and characterising it as 'dead' demeaned and devalued Ngāti Rangi mātauranga and mana, and disrespected the ancestral relationship between the people and the river. To them, polluting the water is polluting the people.³⁴³ Agriculture, market gardening, water diversion for hydroelectricity, and wood processing have all harmed the environment, and in so doing have harmed the iwi.

In chapter 23, where we introduced these local issues cases, we talked about previous Tribunals' findings on the duties the Crown owes Māori in relation to water and the resources it supports. As a Treaty partner, the Crown must have regard to Māori spiritual values.³⁴⁴ In the past, Ngāti Rangi's spiritual relationship with the Whangaehu River seems not to have influenced local authorities' resource management decisions. For instance, we are unaware of Ngāti Rangi's playing any part at all in decision-making

processes about the pulp mill's rights to take and discharge waste into the river, or the water rights allocated to vegetable growers. Witnesses from Horizons Regional Council appeared before us, but we heard little about its current process for allocating water rights, or how it engages with Ngāti Rangi. However, we do know that Ngāti Rangi has made progress on its resource management plans, and this will foster early and appropriate engagement between the iwi and those charged with making environmental decisions. We gained the impression that the relationship between the mill, Horizons, and Ngāti Rangi has improved over time.

We agree with the National Park Tribunal's finding that the Tongariro Power Development adversely affected the Whangaehu River and its tributaries. Although the Whangaehu River was not part of the scheme, the tributaries that diluted its acidic waters were diverted, affecting the migration of tuna and changing the way Ngāti Rangi use the river.³⁴⁵ We note that the resource consent process for the Tongariro Power Development gave scope for changes that are in Ngāti Rangi's interests.

More broadly, we find that the Crown did not ensure Ngāti Rangi's and other Māori interests were taken into account in the care, use, and management of the Whangaehu River, and did not actively protect their interests in their taonga.

We recommend that the Crown takes these findings into account in settlement negotiations, and ensures that the management regime for the river provides for decision-making that better recognises Māori interests, and supports the restoration of the river to its natural state.

Notes

1. 'Setting Aside Native Land as a Native Reservation', 14 February 1939, *New Zealand Gazette*, 1939, no 11, p 272
2. Aotea Māori Land Court, minute book 225, 21 January 2009, fols 275–276; Aotea Māori Land Court, minute book 247, 16 March 2010, fol 229
3. Submission 3.3.174, p 5
4. Submission 3.3.105, p 48
5. Ibid, p 51
6. Submission 3.3.95, pp 14–15

7. Ibid, p 16
8. Submission 3.3.126, p 12
9. Ibid, p 13
10. Ibid
11. The Ruapehu District Council was formed in 1989 after a reorganisation of the structure of local authorities. It currently manages the public works infrastructure in the district and carries out broadly similar functions to its predecessor, the Ohakune Borough Council.
12. Document A101 (Horan), pp 38–39
13. Document A54 (Innes), pp 143–154; doc A37(r) (Berghan), p 10524; 'Notice of the Taking and Laying-off of a Road through Raetihi Native Blocks 3B and 4B, Block 1v, Makotuku Survey District', 24 April 1909, *New Zealand Gazette*, 1909, no 39, p 1312; 'Proclaiming a Road in Block 1v, Makotuku Survey District', 7 December 1911, *New Zealand Gazette*, 1911, no 103, p 3745; 'Declaring Land Acquired for a Limited Access Road in Block 1v, Makotuku Survey District, Waimarino County', 27 March 1984, *New Zealand Gazette*, 1984, no 56, pp 1084–1085
14. Document L5 (Wilson), p 24
15. Ibid, p 25
16. Ibid, p 21
17. Ibid, apps B, F–I
18. Ibid, pp 21–23, app 1
19. Document A54(w) (Innes), p [49]
20. Ibid, p [29]
21. Ibid, p [21]
22. Transcript 4.1.13, p 207
23. Document A54(w) (Innes), p [50]
24. Document L5 (Wilson), app F
25. Document A54(w) (Innes), pp [56], [57]
26. Ibid, p [82]; Cathy Marr, *Public Works Takings of Māori Land, 1840–1981*, Waitangi Tribunal Rangahaua Whanui Series (Wellington: Waitangi Tribunal, 1997), pp 142–143
27. Document A54(w) (Innes), pp [24], [29]–[30]
28. Ibid, pp [39]–[41], [42]
29. Ibid, p [43]
30. Ibid, pp [29], [30]
31. Document A57 (Cleaver), p 68
32. Document L5 (Wilson), p 25
33. Russell Davies, *History of Public Works Acts in New Zealand, Including Compensation and Offer-back Provisions* (Wellington: Land Information New Zealand, 2000), p 51
34. Ruapehu District Council, *Waste Minimisation Plan, 2009–2012* (Taumarunui: Ruapehu District Council, 2009), p 17
35. Document G8 (Hāpuku), pp 3–5
36. Ibid, p 5
37. Document L5 (Wilson), app C
38. Ibid
39. Ibid
40. See, for example, Waitangi Tribunal, *The Wairarapa ki Tararua Report*, 3 vols (Wellington: Legislation Direct, 2010), vol 2, pp 780–781.
41. Document A54(w) (Innes), pp [31]–[33]
42. Submission 3.3.95, p 14

43. Worksafe New Zealand, *New Zealand Guidelines for the Management and Removal of Asbestos*, 3rd ed (Auckland: New Zealand Demolition and Asbestos Association, 2011), <http://www.business.govt.nz/worksafe/information-guidance/all-guidance-items/new-zealand-guidelines-for-the-management-and-removal-of-asbestos-3rd-edition>, sec 11.10
44. Claim 1.2.33(a), p 5
45. Ibid, pp 5–6; submission 3.3.50, p 21
46. Claim 1.2.33(a), p 4; submission 3.3.50, pp 44, 49, 52
47. Claim 1.2.33(a), p 7; submission 3.3.95, p 16
48. Document A51 (Walzl), p 186; doc A57 (Cleaver), p 268; doc A69 (Walzl), p 205
49. Document A57 (Cleaver), pp 267–268
50. Ibid, p 268
51. Ibid, pp 268–271; ‘Declaring Land Taken for a Metal Pit’, 29 May 1968, *New Zealand Gazette*, 1968, no 41, pp 1088–1089
52. Document A57 (Cleaver), p 272
53. Ibid, p 274
54. Ibid, p 278
55. Ibid, pp 279–280
56. Ibid, p 283
57. Ibid
58. Ibid
59. Ibid
60. Ibid, pp 267–268
61. Transcript 4.1.8, pp 177–178
62. Ibid, p 178
63. For examples of other public works takings involving the Māori Trustee, see Waitangi Tribunal, *Tauranga Moana, 1886–2006: Report on the Post-Raupatu Claims*, 2 vols (Wellington: Legislation Direct, 2010), vol 1, pp 285, 292.
64. Submission 3.3.95, p 6
65. Document L5 (Wilson), p 32
66. Submission 3.3.105, p 50
67. Document G9 (Hāpuku), p 6
68. Transcript 4.1.8, p 269
69. Marilyn George, *Ohakune: Opening to a New World*, 2nd ed (Ohakune: Kapai Enterprises Ltd, 1993), p 49
70. Ibid, pp 49–50
71. Document G10 (Hēnare and Kōpua), p 3
72. Document L5(a) (Wilson), pp 5–6; Raetihi 3B2A2A was partitioned by the Native Land Court in June 1928, and was set aside as a Māori reserve on 14 February 1939: ‘Setting Aside Native Land as a Native Reservation’, 14 February 1939, *New Zealand Gazette*, 1939, no 11, p 272.
73. Document L5 (Wilson), p 32
74. Ibid
75. Submission 3.3.105, p 50; doc L5 (Wilson), p 32
76. Document L5 (Wilson), p 32
77. Document L30 (Ngāti Rangi site visit booklet), p 3
78. Document L6 (Sinclair), pp 20, 26; doc L26 (Wilson), p 10
79. Document L10 (Māreikura), p 6
80. Document L24 (Wilson), p 32
81. NZTopo50-BJ34, edition 1.0, 2009; topographical map 260-s20, 2002
82. Waitangi Tribunal, *The Wairarapa ki Tararua Report*, 3 vols (Wellington: Legislation Direct, 2010), vol 1, p xlix
83. Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua*, 2 vols (Wellington: Legislation Direct, 2011), vol 2, p 442
84. Ibid, p 450
85. Document L24 (Wilson), pp 21–22; doc L5 (Wilson), p 9
86. Submission 3.3.42, p 8
87. Claim 1.2.36(a), p 8
88. Claim 1.2.29, p 33
89. Ibid, p 35
90. Document A37 (Berghan), p 727
91. George, *Ohakune*, p 70
92. Ibid, pp 70–71
93. Ibid, pp 69–71
94. Document L4 (Wood), p 39
95. Ibid; doc L24 (Wilson), pp 21–22
96. Document L24 (Wilson), pp 21–22
97. Document L3 (Māreikura), p 17
98. Document L24 (Wilson), pp 22–23; doc O1 (Green), p 7
99. Claim 1.2.29, p 33
100. Document O1 (Green), p 7
101. Ibid, p 8
102. Document L2 (Rāpana), p 2
103. Submission 3.3.105, p 58
104. Ibid, p 59
105. Ibid; see also doc L2 (Rāpana), pp 11–13.
106. George, *Ohakune*, p 73
107. Lease agreement between Parekura Hākopa and Paora Hākopa (as trustees), and Harry Merson, 5 February 1917, AEGX 19124 MLC-WGW1645 box 47 3/1917/89, Archives New Zealand, Wellington. Although the lease document was signed in 1917, the text of the agreement states the lease commenced in 1911.
108. For comments on the roads, see George, *Ohakune*, pp 52, 130.
109. Ibid, p 130; under-secretary, Public Works Department to general manager, Railways Department, memorandum, 15 February 1915, ADQD 17422 R3W2334 box 8 1913/1947, pt 1, Archives New Zealand, Wellington
110. George, *Ohakune*, pp 130, 131
111. Ibid, p 130
112. Document A66 (Mitchell and Innes), pp A83, A169. Approximately 54 per cent of the Raetihi block remained in 1912 and 51 per cent in 1917.
113. ‘Land Taken for Raetihi Branch of the North Island Main Trunk Railway’, 29 July 1914, *New Zealand Gazette*, 1914, no 70, p 3006
114. ‘Land Taken for the Purposes of a Road’, 11 January 1918, *New Zealand Gazette*, 1918, no 5, p 147; SO 17176
115. Document L2 (Rāpana), p 10

116. George, *Ohakune*, p 132; 'Ohakune – Raetihi Line: The Official Opening', *Hawera and Normanby Star*, 19 December 1917, p 8
117. Document L2 (Rāpana), p 10
118. Ibid, p 5. Mr Rāpana's evidence that he was born in 1942 and that the wharepuni Tamakana had not been used for forty years by the time he returned in 1990 suggests he moved away in the 1950s: *ibid*, p 6.
119. Ibid, p 10; doc F20 (supporting documents for Wai 1072 and Wai 1738), p [58]
120. A T Gandell, general manager, New Zealand Railways to chief civil engineer, 7 March 1966, AAEB W3293 box 55 15322 pt 1, Archives New Zealand, Wellington; doc L2 (Rāpana), p 10; doc F20 (supporting documents for Wai 1072 and Wai 1738), p [58]
121. Document L2 (Rāpana), p 11
122. George, *Ohakune*, p 130
123. C Jeffreys, district engineer, to chief engineer, Wellington, 13 November 1917, AAEB W3293 box 55 15322 pt 1, Archives New Zealand, Wellington
124. See AAEB W3293 box 55 15322 pt 1, Archives New Zealand, Wellington
125. G C Godfrey, assistant under-secretary, to registrar, Aotea District Native Land Court, Wanganui, 1 April 1921, ACHL 19111 w1/225 10/7 pt 2, Archives New Zealand, Wellington
126. G C Godfrey, acting under-secretary, to registrar, Aotea District Native Land Court, Wanganui, memorandum, 16 April 1919, ACHL 19111 w1/225 10/7 pt 2, Archives New Zealand, Wellington
127. G C Godfrey, acting under-secretary, handwritten note, 13 May 1919 on G C Godfrey, acting under-secretary, to registrar, Aotea District Native Land Court, Wanganui, memorandum, 16 April 1919, ACHL 19111 w1/225 10/7 pt 2, Archives New Zealand, Wellington; 'Sitting of the Native Land Court at Marton', 5 August 1919, *New Zealand Gazette*, 1919, no 99, pp 2626–2627
128. Payment receipt, 28 September 1921, Public Works Department to the Native Trustee, ACHL 19111 w1/225 10/7 pt 2, Archives New Zealand, Wellington; Judge Acheson, 'In the Matter of the Public Works Act 1908 and in the Matter of Portions of the Raetihi and Ngapakihī Blocks', 26 January 1921 (doc F20 (supporting documents for Wai 1072 and Wai 1738), p [57])
129. Aotea District Native Land Court, minute book 76, 10 February 1922, fols 265–267
130. Aotea District Native Land Court, minute book 78, 14 December 1922, fols 156–157
131. Claim 1.2.54, p 6
132. Submission 3.3.44, p 1
133. Ibid, p 2; claim 1.2.16(b), p 7
134. Submission 3.3.107, p [4]; transcript 4.1.5, p 189
135. Submission 3.3.107, p 7
136. Claim 1.2.54, p 2
137. Document A42 (Oliver), pp 86, 93–94, 96
138. Document A32(d) (Stevens supporting papers), pp 750–751, 758
139. Ibid, pp 758–760
140. Ibid, p 760; Aotea Māori Land Court, minute book 111, 3 February 1954, fols 122–123, 126
141. Document A32(d) (Stevens supporting papers), pp 758–759; doc A57 (Cleaver), pp 157, 159
142. 'Land Taken for the Purposes of a Native School in Block 11, Omara Survey District', 11 December 1926, *New Zealand Gazette*, 1926, no 81, p 3411
143. Document N10 (Taurerewa), app 2, p 1; doc A32(d) (Stevens supporting papers), p 752
144. Document N10 (Taurerewa), app 2, p 2
145. Ibid
146. Document E1 (Dixon), p 7
147. Document A32 (Stevens), p 124; doc A42 (Oliver), p 117; doc A55 (Clayworth), p 129
148. Submission 3.3.44, p 1
149. Aotea Māori Land Court, minute book 111, 3 February 1954, fols 122–123, 126
150. Document A42 (Oliver), pp 86–87
151. Aotea Māori Land Court, minute book 194, 11 September 2007, fols 11–14; Certificate of title 406387, LINZ
152. Aotea District Native Land Court, minute book 89, 17 October 1928, fol 147; doc A42 (Oliver), p 97
153. Document A39 (Boulton), pp 76–77, 163–164
154. Claim 1.2.60, p 2; doc N16 (Cribb), p 1
155. Submission 3.2.719, paras 5, 7, 22
156. Ibid, para 22
157. Ibid; submission 3.3.85, p 99; doc N16 (Cribb), p 2
158. Document E14 (Whitu), p 11
159. Treaty of Waitangi Act 1975, s 6(4A)
160. Submission 3.3.85, p 100
161. Ibid
162. Memorandum 3.2.320, p 1
163. Ibid, p 4
164. Document A61 (Rose), p 163
165. Ibid, pp 545–546, 547
166. Ibid, p 545; doc E14 (Whitu), p 10; doc E26 (Crown documents regarding Pipiriki School), p 5
167. Document E14 (Whitu), p 10; doc E26 (Crown documents regarding Pipiriki School), p 5
168. Document E19 (Gray), p 10. Mrs Wallace used her Māori names when writing to the registrar of the Māori Land Court about her interests in the Waharangi blocks in 1958: see doc A37 (Berghan), p 1037.
169. Document E14 (Whitu), p 11
170. Ibid; submission 3.3.85, p 56
171. Document A72 (O'Leary), pp 101–102; submission 3.3.85, p 12; Aotea District Native Land Court, minute book 55, 11 February 1898, fols 305–312
172. Document E26 (Crown documents regarding Pipiriki School), p 4
173. Ibid, p 5
174. Ibid
175. Document A61 (Rose), p 546
176. Ibid, p 547; doc E14 (Whitu), p 12; doc E14(a) (Whitu), p 2

177. Document E14 (Whitu), p 12; doc E26 (Crown documents regarding Pipiriki School), p 1
178. Document E14 (Whitu), pp 12–13; doc E26 (Crown documents regarding Pipiriki School), p 1
179. Document E26 (Crown documents regarding Pipiriki School), p 13
180. Ibid
181. Ibid
182. DTZ is a multinational property agency, which operated as an accredited supplier to the Ministry of Education in managing surplus properties. Its name was changed to DTZ in 1993 after its joint venture with the Debenham Tewson and Chinnocks, Jean Thouard, and Zadelhoff Group.
183. Document E26 (Crown documents regarding Pipiriki School), pp 10–31
184. Ibid, pp 17–26
185. Ibid, pp 1–8
186. Submission 3.3.85, p 99; submission 3.3.157, pp 4–5
187. Document E21 (Edmonds), p 4
188. Document E8 (Ponga), p 5
189. Submission 3.3.85, p 54
190. Document E21 (Edmonds), p 4
191. Document A55 (Clayworth), p 42
192. In chapters 13 and 20, we investigated the Crown's acquisition of most of the Waimarino block and the creation and subsequent history of the Waimarino reserves, including Waimarino 3.
193. Document A55 (Clayworth), pp 103–105; Aotea District Native Land Court, minute book 55, 3 June 1907, fols 291–292
194. Document A55 (Clayworth), pp 11–13, 108
195. Document E8 (Ponga), p 3; submission 3.3.85, p 87; Aotea Māori Land Court, minute book 106, 7 December 1949, fols 226–227
196. Submission 3.3.96, p [20]
197. Claim 1.2.36(a), p 7
198. Submission 3.3.96, pp [19], [20]
199. Submission 3.3.85, p 87
200. Ibid
201. Claim 1.2.32(b), p 5; submission 3.3.85, pp 87–88; submission 3.3.96, p [16]; doc A55 (Clayworth), p 71
202. Submission 3.3.96, p [21]; Māori Land Court, title notice 5836, 29 February 1972; doc A55(q) (Clayworth document bank), p [966]. The Ngāti Ruakōpiri and Ngāti Tūmānuka submissions incorrectly state the council acquired the site in 1967.
203. Submission 3.3.96, p 21
204. Submission 3.3.126, p 14
205. Ibid, pp 14–16
206. Ibid, p 15
207. Ibid
208. Ibid, pp 15–16
209. Ibid, p 14
210. Ibid
211. Ibid
212. Ibid, p 16
213. Document F19 (Parker), p 3
214. 'Declaring Land Used as a Roadway in Block xvi, Whirinaki Survey District, Block vi, Rarete Survey District, and Block xiii, Manganui Survey District, Waimarino County, to be Road', 5 December 1966, *New Zealand Gazette*, no 3, 1967, p 74
215. BE Hayes, *Roading Law as it Applies to Unformed Roads* (Wellington: Ministry of Agriculture and Fisheries, 2007), p 1
216. Hayes, *Roading Law*, pp 52–54
217. Section 91 of the Native Land Court Act 1886 empowered the court on an investigation of title or partition, to order that land be made 'subject to such rights of private road for the purpose of access'.
218. Aotea District Native Land Court, minute book 55, 3 June 1907, fol 292
219. Memorandum 3.2.277, p 1; survey plans so 16582, 16582, 16759, 18250 (doc F19(a) (Parker), pp [7]–[10])
220. Aotea Māori Land Court, minute book 131, 1 August 1966, fol 12
221. Ibid
222. Ibid, fol 36; survey plans so 16581 and so 16582. Section 422 of the Maori Affairs Act 1953 provided for areas of Māori land to be declared roads, where they were already being used as such. The court could also recommend that the Crown pay compensation for the taking to the beneficial owners of that land.
223. Aotea Māori Land Court, minute book 131, 1 August 1966, fols 12–13
224. Ibid
225. 'Declaring Land Used as a Roadway in Block xvi, Whirinaki Survey District, Block vi, Rarete Survey District, and Block xiii, Manganui Survey District, Waimarino County, to be Road', 5 December 1966, *New Zealand Gazette*, no 3, 1967, p 74
226. Document F19 (Parker), pp 3, app
227. 'Land taken for the Purposes of a Road in Block xvi, Whirinaki Survey District, County of Waimarino', 4 June 1927, *New Zealand Gazette*, 1927, no 39, p 1963
228. Document E22 (Ponga), p 8
229. Document E8 (Ponga), p 3
230. Aotea District Native Land Court, minute book 87, 10 February 1928, fols 297–298
231. Aotea District Native Land Court, minute book 87, 14 February 1928, fol 300
232. Document E8 (Ponga), p 3
233. Ibid
234. Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims, Stage One*, revised ed, 4 vols (Wellington: Legislation Direct, 2006), vol 2, p 829
235. It is often necessary to consider what the Māori Land Court did as part of the historical narrative. The Tribunal may also look at the structure and jurisdiction of the Native Land Court as creations of the Crown, and consider whether the result was inconsistent with Treaty principles and whether the Crown should have intervened. However, the Tribunal may not question or impugn the legality of particular decisions of the court, nor assess them in terms of Treaty principle. This was the view taken in the Tribunal's *Rekohu* report. Waitangi

Tribunal, *Rekohu: A Report on Moriori and Ngati Mutunga Claims in the Chatham Islands* (Wellington: Legislation Direct, 2001), p 33.

236. Waitangi Tribunal, *The Ngati Rangiteaorere Claim Report* (Wellington: Brooker and Friend Ltd, 1990), p 48

237. Waitangi Tribunal, *The Wairarapa ki Tararua Report*, 3 vols (Wellington: Legislation Direct, 2010), vol 2, p 765

238. Claim 1.2.32(b), p 5; submission 3.3.85, pp 87–88; submission 3.3.96, pp [16]–[18]; doc F18(b) (Parker), app

239. Document F18 (Parker), pp 5, 11–12; submission 3.2.329

240. Document F18 (Parker), p 3

241. Ibid, pp 3–4

242. ‘Land taken for the Purposes of a Public School in Block xv1, Whirinaki Survey District, Waimarino County’, 4 April 1935, *New Zealand Gazette*, 1935, no 25, p 1053; doc F18 (Parker), p 4

243. Document F18 (Parker), p 4

244. Aotea District Native Land Court, minute book 97, 14 August 1935, fol 92 (doc F18 (Parker), p 5)

245. Document F18 (Parker), p 7

246. Ibid; court order for partition of Waimarino 3L1 containing extract from Aotea Māori Land Court, minute book 110, 19 October 1953, fol 221 (doc F8 (Haitana), app, p [41])

247. Document F18 (Parker), p 2

248. Ibid

249. Aotea District Native Land Court, consent on fixing of compensation for portion of Waimarino 3L1, 10 June 1935 (doc F18(b) (Parker), app)

250. ‘Declaring Land in the Wellington Land District, Vested in the Wanganui Education Board as a Site for a School, to be Vested in Her Majesty the Queen’, 1 December 1971, *New Zealand Gazette*, 1971, no 98, pp 2830–2831

251. Certificate of title WN10D/1375, LINZ

252. Document F18 (Parker), p 3

253. Document E8 (Ponga), p 4

254. Submission 3.3.96, p [21]; Māori Land Court, title notice 5836, 29 February 1972; Memorial Schedule for Waimarino 3M5, title binder 54, Aotea Māori Land Court (doc A55(q) (Clayworth document bank), p [96])

255. Aotea Māori Land Court, Whanganui Alienation minute book 7, 15 June, 19 October 1971, fols 142–143, 170; Māori Land Court, title notice 5836, 29 February 1972; Maori Vested Lands Administration Act 1954, s 61

256. The claimants suggested that the area used by the Pohe whānau was six acres, but further research on the block in question suggests the area is more likely to be 3 acres 2 roods 38 perches.

257. Submission 3.3.94, p 4

258. Ibid, p 3

259. Ibid, p 7

260. Ibid

261. Ibid, p 3

262. Memorandum 3.2.542

263. Submission 3.4.23, p 3

264. ‘Land Taken for a Further Portion of the North Island Main

Trunk Railway’, 3 August 1905, *New Zealand Gazette*, 1905, no 74, p 1914. The claimants variously submitted that the land was taken in 1903, 1909, and 1914. However, after examining the *Gazette*, it appears it was taken in 1905.

265. Memorandum 3.2.593, app A

266. Public Works Act 1894, s 167(1)(h). This general process is more fully described in section 23.3.1(2).

267. Document N11 (supporting documents for the Wai 1632 claim), app D

268. Memorandum 3.2.593, app A

269. Ibid

270. Ibid, apps A, B

271. Ibid, app B

272. Ibid

273. G H Davis, land officer, to district engineer, ‘Railway Reserve at Turangarere’, 28 March 1935 (memorandum 3.2.593, app c)

274. Document N11, app C

275. Document A20 (Wai 898 R01, Cleaver and Sarich), p 176

276. Ibid

277. Submission 3.3.94, p 6

278. Memorandum 3.2.542, p 4; submission 3.3.94, p 7

279. Memorandum 3.2.593, app D

280. Ibid

281. Waitangi Tribunal, *Te Maunga Railways Land Report* (Wellington: Brooker’s Ltd, 1994), p 60

282. ‘Land Taken for a Further Portion of the North Island Main Trunk Railway’, 3 August 1905, *New Zealand Gazette*, 1905, no 74, p 1914

283. R Prebble, 20 March 1990, NZPD, 1990, vol 506, pp 923–924; D Kidd, 23 June 1993, NZPD, 1993, vol 536, p 16169; W Creech, 20 July 1993, NZPD, 1993, vol 536, p 16557

284. On 23 June 1899 (following a series of partitions), Raketāpāuma 2B1 was listed with 5 owners; on 14 March 1912, Raketāpāuma 2B1 was listed with 5 owners; in 1923, when Whatarangi Pohe acquired a lease over the entire block, there were 11 owners; and on 24 February 1936, when Raketāpāuma 2B1 was partitioned, there were eight owners of Raketāpāuma 2B1C: see doc A37 (Berghan), pp 694, 699, 702.

285. ‘Land Taken for a Further Portion of the North Island Main Trunk Railway’, 3 August 1905, *New Zealand Gazette*, 1905, no 74, p 1914

286. Submission 3.3.105, p 76

287. Ibid, p 34

288. Ibid, pp 33, 37, 44

289. Ibid, pp 46–47

290. Claim 1.2.30(b), pp 7–8; submission 3.3.105, pp 36, 45–47

291. Submission 3.3.42, p 10; submission 3.3.105, p 47

292. Submission 3.3.120, pp 8, 16–17

293. Ibid, p 14; submission 3.3.123, p 1; submission 3.3.128, p 17

294. Submission 3.3.128, p 20

295. Ibid, p 19

296. Ibid, pp 10–11

297. Ibid, p 21; doc A171 (Walzl), pp 294–295

298. Document L26 (Wilson), p 16
299. Ibid, p 12; doc L4 (Wood), p 14; doc L30(g) (Cultural Impact Assessment, Winstone Pulp International), p 16
300. We use the Ngāti Rangi term 'mouri' here in place of the more commonly used 'mauri'. See doc L30(g) (Cultural Impact Assessment, Winstone Pulp International), p 16.
301. Document L4 (Wood), p 8
302. Wai 1130 RO1 doc D29 (Edmonds), p 15
303. Document L16 (Wilson), p 9
304. Ibid, p 6. This site is discussed in this report in the context of the case study on Mere Kūao lands on pages 737 to 752.
305. Wai 1130 RO1 doc D29 (Edmonds), p 15
306. Document L4 (Wood), p 14
307. Ibid, p 25
308. Wai 1130 RO1 doc E17
309. Document O9 (Carlyon), p 7
310. Ngāti Rangi, 'Te Reo Kōruarua', issue 6, December 2012, p 2
311. Submission 3.3.7, pp 5, 9, 10; doc B5 (Patea), p 7; doc B13 (Maihi), p 15
312. Document L13 (Hāwira), p 5
313. Transcript 4.1.13, p 292
314. Document L26 (Wilson), p 12
315. Genesis Energy, *Tongariro Power Scheme Environmental Report 1 July 2010 to 30 June 2011*, Genesis Energy, 2011, p 5
316. Ibid
317. Document A158 (Alexander), pp 82–83
318. Ibid, p 83
319. Genesis Power Limited, 'Tongariro Power Development: Resource Consent Applications and Assessment of Environmental Effects', July 2000, p 323 (doc A171 (Walzl), p 229)
320. Document L13 (Hāwira), p 5
321. Document A162 (Donovan), p 67
322. Transcript 4.1.13, p 292
323. Waitangi Tribunal, *He Maunga Rongo*, vol 3, pp 1165–1220; Waitangi Tribunal, *Te Kāhui Maunga: The National Park District Inquiry Report*, 3 vols (Wellington: Legislation Direct, 2013), vol 3, pp 1065–1181; Waitangi Tribunal, *The Whanganui River Report* (Wellington: GP Publications, 1999), pp 233–253
324. Waitangi Tribunal, *Te Kāhui Maunga*, vol 3, pp 1136, 1138, 1165
325. Document A171 (Walzl), p 489
326. Ibid, pp 195, 496
327. Genesis Energy, *Tongariro Power Scheme Environmental Report 1 July 2010 to 30 June 2011*, Genesis Energy, 2011, p 8
328. Ibid
329. Document L4 (Wood), p 27; doc L26 (Wilson), p 18; claim 1.2.30(b), p 8; doc A158 (Alexander), p 85; doc A162 (Donovan), pp 48–49
330. Document L20 (Severne), p 13
331. Transcript 4.1.13, p 289
332. Document L20 (Severne), p 14
333. Transcript 4.1.13, pp 289–290
334. Document L20 (Severne), pp 13–14

335. Transcript 4.1.13, p 289
336. Ibid, p 30
337. Ibid, p 18
338. Ibid, p 19
339. Ibid, pp 19–20
340. Ibid, p 21
341. Ibid, p 20
342. Ibid, p 18
343. Ibid, p 14
344. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Motunui–Waitara Claim*, 2nd ed (Wellington: Government Printing Office, 1989), pp 53–54; Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity, Te Taumata Tuarua*, 2 vols (Wellington: Legislation Direct, 2011), vol 1, p 260
345. Waitangi Tribunal, *Te Kāhui Maunga*, vol 3, pp 1136, 1138, 1165

Pāuro Marino and Raetihi 3B2A2

1. Document L5 (Wilson), pp 9–10, 29

Tragedy at Ngāporo Rapids

1. Document E1 (Dixon), pp 6–7
2. Ibid, p 7

Table sources

Table 25.1: Document A54 (Innes), pp 146–154; 'Raetihi 3B2A2B2' (doc A54(w) (Innes), pp [24], [29]–[30]); doc A54(w) (Innes), p [82]; doc L5 (Wilson)

Table 25.3: Document F19 (Parker), p 3, app

CHAPTER 26

SOUTHERN WHANGANUI LOCAL ISSUES**26.1 INTRODUCTION**

We conclude our investigation of local issues with 13 cases in the southern region of the inquiry district – an area integral to the traditional Whanganui Māori economy. Major Māori settlements were situated here, near the vital coastal resources that sustained the whole district.

Accessible and fertile land was a drawcard for settlers, who arrived from the mid-1840s. We investigated in previous chapters how the Whanganui Purchase of 1848 shaped the Crown–Māori relationship in the region first, then later there were wars, and the Crown purchasing programmes just to the north and west of Whanganui town. The Whanganui Purchase covered some 89,000 acres, of which the Crown set aside approximately 7,400 acres as reserves for Māori. Much of this passed out of Māori ownership, although in some cases it has not been possible to determine what happened to the land (see section 7.5.3).

We begin near the Mangawhero River, examining claims from communities at Ōtoko and Ōhotu. We then turn west to the district's main artery, looking at issues facing people along the Whanganui River from Koriniti to Whanganui city. Once we reach the ocean, we look towards the sand dune lakes that border the Tasman Sea and the Whanganui inquiry district, and then travel further west, to Kai Iwi.

Public works feature again. We discuss the offer-back of former school sites at Koriniti (also known as Corinth) (section 26.5) and Parikino (section 26.7). We consider the effects of Parapara Road, an 80-kilometre stretch of State Highway 4, on communities at Ōtoko (section 26.2.3) and Ōhotu (section 26.4). We also examine the role of local authorities in public works at Kaiwhaiki (section 26.9), the Puketarata area (section 26.8), and Kai Iwi (section 26.12), and how the works affected owners' ability to manage their remaining landholdings.

Environmental management is a key concern in this region. We investigate criticisms of how local and central government authority decisions have affected important fisheries at Kaitoke Lake and Lake Wairitoa (section 26.11), and how the Department of Conservation has administered the Taukoro Conservation Area (section 26.3) and Ōtoko Scenic Reserve (section 26.2.4). We also explore claims about environmental damage caused by exploratory work undertaken for the proposed Ātene Dam in this chapter (see section 26.6).

We also scrutinise the management and display of taonga tūturu or moveable cultural heritage in Te Papa Tongarewa and the Whanganui Regional Museum (section 26.10). The taonga tūturu link to various parts of the Whanganui inquiry district, but we deal with

them as part of the southern region issues because they are now located either in Whanganui city or in Wellington.

26.2 ŌTOKO ISSUES

26.2.1 Introduction

Ōtoko is a small settlement on Parapara Road, overlooking the Mangawhero River. It is near the ancestral maunga Ngāpukewhakaupū, and lies about 40 kilometres north-east of Whanganui city.¹

In the early twentieth century, the Crown compulsorily acquired Māori land at Ōtoko to build Parapara Road, and to create Ōtoko Scenic Reserve to provide a vista for those travelling along it.

26.2.2 What the claimants said

Ngāti Rūwai, Ngāti Hine-o-te-rā, and Ngāti Waikārapu (Wai 1107) submitted that, when the Crown compulsorily acquired Māori land in the Ngāpukewhakaupū block for roading purposes at the beginning of the twentieth century, it did not talk to tangata whenua about where the road should go. As a result, Parapara Road went through the middle of their papakāinga, affecting wāhi tapu.² Land no longer used for roading purposes has not been offered back to the owners, and nor were they adequately compensated.³

The claimants alleged that Parapara Road has caused environmental damage to Ōtoko Stream, Pāhihi Stream, and the lakes north of Ōtoko. We received no evidence about this environmental damage, so can take this aspect of the claim no further.⁴

The claimants also said that Ōtoko Scenic Reserve has not fulfilled the purpose for which it was set aside, because it is inaccessible to the public, landlocked, and cannot be seen from the road.⁵

During our inquiry, the claimants sought the return of Ōtoko Scenic Reserve land in the discrete remedies process.⁶ The Crown was willing to discuss the transfer of management to the claimants. It proposed that an entity established by the applicants could administer the reserve, with the land remaining in Crown ownership.⁷ The claimants declined, stating that they intend to negotiate full

return of the land as part of a wider Whanganui settlement package.⁸

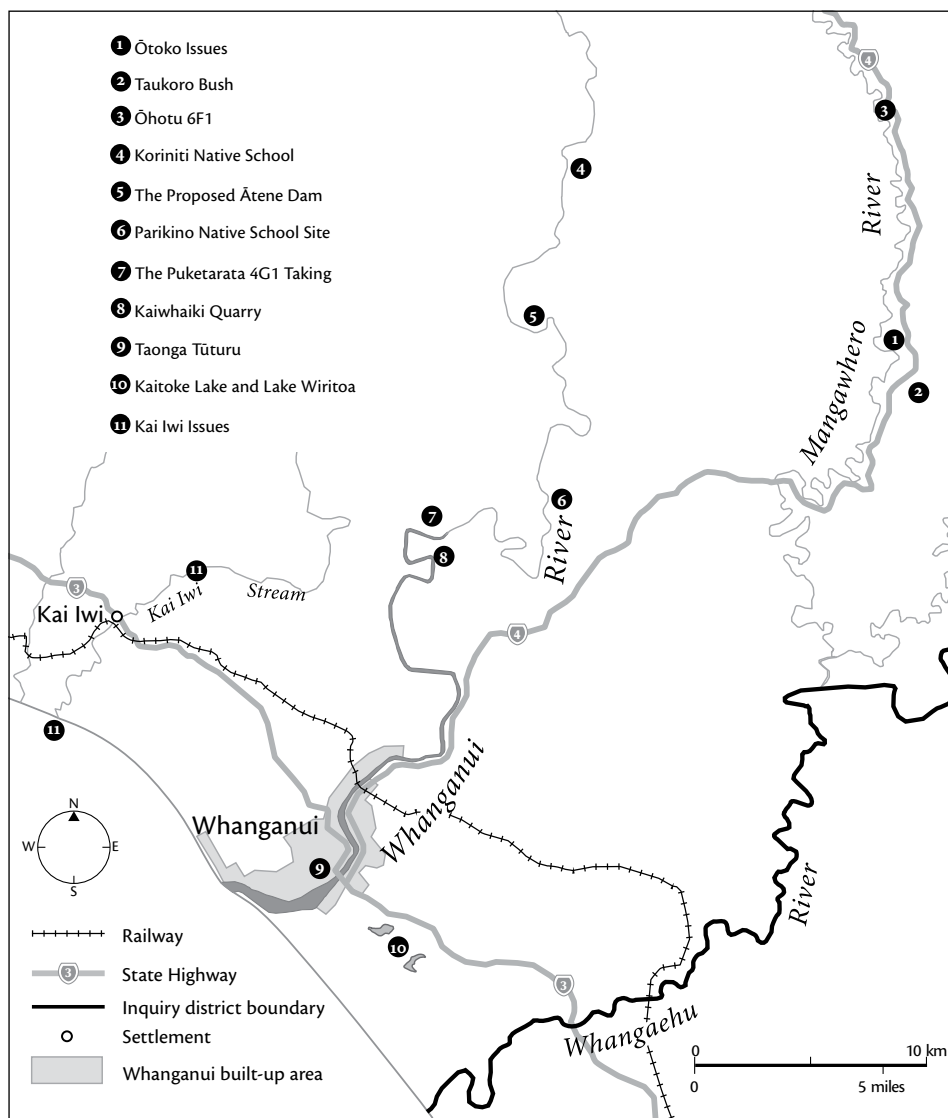
Beyond responding to the discrete remedy application, the Crown made no specific submissions on Ōtoko issues.

26.2.3 Parapara Road

Parapara Road is 80 kilometres long, and is the section of State Highway 4 that connects Whanganui to Raetihi. As it winds its way north, the road hugs the eastern bank of the Mangawhero River for much of its length, passing by deep river valleys, steep-sided ridges, farm blocks, and stands of bush.

Work began in earnest on Parapara Road in the early 1890s, but by 1905, Wanganui settlers and local authorities were frustrated by the 'shamefully slow' progress.⁹ The Wanganui Chamber of Commerce took the lead in petitioning the Government for additional funds to speed it up, saying that the road would provide Wanganui town with a vital communication link to the interior, and open up Māori land for purchasing.¹⁰ Other interests were concerned that the North Island Main Trunk railway would divert trade from the Wanganui port, that settlers farming the interior would be unable to drive their stock to market in Wanganui town, and that large stands of cleared timber on leased land were being burned and wasted due to limited transport options.¹¹ At least one delegation of Māori owners approached the Minister of Lands and asked for a road to be built between Parapara and Karioi to open up their land, presumably for leasing and farming.¹²

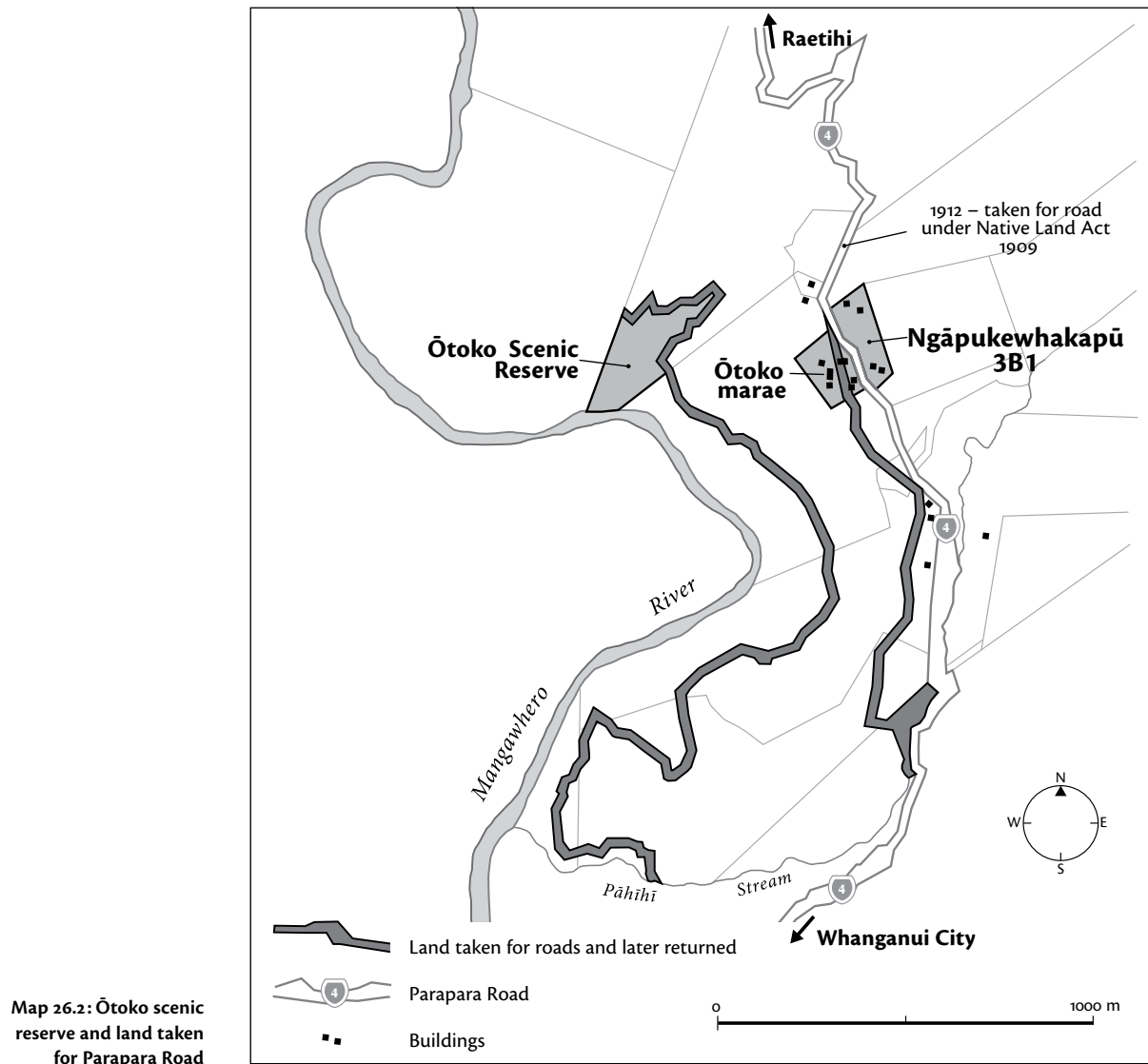
By October 1905, the road had reached Ōtoko and the *Wanganui Chronicle* reported that construction work was continuing between that settlement and Taukoro.¹³ Intending that the road would run along the eastern bank of the Mangawhero River as it bypassed Ōtoko, the Crown took land from Ngāpukewhakaupū blocks.¹⁴ However, this route was soon found to be unsuitable, and the Crown took more land approximately 20 chains further east.¹⁵ Evidently the second route also encountered problems, because in early 1912 it was decided to run the road directly through the papakāinga at Ōtoko. This left five acres of the papakāinga on the eastern side of the road, and four acres on the western side (see map 26.2).¹⁶



Map 26.1: Local issues in the southern Whanganui region

The claimants told us that the Crown did not talk to the hapū about any of this. According to Tanea Tangaroa, the road has ‘always been a sensitive point for our people’ because a ‘lot of land was taken under proclamation to improve the road, and there was no consultation process offered to our people, except in more recent years’.¹⁷

The Crown took the land for all three routes under the ‘5 per cent rule’, under which the Crown could take up to 5 per cent of Māori land blocks for public roads for 15 years after the first issue of title or memorial of ownership, and pay no compensation (see section 23.3.1(9)). The Māori land taken for the two routes that did not go ahead was



returned to its owners.¹⁸ Parapara Road was finally completed in 1917, but it was another 15 years before the road was considered stable.¹⁹ It was developed further in the course of the twentieth century, and more land was taken from the Ōtoko papakāinga.²⁰

The claimants described the impact of Parapara Road on

culturally important sites in the Ōtoko area. Mrs Tangaroa said that the road undercut the wāhi tapu Te Kāhui o Ngā Rangatahi, a significant pōhutukawa tree and one of three that were taken as seedlings from Motutāiko, an island and wāhi tapu located in the middle of Lake Taupō. In one version of the story, it is said that three kuia swam to

Motutāiko to gather the seedlings under the supervision of Ringatū tohunga.²¹ In another version, spiritual leader Wī Raepuku collected them from Motutāiko.²² In addition to the pōhutukawa planted at Ōtoko, one was planted at Koriniti and another at Pipiriki. Those constructing Parapara Road paid no respect to its culturally important location as it passed through the Ōtoko papakāinga. The road cutting exposed the roots of the sacred tree Te Kāhui o Ngā Rangatahi. It survived, but now hangs over the road, much to the consternation of tangata whenua.²³

The road also went through the urupā at Kākātahi, a former settlement of Ngāti Rūwai to the north of Ōtoko. Tangata whenua moved some kōiwi to the opposite side of the road to get them out of the way of the road construction, but there were more kōiwi that were not shifted, and their resting places were disturbed.²⁴

Some saw these incursions, and the taking of land, as an attack on the Ōtoko community. The claimants told historian Tony Walzl that

the people . . . believed it was a Pakeha effort to break the strength within the whanau because the whanau was very strong and close prior to that. So it is a significant act, taking away the mana.²⁵

The feeling that the community was being undermined may have been exacerbated by the Crown's enthusiastic land purchases in this area at the time. Between 1900 and 1910, while Parapara Road was under construction, the Crown bought up nearly 60 per cent of the 5,000 acres in the Ngāpukewhakupū block.²⁶

Later, effects of alterations to the road were also resented. The claimants said that a steep bank was constructed near the house of kuia Mrs Nahu, which made it difficult for her to access some parts of her property.²⁷

26.2.4 Ōtoko scenic reserve

In 1904, the Crown put nine acres of the blocks Ngāpukewhakupū 2A and 3A into a reserve for the preservation of scenery under the Land Act 1892.²⁸ The Crown had owned the blocks since 1901, when the Native Land Court partitioned out the interests that it had purchased.²⁹

As noted earlier, the idea was to reserve scenery along the Mangawhero River for travellers along the nascent Parapara Road. However, the ultimate route for the road was elsewhere, making the reserve's original purpose redundant, and the public could not access it because it was completely surrounded by privately owned (mainly Māori) land (see map 26.2). It is almost completely surrounded by land administered by the Ngāpukewhakupū Trust, which affiliates to the hapū represented by the Wai 1107 claim.³⁰

Between 1943 and 1947, the claimants' tupuna Kaiwhare Kiriona approached the Department of Lands and Survey at least three times in an attempt to gain ownership of the reserve, either via land exchange or outright purchase. He owned the neighbouring land, and wanted to be able to develop his stock tracks and burn bush without worrying about the impact on the scenic reserve.³¹ The Field Inspector and commissioner of Crown lands agreed that, in light of these 'special circumstances', the reserve could be sold to Kiriona, and another, more accessible piece of land purchased from the proceeds.³² However, the commissioner stated that reserve status could only be lifted if the subsequent purchase could also be set aside as a scenic reserve.³³ It appears that the Crown never found a suitable replacement, because Ōtoko Scenic Reserve remained in Crown ownership throughout the twentieth century, and is now administered by the Department of Conservation.

The claimants questioned the reserve's utility, given the access issues already mentioned. As claimant John Maihi stated: 'The reserve is not accessible by the general public nor is it visible from the road so who the Crown was protecting the scenery for is beyond us.'³⁴ The claimants sought the return of Ōtoko Scenic Reserve land.³⁵

26.2.5 Conclusion, findings, and recommendations

(1) Land taken for Parapara Road

The Central North Island Tribunal found that the '5 per cent rule' was in breach of the Treaty because it treated Māori land differently to general land, to the disadvantage of Māori.³⁶ We concur, and we consider that the Parapara Road takings constitute a breach of the Treaty. While the

Running a Road through a Sacred Place: Ōtoko Marae and the Ringatū Faith

Ōtoko Marae is today the southern-most Ringatū marae in New Zealand.

According to Ringatū sources, in the nineteenth century, matakite (prophet, seer) Heremaia Rūpuha instructed his followers to build Ōtoko Marae at Maungakawere (Mount Calvary) in an area known as Tauakirā. Heremaia prophesied that a spiritual man would come there. To make ready for his coming, he sent his daughter, Hirepeka, her husband, ship carpenter Augustus William Ashford, and her sister, Roka, to build the meeting house. They levelled the site with a horse and scoop, and built the whare in the shape of an upside-down arc, without nails or carvings. Finished in 1870, the house was called Tauakirā.

In 1891, Te Kooti Arikirangi Te Turuki, the founder of the Ringatū faith, arrived at Ōtoko. He was on his way to a large hui at Parikino, where two different forms of kotahitanga (unity) were to be debated – that offered by Te Keepa in the form of Te Kotahitanga (the Māori Parliament), and that offered by Te Kooti in the form of spiritual unity. Today, many believe that Te Kooti's arrival at Ōtoko fulfilled Heremaia's prophecy. He is said to have opened the marae and, in honour of the growing number of people turning toward the Ringatū faith in the Whanganui district, renamed the meeting house Te Parakuihi (the Breakfast). Te Kooti is also said to have laid 'seven seals' or seven tasks and riddles that his successor was to complete to bring unity. Under the spiritual leadership of Wī Raepuku, members of the Ōtoko community began fulfilling the tasks. One was the establishment of Ōtoko as a spiritual centre. Another was the retrieval of the three pōhutukawa seedlings from Motutāiko.

The connection between the Ōtoko community and the Ringatū faith, the unique nature of their marae as the fulfilment of a sacred prophecy, and its historical and spiritual association with the prophet Te Kooti, helps to explain their outrage at the actions of the Crown when it effectively confiscated papakāinga land to run a road right through their marae.¹

Ōtoko Marae with road through the papakāinga, 2007. Around the turn of the twentieth century, a road was planned between Raetihi and the inland settlements along the Mangawhero River. The Parapara Road was largely able to follow the course of the river, but when construction reached Ōtoko it was found that the route adjacent to the river was unsuitable. An alternative route was chosen which cut Ōtoko papakāinga in half: five acres on the eastern side of the road, and another five acres on the western side.



land for the first and second routes was returned quickly in 1913, the taking for what is now State Highway 4 clearly prejudiced the claimants and no compensation was paid. A road was driven through their papakāinga, threatened the stability of significant wāhi tapu, and led to the relocation of kōiwi from the urupā in Kākātahi.

We recommend that the Crown compensate the claimants for the taking of their land and for damage to their papakāinga and urupā.

(2) Ōtoko Scenic Reserve

In our consideration of the conservation estate in this report, we have found that Māori retain a kaitiakitanga interest in taonga in the conservation estate, even if the land was purchased – as in the case of Ōtoko. We concluded that the extent of Māori involvement in any part of the conservation estate must be decided on a case-by-case basis, by reference to three factors (see section 22.6.5).

In Ōtoko's case, we do not know the reserve's environmental status. We do know, however, that Māori have a strong relationship with it: Ōtoko Marae is nearby; Māori have expressed interest in regaining ownership of the land since at least the early 1940s; and most of the other blocks in the area are Māori land administered by the Ngāpukewhākapū Trust. The public cannot access the reserve, and few probably even know that it exists. It is safe to say that the public interest in Ōtoko Scenic Reserve is low.

Māori influence in the management of scenic reserves was usually small or non-existent. We have no evidence that tangata whenua were involved in the management of this reserve, and consider it probable that they were not.

We were encouraged that the Crown offered, as part of the discrete remedies process, to transfer the management of the reserve to an entity established by the claimants. We agree with the claimants, however, that it would be more appropriate for the Crown to return ownership of Ōtoko Scenic Reserve to them. Depending on the significance of the reserve from an environmental point of view – about which we have no information – it may be necessary for covenants to be entered into to maintain a conservation management regime. We recommend that this issue be addressed during settlement negotiations.

26.3 TAUKORO BUSH

26.3.1 Introduction

Another local issue that concerns the community at Ōtoko is an area of conservation land known as Taukoro Bush. Situated to the east of Ōtoko, the land is mostly moderate to steep hill country and deep gorges, all covered in rimu, tawa, and mānuka.³⁷ The claimants told us that they have used the bush for generations for customary harvesting, and hunting.³⁸ For much of the twentieth century they believed that they owned the land, discovering only recently that it is Crown land and the Department of Conservation (DOC) administers the area.³⁹

26.3.2 What the claimants said

Ngāti Rūwai, Ngāti Hine-o-te-rā, and Ngāti Waikārapu (Wai 1107) said that under DOC's administration they have no access to Taukoro Bush, are prevented from gathering traditional food resources, and have no role in decisions such as those about 1080 poison drops.⁴⁰ The claimants sought recognition of their customary authority in Taukoro Bush, including the right to manage and develop its resources.⁴¹

We did not receive specific submissions from the Crown on this issue.

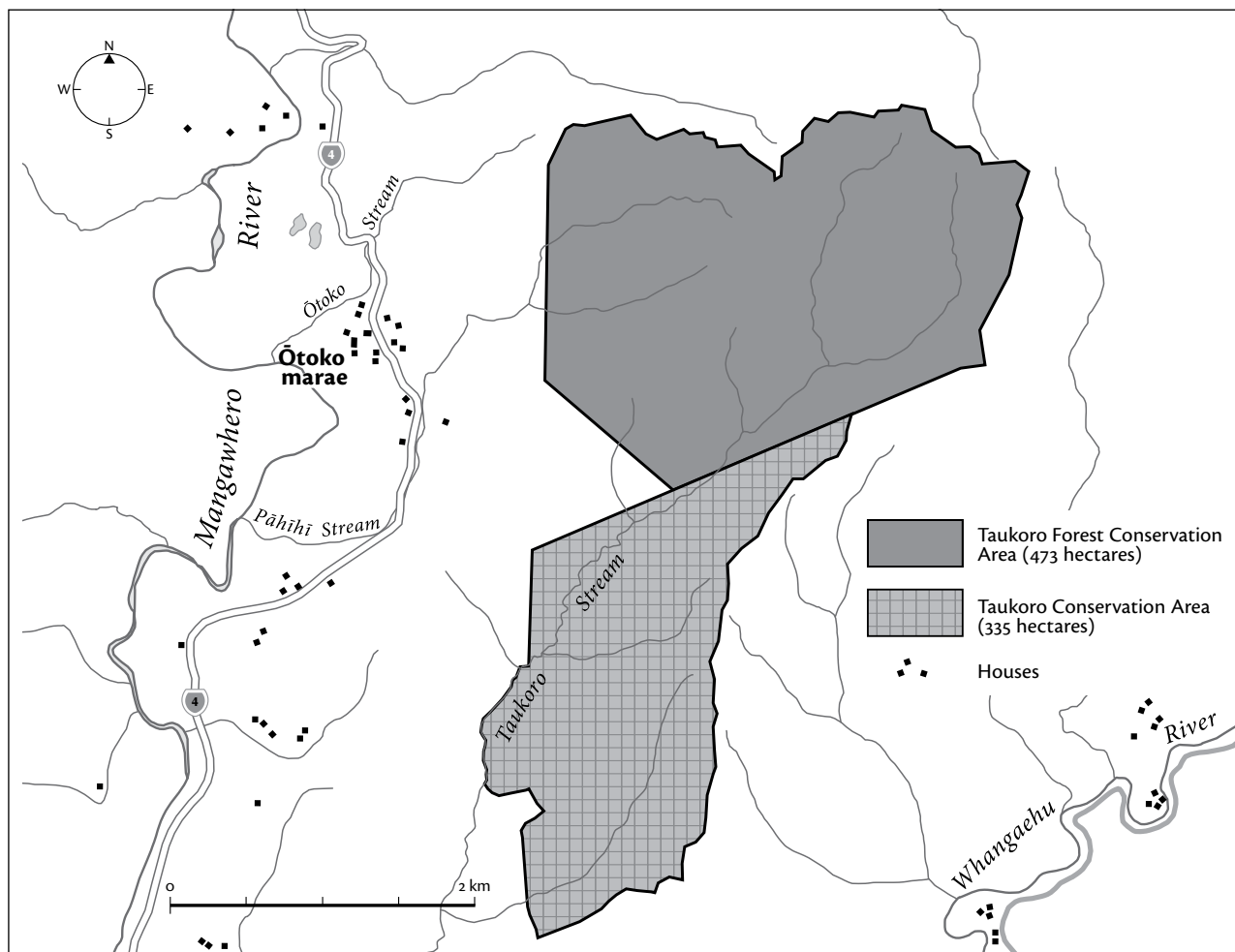
26.3.3 Taukoro Bush and the Crown

Taukoro Bush is the only significant stand of forest remaining in the rohe of Ngāti Rūwai, Ngāti Hine-o-te-rā, and Ngāti Waikārapu.⁴² It comprises two adjoining blocks: the 335-hectare Taukoro Conservation Area, and the 473-hectare Taukoro Forest Conservation Area (see map 26.3).⁴³

The 335-hectare portion was originally in the Paratieke block. The Crown bought all 6,006 acres in this block in the 1870s.

The 473-hectare portion was in a part of the Ngāpuke-whākapū block that the Crown purchased in 1901.⁴⁴

The Crown put both areas into a provisional state forest in 1926.⁴⁵ It then developed part of the 335-hectare portion, and in 1959 granted a perpetually renewable 33-year grazing lease over that part. In 1992, it extended the lease for a further 33 years.⁴⁶



Map 26.3: Taukoro Forest Conservation Area and Taukoro Conservation Area

In 1987, DOC was established and took over administration of both pieces of land as conservation (stewardship) areas.⁴⁷

Kaumātua John Maihi later discovered the status of the land after the lessee denied him access:

We had always understood that the bush was still our land and used to hunt in that bush all the time until a pakeha farmer put a fence up . . . This farmer said he was leasing the

land off the Crown and then after we looked into it we realised that it was considered Crown land.⁴⁸

That lease continued at the time of our hearings.⁴⁹

26.3.4 Māori access to, and use of, Taukoro Bush

The claimants' evidence suggested that their uninterrupted use of the bush section of Taukoro for much of the twentieth century led to a misunderstanding about the

legal ownership of the land. Some claimants used the bush to practise rongoā Māori (traditional healing), and at least two generations hunted there before they could go there no longer.⁵⁰ Tawhitopou Pātea told us:

Taukoro bush was a favourite hunting spot. I always thought it was a Maori reserve, that's what it was called in my time, a Maori reserve. Many years later I found out it wasn't a Maori reserve and was actually State Forest and Conservation land.⁵¹

For decades, it appears that only members of the Ōtoko community used the land.

The access issues that claimants have recently encountered while trying to hunt in Taukoro Bush are not a result of DOC policy. The Conservation Act 1987 allows for the hunting of introduced and game species with an official permit, and DOC actively encourages recreational hunting on conservation land to help assist in the management of animal pest populations.⁵² Nicholas Peet, the area manager for DOC's Whanganui Conservancy at the time of our hearings, also confirmed that wild animal control was one of the management priorities in the Taukoro area.⁵³

The problem lies rather with access to the bush itself. Neither the 473-hectare northern area (the Taukoro Forest Conservation Area – see map 26.3)⁵⁴ nor the 335-hectare Taukoro Conservation Area to the south has legal access. In the past, hunters could cross adjoining Māori land and the Taukoro Conservation Area, but this was stopped when the lessee of the Taukoro Conservation Area prevented claimants from crossing the leased land.⁵⁵ In 2003, DOC proposed to the lessees that they relinquish the forested part of the block (approximately 93 per cent of the entire Taukoro Conservation Area) 'to lessen the prospective rental increase' after a rental review.⁵⁶ If this happens, greater access will be afforded to both conservation areas, but at the time of our hearings negotiations were still ongoing.⁵⁷

26.3.5 The management of Taukoro Bush

DOC took over management of Taukoro Bush in 1987, and we have no evidence about what happened before then.

Today, DOC manages Taukoro Bush in accordance

with its regional Conservation Management Strategy.⁵⁸ Although the strategy provides for consultation with tangata whenua in Whanganui on conservation matters, DOC provided us with little evidence about its engagement with the claimants. Mr Peet identified a single instance when the Māori community at Ōtoko was approached to participate in the management of Taukoro Bush: in 2005, Ōtoko Marae was invited to participate in a survey into threatened species in the conservation area.⁵⁹

The claimants told us that they were consistently left out of important discussions on the management of Taukoro Bush and surrounding areas. When decisions were made to apply the pesticide 1080 to the conservation area through aerial drops, the claimants only learned of these plans through the local newspaper.⁶⁰

26.3.6 Conclusion

We are unable to draw any conclusions about the history of Taukoro Bush before 1987. It is odd that over 100 years passed before the claimants were aware that the bush was in Crown ownership, but we know too little to understand why or how that came about.

The modern access issues that prevent Ngāti Rūwai, Ngāti Hine-o-te-rā, and Ngāti Waikārapu from undertaking customary harvesting and hunting in Taukoro Bush are the result of the decision to grant a lease over the Taukoro Conservation Area in 1959. DOC wants the lessee to surrender part of the lease, and is negotiating to that end. We hope that this will solve the access problem.

We consider that the comments of previous Tribunals about the management of conservation lands apply to this case (see section 22.6.4). The principle and practice of partnership is important in balancing Crown and Māori interests in the management of conservation land. In Taukoro Bush, the scales are not adequately weighted in favour of Māori interests. It is telling that DOC could identify only one occasion when Ōtoko Māori were invited to participate in the management of Taukoro Bush, while the claimants spoke vividly of their frustration at DOC's continued disregard for their rangatiratanga and kaitiakitanga. Taukoro Bush is important to the Ōtoko community as the last significant stand of forest in their rohe.

The Crown should actively engage with the claimants in the day-to-day management of Taukoro Bush. During our hearings, DOC officials indicated willingness to work with Ōtoko people in the future management of Taukoro Bush. We trust that this is already underway, and that, before too much longer, tangata whenua and DOC manage Taukoro Bush in true partnership.⁶¹

We note that there is at least one other iwi with interests in these conservation areas from whom we did not hear.⁶² DOC needs to make the necessary inquiries to ensure that all those with legitimate interests are included in their processes.

26.4 ŌHOTU 6F1

26.4.1 Introduction

Ōhotu 6F1 (six acres), an area called Kaikākā by its owners, is situated near the confluence of the Mangawhero River and Hāpokopoko Stream, on either side of Parapara Road.⁶³ It was created in 1911 after tūpuna of the current owners objected to the sale of a larger block, and applied to have their shares partitioned out. Claimant Jacqueline Flight acknowledged that such a tiny block might be ‘insignificant and worthless to some’, but to her whānau it is far from that:

We are descendant of the Ngāti Waikarapu Tribe who once populated the valley and ranges of what is now called the Parapara. There were numerous Pa scattered over this vast area of thick bush land. The Urupas of Te Parapara, Puketapu and Ngahura are the last resting place of our Tipuna. . . . The lower part of Kaikaka . . . has the Mangawhero River flowing around it. Our Ancestors gathered there to do the daily domestic chores such as washing clothes and bathing their Mokopuna. They would set their hinaki's and the eels and trout always kept our families fed. This activity is still practised by our whanau today. . . . The 3 acres above the road that is also Kaikaka is the ideal spot to view the remnants of what were once the vast Ōhotu and Parapara Blocks. . . . There are many of our ancestors buried all over these lands and Kaikaka is no exception. The ashes of two of our Uncles are scattered there. The Pito and afterbirth of Moko's have been placed

there over decades. Our children and their children's Pito and afterbirth are there. . . . The Mangawhero is our spiritual river, it plays an important role in our daily lives, it is our holy water. We have fond memories of swimming, playing and growing up there. . . . Often whanau members would take away with them a container of this water for spiritual clean[s]ing.⁶⁴

The current owners of Ōhotu 6F1 brought their claims about the block to our attention towards the end of the Whanganui hearings process, and their evidence at that stage was limited. Some further information has, however, since come to light in the course of reporting on this claim.⁶⁵ The case is interesting because it exemplifies the kinds of pressure that Māori were under to sell their land in the early twentieth century, and how partitioning out interests from large blocks could result in continued Māori ownership of only a small fragment, too isolated and too small for habitation. Then, activities of the Crown and local authorities could diminish and adversely affect even such insignificant acreage.

26.4.2 What the claimants said

The owners of Ōhotu 6F1 (Wai 1604) contended that the Crown failed to actively protect their interests in Ōhotu 6F1, and allowed the native land laws, public works regime, and, later, the actions of other authorities to render their land economically unviable and impede their use of the block.⁶⁶ They argued that this has threatened their spiritual ties to the land, and restricted their ability to exercise tino rangatiratanga.⁶⁷

The Crown made no submissions on this claim.

26.4.3 The creation and alienation of Ōhotu 6F

In 1897, the Ōhotu land block came before the Native Land Court for title investigation, and when the court subdivided it between hapū,⁶⁸ Ōhotu 6F (227 acres) was awarded to Waikārapu and Tūmataira, of Ngāti Pāmoana; 202 owners held interests in the block. Parapara Road later went through the block's south-west corner, taking 7.5 acres.⁶⁹

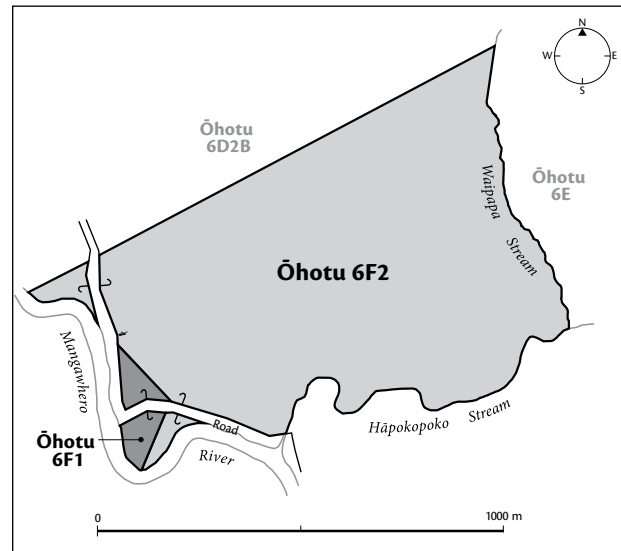
The owners did not pay survey costs of £28 5s 9d charged against Ōhotu 6F in January 1903, and so in

February 1909 the Native Land Court awarded to the Crown 39 acres in lieu of payment. The Crown's 39-acre partition became Ōhotu 6F1, and the balance of the block became Ōhotu 6F2.⁷⁰

At the end of 1909, the Aotea District Māori Land Board approved the owners' application to lease out Ōhotu 6F2.⁷¹ The block had not been leased for a full year when a local farming family, the Glenns, applied to purchase it at 34 shillings per acre, apparently the government valuation.

The land board held a meeting of owners in December 1910 to consider the Glenns' offer. Minutes of the meetings record that a number of prominent owners attended – Hāwira Rehi, Arama Tinirau, Eruini and Tiemi Te Wiki, and Rēneti Te Kaponga, along with a Mr Forsyth, the husband of another owner, Hārete Ripeka Utanga. Tinirau chaired the meeting.⁷² Te Kaponga and Tiemi Te Wiki did not agree to the proposal, and said the owners needed a conference to discuss matters like the price, whether to retain the block themselves and farm it, or whether to lease it. Leasing was preferable to selling, in Te Wiki's view, and he added that his remarks did not apply only to the block in question. The meeting was adjourned for a few hours to give the owners a chance to discuss the issues.⁷³

When the meeting resumed, Tiemi Te Wiki presented the owners' counter offer: they would sell the land for 50 shillings per acre (substantially more than the offered price), but if the Glenns rejected this, they would continue to lease the land. Perhaps in an attempt to discourage the meeting from selling unrepresented owners' interests, he pointed out that the block had almost 190 owners, and the majority of them were not at the meeting. Two owners, Eruini Te Wiki and Riria Rāwhiti, asked for their interests to be partitioned out. Forsyth commented that the road through the block increased its value. The Glenns' lawyer, however, pointed out that the current lease was worth 30 shillings per acre, whereas the purchase offer was 34 shillings per acre, and would include the 39 acres transferred to the Crown for survey liens – the Glenns would pay the Crown the survey debts, and would also pay the Māori owners for the 39 acres. In the end, the meeting adjourned again to give the owners more time to consider their options.⁷⁴



Map 26.4: Ōhotu 6F1 in relation to Ōhotu 6F2, Mangawhero River, and Parapara Road

It seems likely that owners held their own hui, but we have seen no record of that. A final meeting of assembled owners was held on 19 December 1910 with 11 owners in attendance. A summary report of the meeting records that Tinirau again chaired. Rewi Rēneti put forward the proposal to sell, seconded by Tiemi Te Wiki. The price was 34 shillings an acre, including the Crown's 39 acres. This time the resolution was carried, although the report gives no account of any discussion. The shareholding of those present at the meeting was 36.5 out of 300 shares.⁷⁵

Not all of the owners were happy with the sale. Rora Te Oiroa Pōtaka asked the land board 'not to confirm the resolution so far as it relates to her interests and to those of her family', but later withdrew her objection.⁷⁶

Rāhera Tiweta (also known as Rāhera Huinga) also opposed the sale. She attended the meeting on 19 December. She applied to have her family's interests – amounting to six acres – partitioned out.⁷⁷ Their interests became the new Ōhotu 6F1. Survey costs for the partition were £7 6s.⁷⁸ This done, Ōhotu 6F2 was transferred into the ownership of the Glenns.⁷⁹



Culvert next to Parapara Road directing water onto Ōhotu 6F1



Pipe directing run-off from other farmland onto Ōhotu 6F1

26.4.4 Difficulties in using and protecting Ōhotu 6F1

Owners agreed on the location of Ōhotu 6F1, placing it next to the Mangawhero River.⁸⁰ As map 26.4 shows, this block was bisected by Parapara Road. Witness Jacqueline Flight told us that her eldest brother ran a hobby farm on the block from 1975 to 1979, but it was uneconomical.⁸¹ George Pōtaka said that he had attempted to establish a plantation of pine trees, but found it difficult to navigate the necessary bureaucratic processes.⁸²

The claimants described the challenges of dealing with local and central government authorities whose actions have affected the land. Mr Pōtaka provided evidence that large pipes were laid under Parapara Road during his childhood, channelling water from the road and neighbouring block. The problems caused are significant, with 'large crevices gouged into the hillside below the road',

water pooling on the land and creating an 'unusable swamp', and causing 'many of the pine trees to become unstable and rot'.⁸³ Mr Pōtaka has visited the local council on more than one occasion about this issue, but without result. He further stated that during the 1990s, Horizons Regional Council laid brodifacoum as possum bait around the block, despite the owners having informed the council that they did not want poison to be laid because they still used the land as a camping site.⁸⁴

In recent years, the owners entered into discussions with Transit New Zealand regarding the proposed realignment of Parapara Road at Ōhotu 6F1.⁸⁵ The road makes a very sharp turn as it passes through the block, and has been the site of many accidents over the years.⁸⁶ To straighten the road, Transit New Zealand needed to acquire nearly three acres of Ōhotu 6F1, which the owners indicated

they might agree to if the land could be exchanged for a similarly sized block.⁸⁷ We do not know how Transit New Zealand or its successor, the New Zealand Transport Agency, viewed this request, but the issue remained unresolved at the end of our hearings in 2009.⁸⁸

26.4.5 Conclusion

Those owners who voted to sell Ōhotu 6F2 held only a small minority of the shares. On the other hand, there was considerable discussion among owners as to what to do with the land, with prominent local men taking an active part in the decision. It seems likely they consulted with other owners during the three-day adjournment between meetings. We do not know why, in the end, they agreed to sell, although we can say with some certainty that they were not in a position to farm it themselves. The lump-sum purchase price was presumably simply more desirable to most than drip-fed rent on a long-term lease.⁸⁹

The remnant partitioned out as Ōhotu 6F1 is bisected by Parapara Road, but Rāhera Tiweta presumably had her own reasons for choosing these particular six acres. Perhaps she thought that proximity to the road would make the site suitable for a dwelling. Perhaps she was also influenced by its position beside the Mangawhero River and the view it affords over ancestral lands. These were factors that Jacqueline Flight said contributed to the block's significance.⁹⁰ However, proximity to the road has brought problems over the years. Water piped away from the road and onto Ōhotu 6F1 has led to flooding, and now land is sought to reroute the road.

Parapara Road is a State highway, so its management is in the hands of Crown agencies. Those responsible for the road must have laid the pipes that have damaged Ōhotu 6F1 and caused flooding. It appears that this occurred without permission, or compensation for the adverse effects. There are also pipes directing run-off from other farmland onto Ōhotu 6F1. They may be on private land, although it is not clear from the evidence presented who owns them.⁹¹

The lack of definitive evidence about past or present processes concerning the land and the maintenance of the road precludes our making findings and

recommendations here. However, we do encourage the Crown to facilitate meetings between the claimants and agencies working in Ōhotu to discuss rehabilitation of the damage to the block. It is also critical that any purchase of Ōhotu 6F1 land to reroute Parapara Road occurs only if the owners are willing, and suitable land is made available by way of exchange.

26.5 KORINITI NATIVE SCHOOL

26.5.1 Introduction

In the late 1890s, Ngāti Pāmoana gifted land in the Tauakirā block to the Crown for the establishment of Koriniti Native School (also known as Pāmoana Native School and Pāmoana Māori School).⁹² The school served Koriniti for approximately 70 years before closing in 1969 after the site was deemed surplus to the requirements of the Wanganui Education Board, which transferred it to the Department of Lands and Survey for disposal in between 1974 and 1976. Under the mistaken impression that it had originally bought the school site, the Crown did not offer the land, known as Tauakirā 2C, back to Ngāti Pāmoana, but instead sold it to three local farmers.

In the nineteenth century, it was usual practice for Māori to gift land for schools that would serve their community. In this case we investigate why the Crown believed that it bought the land, and whether it has made sufficient efforts to address its mistake.

26.5.2 What the parties said

Ngāti Pāmoana claimants (Wai 180) said that the Crown did not correctly record the gift of Tauakirā 2C for the purposes of a school.⁹³ As a result, it took no steps to return Tauakirā 2C to them, nor gained their consent before selling the block.⁹⁴

Once the Crown acknowledged its error in 1978, it failed to provide a suitable resolution, which constituted a breach of the principle of redress.⁹⁵ As a result, the claimants have lost the opportunity to utilise the former school site for the benefit of their hapū.⁹⁶ They sought the provision of equivalent land or compensation for the loss of Tauakirā 2C.⁹⁷

Ngāti Pāmoana applied for the return of the former school site through the discrete remedy process, but because the land is now privately owned, the application did not meet the criteria.⁹⁸

The Crown accepted that land for Koriniti Native School was gifted, and acknowledged the 'real sense of grievance' that Ngāti Pāmoana feel in relation to the school site.⁹⁹ However, the Crown denied that the sale of the school breached the Treaty because the evidence at the time of the sale suggested that the land had been purchased and did not need to be returned to Ngāti Pāmoana.¹⁰⁰ Once the error was brought to the Crown's attention, several attempts were made to resolve the issue, including proposals to repurchase the site and return it to Ngāti Pāmoana or forward the proceeds of the sale to Ngāti Pāmoana. These attempts were, however, ultimately unsuccessful.¹⁰¹

26.5.3 The transfer of school land to Crown ownership

In the 1890s, the Māori community at Koriniti wanted a school, so Hōri Pukehika visited the Education Department in 1895 (see section 23.3.1(10) for a description of the native schools regime and how it required a community to actively seek to have a school established). Pukehika was a great supporter of education in the district, later gifting land for Parikino Native School (see section sidebar).¹⁰² In 1896, the Inspector of Native Schools visited Koriniti and was offered a choice of three potential sites for a school. He chose an area of flat land to the south of the settlement, on the Tauakirā block.¹⁰³

Government policy required Māori communities to donate native school sites for transfer into Crown ownership. After 1900, the transfer to the Crown was usually done using public works legislation, but practice was more diverse in the 1890s.

At the time when Koriniti School was established, the Crown was buying up interests in Tauakirā, a large block of 50,700 acres. It acquired over 60 per cent of the block between 1896 and 1899.¹⁰⁴ An official in the Land Purchase Department advised the Education Department that he expected the Native Land Court to include the school site

in the Crown's award when it partitioned out the Crown's purchases. Something of this sort is what eventually occurred.¹⁰⁵

In May 1899, the Native Land Court partitioned out the interests that the Crown had purchased in the Tauakirā block as Tauakirā 2A. A month later, the court made a further order awarding the Crown the school site, to be known as Tauakirā 2C. On the purchase deed for Tauakirā 2A, the court noted that the school site was 'to be included in this purchase'. However, the court made no adjustment to the acreage or boundaries of the Tauakirā 2A award when it included the school site on the purchase deed.¹⁰⁶ The site was effectively tacked on to the Crown's purchase and remained, as the Māori owners had agreed, a gift.¹⁰⁷

The Crown then issued a proclamation in the *New Zealand Gazette*, declaring it had acquired both the purchased and gifted areas under section 250 of the Land Act 1892. This was a very broad provision that allowed the Governor to declare that Māori land that the Crown acquired was Crown land. Therefore, neither purchase deed nor *Gazette* notice revealed that the land was gifted.¹⁰⁸

By this time, the school had already been open for a year, and quickly became central to the community.¹⁰⁹ However, by the mid-twentieth century the school roll was declining, and in 1969 it closed. Pupils from Koriniti transferred to Parikino Native School, 15 miles to the south.¹¹⁰

26.5.4 The disposal of the school site

After the school was closed, the local community was concerned about the fate of the land. Kaumātua Rangi Pōkiha visited Education Department officials in Wellington prior to the site's disposal, and was assured that nothing would be done with the land before the local people were consulted and their views obtained.¹¹¹ Pōkiha also visited Phil Amos, Minister for Education between 1972 and 1975, who gave similar assurances.¹¹² Unfortunately, there appears to be no departmental record of the guarantees given to Pōkiha.

Between 1974 and 1976, the former school site was transferred to the Department of Lands and Survey for

disposal.¹¹³ After conducting a preliminary examination into the acquisition of the school site, the commissioner of Crown lands wrongly concluded that the Crown purchased the land from Māori, and the Crown was not obliged to return it to Māori ownership 'by way of gift'.¹¹⁴

However, the Crown was informed at least twice before the disposal process was complete that the land was gifted. In late 1976, the District Field Officer reported that a prospective buyer (RH Marshall, one of those who did later purchase the land) doubted that the Crown had purchased the land, and would only go ahead if the status of the land was clear:

He has been intimately acquainted with the Maoris of the area over a long period, and has been, as he says, 'reliably informed' that the land was given by the Maori owners to the Crown for school purposes, and the understanding was that once it was no longer required for a school, it was to be returned.¹¹⁵

The Crown was again alerted to the gift when Mr and Mrs Pōtaka of Wanganui wrote to the Department of Lands and Survey expressing their interest in acquiring the tenancy of the school site in March 1977, but noting that Ngāti Pāmoana were interested in having the land returned.¹¹⁶ The Land Settlement Board then conducted further investigations into the land and seems to have relied on the purchase deed and the *Gazette* notice for confirmation that the Crown had purchased the land.¹¹⁷

In October 1977, the Crown sold Tauakirā 2c and the school buildings for \$5,000.¹¹⁸

26.5.5 The Crown's response once the gift was discovered

In May 1978, Māori became aware of the sale when the secretary of the Whanganui City Māori Committee, Mrs Te Paa, wrote to the Education Department in an attempt to secure the school site for use in outdoor education programmes for Māori youth. The commissioner of Crown lands responded that the land was already in private ownership. Mrs Te Paa launched a letter-writing campaign to inform the Education Department, the Minister

of Māori Affairs, the Minister of Lands, and the commissioner of Crown lands that the community had gifted the land, and it should have been returned.¹¹⁹

Te Paa's campaign received mixed responses. Initially, the commissioner of Crown lands rejected Te Paa's claims. Her persistence, however, prompted Brian Herlihy, the deputy registrar of the Māori Land Court in Wanganui, to re-investigate the history of Tauakirā 2c. Herlihy examined the Native Land Court minute books, and concluded that the Crown had never purchased the site. He showed that the acres that the Crown had purchased in the area were fewer than they would have been had the school site been included, or in fact purchased. He also pointed to a comment by Hōri Pukehika who, when the court was partitioning the Tauakirā 2 block in 1899, called the school site 'a contribution of all the people'.¹²⁰ But of course this information came too late, because the block was now in private ownership.

After Herlihy's investigation, the director-general of lands informed the Minister of Lands that 'some form of settlement in favour of the Maoris' was required, as 'the land should have first been offered back to the descendants of the original owners'.¹²¹ At a meeting of all parties on December 1978, the commissioner of Crown lands, 13 members of the Māori community, and one of the purchasers were present.¹²² The commissioner argued that because the land was now in private freehold title, the Crown had 'no standing' in the matter.¹²³ Ngāti Pāmoana representatives did not accept this, however, and the commissioner agreed to approach the new owners to seek a solution.¹²⁴

The Crown opened negotiations with the new owners for the school site's return to Ngāti Pāmoana. Over the next several years much correspondence, negotiation, and effort went into resolving the situation. Until 1982, the Crown sought to repurchase the site, or give the new owners other land in exchange for the site, but negotiations reached an impasse in 1983.¹²⁵ It also offered the proceeds of the sale to the descendants of the former Māori owners, but this was not accepted.¹²⁶ We are not aware of any further negotiations after this date.

Hōri Pukehika

Hōri Pukehika was born on the Whanganui River, either at Pipiriki or Hiruhārama, in the mid-nineteenth century. Through his father, Te Wikirini Te Tua of Te Āti Haunui-ā-Pāpārangi (also known as Wikirini Tetua and Wihirini Warihi) and his mother, Peti Te Oiroa of Ngāti Pāmoana (also known as Peti Tetua), Hōri had whakapapa connections to many hapū of the lower Whanganui River.

Hōri Pukehika was a man of many talents. He piloted the river steamer *Tūhua* from Wanganui to Rānana in February 1886, and helped to establish a regular riverboat service. At the end of the nineteenth century, he was a member of the management committee that oversaw the bilingual newspaper the *Jubilee/Te Tiupiri*.

From 1906 to 1911, Hōri was the resident sanitary inspector for the Whanganui district, working to reduce the high mortality rates amongst Whanganui Māori by encouraging Māori communities to adopt new sanitary practices. In this role, he worked with Te Rangi Hiroa (Dr Peter Buck) to oversee the sanitary arrangements at the model Māori pā, Te Āraiteuru, which was built as part of the New Zealand International Exhibition of 1906 and 1907. It was hoped that the participants would recognise the high standard of the sanitary arrangements and recreate them in their rohe upon their return home.

Te ao Māori (the Māori world) knew Pukehika as a tohunga whakairo (master carver). He developed his knowledge of whakairo in the 1870s while assisting Kāwana Moraro and his son, Ūtiki Mōhuia, in the carving of the Pūtiki wharenuī Te Paku o Te Rangi. In addition to his work on *Te Wehi o Te Rangi*, Pukehika worked on a number of wharepuni in the Whanganui region, including Poutama at Hikurangi, Maranganui Tuarua at Pungarehu, and Te Waiherehere at Koriniti. He was renowned for carving the 6.7-metre entrance to Te Āraiteuru, which the official record of the exhibition declared was ‘a fine bit of carving’.

He was married twice, first to Pongo Ngākaari (also known as Pango) in 1868, with whom he had one son, and



Hōri Pukehika (1847–1932), a leader of his day and a proponent of native schools. He was also a noted carver. He gifted land for Parikino Native School, and was present in the Native Land Court when land was gifted for Koriniti Native School.

then to Tira Rātana (also known as Erita), with whom he had seven children. Hōri Pukehika died in May 1932, aged 85.¹



Hongi line in front of Te Āraiteuru Pā, New Zealand Exhibition, Christchurch, 1906. The gateway carved by Hōri Pukehika is visible in the background.

In 1988, Tauakirā 2C was combined with neighbouring land and then subdivided into smaller lots. The former school site remains in private ownership today.¹²⁷

26.5.6 Conclusions, findings, and recommendations

The means deployed to transfer the land in the Tauakirā block identified as the school site to the Crown masked its nature as gifted land. It would have been preferable, and tidier, if the school site land had been separately transferred in a manner that marked it out for what it was: a

gift. Probably, though, officials in the 1890s were not sufficiently prescient to foresee a day when the school would close and the school site would need to be returned to its donors.

Even though the transfer was not labelled 'gift', it is arguable that such labels were not necessary when the legislation of the day required Māori communities to donate land for native schools. This made it obvious that native school land was almost certainly donated land. No doubt there was the odd case where the Crown purchased

land for a native school because few rules are invariable, but those cases would have been exceptional. Thus, the Crown should have known when it came to dispose of the school site that it was *extremely* likely that a Māori community would have donated the land for a rural native school set up in the 1890s.

In this case, though, the Crown officials concerned apparently did not know the legislative history of native schools, and did not inquire into the matter in any depth.

But then we have evidence that the Crown was *told* on two separate occasions before transferring the land to private purchasers that it had been gifted. This should have triggered an in-depth inquiry into the situation. We agree that some records suggest the possibility of a purchase, but further steps, including inspection of Native Land Court minutes, could and should have been undertaken to establish what actually happened.

The mistake was discovered after the land had been sold to a private buyer, and the Crown tried to remedy the situation, seeking but failing to repurchase the land, and offering the proceeds of the sale to Ngāti Pāmoana, which they refused. Things stalled in 1983, and have not progressed since.

Almost five decades since Koriniti Native School closed, Ngāti Pāmoana remain in the situation where the Crown sold the land they gifted for the school. They have received neither compensation nor land in lieu of the land sold.

The Crown failed in its duty to actively protect the interests of Ngāti Pāmoana by:

- ▶ poorly documenting the transfer of the gift of the school land to the Crown;
- ▶ inadequately investigating the history of the land when the school closed, and selling it on the false premise that it purchased the land for the school; and
- ▶ letting the matter languish since 1983, rather than continuing to work with Ngāti Pāmoana to resolve their legitimate grievance.

Redress is now well overdue, and we recommend that the Crown promptly enters into discussions with the successors of the donors of the school land with a view to resolving this regrettable situation.

26.6 THE PROPOSED ĀTENE DAM

26.6.1 Introduction

In the 1950s and 1960s, planning for New Zealand's future electricity consumption was at the forefront of Government concerns as rapidly increasing demand threatened to outstrip supply.¹²⁸ The Government considered a large hydroelectric power generation scheme on the lower Whanganui River as a possible solution. Geological investigations were carried out at various locations near Kaiwhaiki, Parikino, and Paetawa, but all were rejected in favour of Ātene, a small settlement located 35 kilometres from the city of Wanganui.¹²⁹ The Government undertook exploratory work for a proposed dam, but doubts about the feasibility of its construction led to the abandonment of the project in the late 1960s.¹³⁰

The initial works and planning arrested land development alongside the Whanganui River for a number of years, and affected the community at Ātene.

26.6.2 What the parties said

Ngāti Taanewai (Wai 1483) said that during the initial investigative phase of the dam, the Crown failed to actively protect their tino rangatiratanga and also failed in its duty to consult them.¹³¹ The potential threat of widespread flooding led to people moving away from their pā and marae, and this depopulation undermined the ability of Ngāti Taanewai to transmit elements of tikanga and kawa to future generations.¹³² Claimants for Ngāti Hau (Wai 979) also said that the dam project intensified emigration from the Ātene area.¹³³ Ngāti Hineoneone (Wai 1028) alleged that the project led to the destruction of their wāhi tapu and the environment at Ātene, and that the Crown not only failed to protect Ngāti Hineoneone wāhi tapu, but was also complicit in their destruction.¹³⁴ The dam also features in evidence from claimants of Te Wai Nui a Rua and the descendants of Heeni Mātene and Pōkairangi Ranginui (Wai 2157), and the Tamahaki Council of Hapū and Uenuku Tūwharetoa (Wai 555, Wai 1224).¹³⁵

The Crown's submissions on Ātene Dam went only so far as to say that there was no evidence that significant resources were destroyed as a result of the project.¹³⁶

26.6.3 The Ātene Dam project

Between 1957 and 1958, the Government undertook a series of reviews into New Zealand's future energy resources that emphasised the importance of developing hydroelectric power in the North Island.¹³⁷ Faced with imminent electricity shortages, the Government issued an Order in Council under the Public Works Act 1928, giving the Crown extensive powers to use several central North Island rivers, their tributaries, and surrounding land for hydroelectric generation purposes.¹³⁸ The Whanganui River was one of the waterways included in the Order in Council, putting in place the legal groundwork for the Ātene Dam project, as well for as the Tongariro Power Development Scheme.

Work began at Ātene in March 1961. To assess the site, the Government conducted field investigations on the Crown-owned land blocks Tauakirā 2N, 2O, 2P, and 2Q, and Te Tuhi 3B and 4C, much of which it had acquired in the early twentieth century for scenic reserves.¹³⁹ It constructed an access roadway and track, and tunnels in the hills around Ātene and underneath the Whanganui River to determine whether the riverbed was strong enough to carry the increased weight of water that the dam would create.¹⁴⁰

The scheme would have made Ātene one of the largest hydroelectric power schemes in New Zealand. The lake that was envisioned at one stage would have been 120 kilometres in length, and would have extended from Ātene to just south of Taumarunui, but the scheme was down-sized multiple times over the next decade until it was abandoned in the late 1960s.¹⁴¹ Soft sandstone in the hills surrounding Ātene increased the risk of collapse during a large earthquake, and the Tongariro Power Development Scheme came to be seen as the cheaper and more efficient option.¹⁴²

26.6.4 The Crown's engagement with tangata whenua

Many groups with vested interests in the Whanganui district predicted that the proposed hydroelectric scheme at Ātene would have disastrous consequences for the Whanganui River and its people. The Wanganui River

Association, led by Whanganui Māori kaumātua Robert (Bob) Tapa and local farmer and Wanganui city councillor James Wickham, opposed the dam proposal, and had significant community support.¹⁴³ The Whanganui River Southern Committee, based in Wanganui city, and the Whanganui River Northern Committee, based in Taumarunui, were also vocal in their opposition to the scheme.¹⁴⁴ These groups held numerous community meetings, and publicised evidence against the dam, including Māori concerns over the loss of their ancestral lands and urupā.¹⁴⁵

Despite the campaign, we are unaware of any serious effort by the Crown to discuss the scheme with Māori. In February 1960, the *Evening Post* reported that the Minister of Works, Hugh Watt, assured Tapa that the Government would consult Māori before it 'did anything drastic'.¹⁴⁶ Christina Tapa told us that Tapa, her father-in-law, also went to Parliament with Wickham to discuss the dam project with 'whoever they could find that would listen', but we do not know how they were received.¹⁴⁷ In May 1964, the Minister of Māori Affairs, J.R. Hanan, met twice with Māori representatives and the Morikaunui Incorporation, by which time the Crown had all but decided that a dam at Ātene would go ahead. Hanan tried to appease those opposed to the scheme, assuring them that they would benefit from the opportunities that the project would create. 'If this dam is coming, and it seems it will', he stated, 'then that is progress, but in that progress you should share'.¹⁴⁸

26.6.5 How did the works at Ātene affect the Māori community?

For the Government, the exploratory works were to determine whether a tunnel, intended to divert water from the Whanganui River and other nearby waterways, could be driven through the land at Ātene without collapsing. This strength testing involved constructing a testing chamber between two horizontal tunnels that ran for approximately 150 feet.¹⁴⁹ The claimants told us that about six additional tunnels were also driven from the main tunnels into the surrounding land.¹⁵⁰ Once it abandoned the dam project,

the Crown undertook remedial work on the site, sealing the ends of the tunnels with concrete.¹⁵¹

However, claimants remain concerned about the environmental impacts of the works. With exploration tunnels now running under Ātene land, some claimants told us that the risk of subsidence increases as the timbers supporting the tunnels gradually deteriorate.¹⁵² Others said that the drilling and tunnelling had contaminated the Whanganui River and water bores with sulphuric underground water. Wai Wiari-Southen, who lived at Hiruhārama as a child, stated that the Ministry of Works had drilled through underground waterways:

They started at Parinui and drilled all the way down the river, including within the middle reaches. What happened was that when they drilled down the artesian water came up to the surface and the water source got contaminated because of all the sulphur that came up with it.¹⁵³

Jenny Tamakehu for Ngāti Taanewai also contended that while testing around Ātene, drillers struck an aquifer, which caused its underground water to flow into the river. This offended the claimants culturally, because the two bodies of water are taonga and should not be mixed.¹⁵⁴

The claimants retained Aqualinc Research to examine the Ātene site for damage to the whenua and awa.¹⁵⁵ Because there are no water records for the Ātene area, the company could not ascertain the effects of the drilling in the 1960s on groundwater quality.¹⁵⁶ However, it recommended further investigation to improve understanding of any impacts from the exploratory work.¹⁵⁷

With the works at Ātene came increased employment opportunities. Terence Ranginui told us that the dam was 'a 24-hour, 7-days a week operation', and employed many local people in the 1960s.¹⁵⁸ Had the dam been built, it is likely that it would have continued to provide employment to the local community both during its construction phase (which one newspaper report said would take nine years), and after it began generating electricity.¹⁵⁹ It was also predicted that the lake created by the dam would draw tourists to the area, and this too might have led to employment opportunities.¹⁶⁰

Most predictions about the future impact of the dam, however, were less positive. Perhaps the most painful aspect of the dam for Māori was the threat that it posed to their marae, kāinga, urupā, wāhi tapu, and tūrangawaewae. In 1964, Wickham called the dam proposal 'the greatest crisis which has faced the river Maoris in 600 years'.¹⁶¹ A preliminary investigation into the dam showed that at least 11 battle sites, 18 burial grounds, 16 marae, six meeting houses, and a hall would be flooded if the scheme went ahead.¹⁶² As Mrs Tapa said, it was 'just unthinkable' that floodwaters would one day cover their tūrangawaewae:

All the marae, all the urupa, all our lands all gone. . . . This is what the people were up in arms about. Our Awa was special for us. It was our life-force and was everything to us. It provided us with spiritual healing, it provided us with kai. It was our main highway before the roads were opened.¹⁶³

Based on the Government's assertion that the dam project would go ahead, Whanganui kaumātua relocated some kōiwi so that the floodwaters would not consume their burial places.¹⁶⁴ Heeni Ranginui also told us that her brothers were not buried in their whānau urupā at the request of her grandmother, who feared the effects of the dam.¹⁶⁵ The Government set aside around £2 million as compensation for land that would be lost as a result of the scheme, but the Whanganui River Association observed that no amount of compensation would cover the social and cultural loss inflicted upon Māori.¹⁶⁶

Many families felt they had to leave their tūrangawaewae. Government ministers and newspapers were telling Whanganui iwi that the dam would be approved, and in May 1964 even the Whanganui River Association conceded that the project looked like a certainty.¹⁶⁷ Consequently, kaumātua such as the grandparents of Ms Ranginui and Ms Tamakehu left their family homes and moved further inland in anticipation of the rising waters.¹⁶⁸ Sister Bernadette Mary Wrack and Sister Mary Walburga of the Sisters of Compassion based at Hiruhārama and Rānana also remembered that migration from the lower Whanganui increased during the period of exploratory work at Ātene.¹⁶⁹

26.6.6 Conclusion, findings, and recommendations

The proposed dam and its exploratory works caused *mamae* (hurt) that endures to this day. The only reason that Māori did not lose their homes, *marae*, and ancestral lands was the instability of the land. Crown concern for *tangata whenua* interests did not come into it at all.

The Crown's authority for the works at Ātene was the Order in Council of 1958, of which the National Park Tribunal (considering the document in the context of the Tongariro Power Development Scheme) said:

The issuing of the OIC was done without consultation or consideration to the adherence of the Crown's Treaty obligations. It was as if the Treaty did not exist. The policies of consent and cooperation from the Crown's side were either ignored or set aside. The Crown exercised its *kāwanatanga* rights without regard for Māori *rangatiratanga*: the project was in the national interest, the lands and waters it would need were important for Māori but there was no attempt at consultation.¹⁷⁰

In considering what the Crown's duty was in this situation, we think it appropriate to apply the Treaty standards for compulsory land acquisitions for public works.

The Tribunal has acknowledged that there are public works purposes of such importance to the whole nation that the Crown may be justified in infringing the guarantee of *te tino rangatiratanga* in article 2. The need to generate hydroelectricity for the country in a time of electricity shortage might be just such an exigency, but in such circumstances the Crown must nevertheless seek to minimise the adverse effects on its Treaty partner. Engagement with Whanganui Māori about what was going on and why, both before and during the Ātene project, was a necessary starting point. The Crown should, for example, have discussed the whole situation with Whanganui Māori before it issued the Order in Council that empowered it to undertake the exploratory work at Ātene. It did not do so, and thereby breached the Treaty principle of active protection.

We do not know enough about the effect of the dam project on depopulation of the area to make findings. Other factors were influencing urban migration in the 1960s

– and, in fact, had the dam gone ahead it would have provided local employment that might have made it possible for *tangata whenua* to remain living on the Whanganui.

It remains unclear whether drilling carried out as part of exploratory investigations increased the risk of subsidence or contaminated water bores and the Whanganui River by drawing sulphuric artesian water to the surface, but we note the claimants' concern about these issues and Aqualinc Research's call for further investigation into the impacts of the exploratory work.

We recommend that the Crown apologises to claimants for its failure to actively protect their *tino rangatiratanga* in the investigative phase of the proposed Ātene dam, and that it assists claimants to ascertain whether there is in fact cause for concern about environmental damage – and if there is, to undertake remedial work.

26.7 PARIKINO NATIVE SCHOOL SITE

26.7.1 Introduction

From 1914 to 2006, Parikino Native School served the settlement of Parikino, 20 kilometres north of Wanganui town. The school occupied two sites: first on the Pukekōwhai 2 block, and then on part of the Pukenui 1 block.

(1) *The first Parikino school*

Māori gifted the land for the first school site. When no longer required for the school, the Crown sold the land to neighbouring landowners. We received no claim about the Crown's disposal of this land.

(2) *The second Parikino school*

The site for the second school was vacated when the school closed in 2006. During the Whanganui district inquiry hearings, Ngāti Hinearo and Ngāti Tuera applied to have that second school site returned to them as a discrete remedy. But it emerged that the land for the second school was not Māori land. The Crown compulsorily acquired it from a Pākehā farmer in the 1950s, and then, once the school closed, offered it back to the farmer or his successors in accordance with its obligations under public works legislation.

26.7.2 What the parties said

Ngāti Hinearo and Ngāti Tuera (Wai 214, Wai 584, and Wai 1143) sought the return of the second Parikino School site as part of the discrete remedies process.¹⁷¹ The claimants emphasised that the school site would be characterised as cultural redress because they intended to use it in the development of their education strategy. At that time, Ngāti Hinearo and Ngāti Tuera held a one-year licence to occupy the site, using it as the location of a programme in which their own kaumātua would teach hapū members their whakapapa, traditions, tikanga, kawa (protocols), and mita (dialect).¹⁷²

During the hearings, the Crown did not make specific submissions on the second Parikino School site on the grounds that the land was subject to the disposal process for former public works lands.¹⁷³ Once the hearings concluded, the Crown informed Ngāti Hinearo and Ngāti Tuera that the site had been sold to the successors of the original Māori owners of the block in accordance with the disposal process. As the land was in private ownership, it no longer met the criteria for a small discrete remedy.¹⁷⁴

26.7.3 The establishment and disposal of the first Parikino school site

During the early twentieth century, the Māori community at Parikino made several requests for the establishment of a local school. In 1912, William Bird, the Inspector of Native Schools, visited Parikino and recommended that a school be established in the settlement.¹⁷⁵ Hōri Pukehika, the sole owner of the Pukekōwhai 2 block, gifted approximately three acres for the school, to which the Crown acquired title in June 1915.¹⁷⁶ Pukekōwhai was a 280-acre block, 70 per cent of which remains in Māori ownership today. The school gifting was one of the first alienations.¹⁷⁷ The school buildings were sourced from unused workshops at Koriniti, and members of the Parikino community floated them downriver in preparation for the school's opening in February 1914.¹⁷⁸ Almost three years later, an additional acre was taken from Pukekōwhai 2 for the school under the Public Works Act 1908.¹⁷⁹ Parikino Native School remained open for several decades, but the

deteriorating state of its buildings and safety issues led to its replacement by 1953.¹⁸⁰

When the first Parikino school closed, the site was transferred to Crown ownership under section 5(6) of the Education Lands Act 1949, enabling it to be sold.¹⁸¹ It appears that the first Parikino school site was then sold to private purchasers, and it is now general land.¹⁸² We have no evidence about the process the Crown followed in disposing of the land, nor whether the purchasers were in any way related to Hōri Pukehika.

26.7.4 The establishment and disposal of the second Parikino school site

The second Parikino school was located on part of the block Pukenui 1, immediately north of the first school site. Pukenui was a 1,053-acre block, most of which was sold to private purchasers between 1910 and 1920.¹⁸³ The land for the school was taken under the Public Works Act 1928 in August 1951.¹⁸⁴

Very little is known about the history of the second school site immediately before or during its compulsory acquisition, but it was not Māori land at the time it was taken for a school. At the time of the taking, the land was being managed by the Public Trustee on behalf of a Pākehā woman who had inherited it from her father, John Lissette, and then married into the Pukehika family. She intended to pass it on to her son, another Hōri Pukehika, once he was old enough to farm it. The land was taken over the objections of the Public Trustee.¹⁸⁵

Parikino School was opened in the early 1950s, by which time the school buildings were completed and the first Parikino school closed.¹⁸⁶ About 50 years later, in late 2006, the Ministry of Education closed the second Parikino school.¹⁸⁷

After the closure of the second Parikino school, it was subject to section 40 of the Public Works Act 1981, which requires the Crown to offer land no longer required for a public work to the person from whom the land was compulsorily purchased, or to his or her successors. In April 2009, the Crown informed us that Land Information New Zealand, the agency responsible for administering



Girls playing rugby outside Parikino Māori School, 1963. This was the second site for the school, which was closed in 2006.

offer-back provisions, had followed section 40 and sold the second Parikino school site to the successors of the original Māori owners.¹⁸⁸ However, this information was in error, at least to the extent that the land was not Māori land when the Crown acquired it. The Crown appears to have acquired the land from the Lissette estate, and although the Lissette descendants are Māori, their rights to the land derive from their Pākehā tupuna John Lissette rather than from their Māori forebears.¹⁸⁹

26.7.5 Conclusion

(1) *The first Parikino school*

When Māori communities gifted their land to the Crown for the establishment of a native school, and later the land was no longer required for educational purposes, the Crown was then obliged both in terms of the Treaty and fairness to return it to the donors or their successors. In the case of the land that Hōri Pukehika donated for

Parikino Native School, we do not know whether the Crown offered it to his descendants before selling it. We therefore make neither findings nor recommendations.

(2) *The second Parikino school*

The second Parikino school site was general land at the time that it was compulsorily acquired, and the Crown was obliged to follow the requirements of the Public Works Act in offering it back to the successors of the original owners. It did so. As far as the second Parikino school is concerned, therefore, the claim was not well-founded.

26.8 THE PUKETARATA 4G1 TAKING

26.8.1 Introduction

The Puketarata 4G1 block is about 20 kilometres north of Whanganui city, on the east bank of the Kauarapaoa Stream. It is located in an important area of Ngā Paerangi's

rohe, with the historic pou whenua (known as Kemp's Pole) on nearby Puketarata 4F, and numerous pā sites and urupā in neighbouring blocks.¹⁹⁰

Ngā Paerangi (Wai 1051) raised concerns about a 10-acre parcel of land that was compulsorily acquired from Puketarata 4G1 for a worker's dwelling in 1924 and is now privately owned. They said that the taking was excessive, compensation was unfairly low, and the taking led to ongoing problems with access to their land in Puketarata 4G1, 4H1, 4H2, and 4F.¹⁹¹ Without access, the claimants struggle to maintain the pine forest located on the Puketarata blocks, or lease out the land.¹⁹² Access to important cultural sites, such as the pou whenua, has also been affected.¹⁹³

The claimants asked that the Crown purchase the 10-acre site that was compulsorily acquired from them, and return it to Ngā Paerangi as part of the discrete remedy process. Their application was dismissed because the land was privately owned and the claim did not meet the process's criteria.¹⁹⁴ Ngā Paerangi continued to seek the Crown's assistance in securing and improving access through the land that was taken so that the Puketarata blocks can be fully utilised.¹⁹⁵

The Crown made no submissions.

26.8.2 The taking for a worker's dwelling

The Puketarata block (2,380 acres) was in Māori ownership until 1899, when 420 acres were privately purchased. The Crown compulsorily acquired some of the block for scenic reserves in the early twentieth century (see chapter 16). Later, private purchasers bought some of the land; 42 per cent of the block remains in Māori ownership today.¹⁹⁶

In April 1924, the Waitotara County Council took 10 acres of the Puketarata 4G1 block next to the Kauarapaoa Stream for a worker's dwelling (see map 26.5). The land was taken under the Public Works Act 1908, and, as required by the Act, both a notice of intention to take and the proclamation of taking were published in the *New Zealand Gazette*.¹⁹⁷

In July 1925, the Native Land Court awarded the owners of Puketarata 4G1 a total of £90 in compensation, while the lessee, Clem Connor, received £650.¹⁹⁸

Today, the land is in private ownership, with a house on the land.¹⁹⁹ The surrounding land blocks, Puketarata 4H2, 4G2, and the parts of Puketarata 4G1 not affected by the taking, are still in Māori ownership and are managed by the Puketarata Trust.²⁰⁰ The Puketarata 4H1 Ahu Whenua Trust manages the block of the same name, and Puketarata 4F is a Māori reservation.²⁰¹

26.8.3 How was compensation determined?

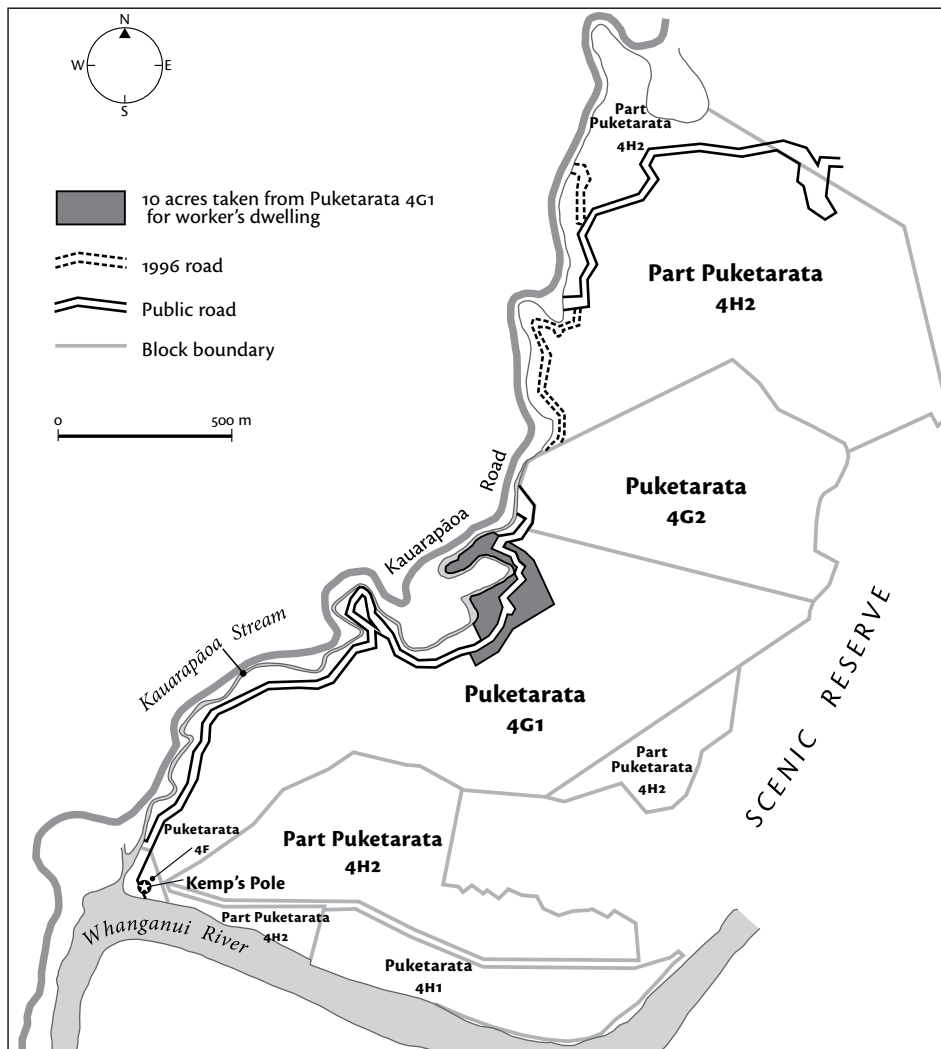
Following the taking, the Waitotara County Council engaged ER Morgan, a local valuer, to value the site for compensation.²⁰² Morgan reported that the total worth of the 10 acres was £429 as follows:

- £30 for clearing and grassing;
- £9 for fencing;
- £330 for buildings on the site at the time of the taking; and
- £60 for the value of the land itself.²⁰³

The Native Land Court awarded more compensation than Morgan's valuation, but the owners still received much less than the lessee, Clem Connor.²⁰⁴ At first, the owners' representative, Hōtene Hōkena, requested a minimum of £12 per acre, arguing that the land taken was 'the pick of the block'.²⁰⁵ After meeting with the county council's representative, however, he agreed to £90. Connor's compensation included £250, which both he and the county council had agreed would be put towards the formation of a road.²⁰⁶ No objections to this decision were recorded.²⁰⁷

26.8.4 Why are there access issues at Puketarata?

The taking for a worker's dwelling has affected access through the Puketarata blocks despite the fact that an unformed public road begins at the boundary of Puketarata 4G2 and 4G1, and continues south, directly through the taken land, to Puketarata 4F. It is probable that the route has never been officially constructed and exists only on survey plans. The road line is vested in the Whanganui District Council and in theory public access should be available. However, in practice, unformed road lines such as this are often left to landowners' use. The claimants took the Tribunal to see this land on a site visit in 2007, and it



Map 26.5: Puketarata
lands, compulsory
acquisition, and roads

appears that a gate has been placed across the road line on the site of the taking for a worker's dwelling.

A public road is also located to the north of the taken block, running through the north-west corner of Part 4H2 (see map 26.5).²⁰⁸ Both of the Puketarata roads were surveyed prior to the taking and, as public roads, should have allowed the owners uninterrupted access to their remaining lands regardless of the compulsory acquisition.²⁰⁹

In 1996, the Puketarata Trust applied to the Māori Land Court to lay out an alternative roadway across Puketarata 4H2 and 4G2 in order to gain greater access to their land. The proposed road was to join the northern road with the unformed southern road. During the court hearing, the trustees' representative explained that the owners were applying for the roadway order because the lessee of Puketarata 4H2 was not allowing 'reasonable access'

through the leased land.²¹⁰ The eventual roadway order stated that the new road was to terminate at the boundary of Puketarata 4H2 and Puketarata 4G2 (see map 26.5). At this court hearing there was no mention of the 1924 taking.²¹¹ This apparently has not resolved the access issues; it may be that the steep, broken nature of the country has made it prohibitively expensive to construct this new road.

26.8.5 Conclusion, findings, and recommendations

Taking 10 acres of Māori land for a worker's dwelling is not a valid infringement of the guarantee of *te tino rangatiratanga* in article 2 of the Treaty. This was a trivial public work that does not even begin to meet the standard required: the land was not required in the national interest or as a last resort, and there were no exceptional circumstances. Moreover, even if it was thought necessary to provide horse-grazing, 10 acres is a huge amount of land for a worker's dwelling.

Unusually, the owners were represented at the compensation hearing. The process appears to have been as fair as it ever was in these situations, and Hōtene Hōkena apparently agreed that the owners should receive £90 for their land. It is not entirely clear why the lessee received so much more, but presumably he had improved the property at his own cost. The valuation methodology was always monocultural, and had no regard to the spiritual or cultural value of Māori land.

The compulsory acquisition has ultimately caused access problems at Puketarata, which the 1997 roadway order has apparently not resolved.

Not only should this Māori land not have been compulsorily acquired for a worker's dwelling, the taking of 10 acres for this purpose was manifestly excessive. The purchase breached the Treaty and its principles – irrespective of the adequacy of the compensation which, without expert evidence on values of the day, we find difficult to assess.

We recommend that the Crown work with the claimants and the relevant agencies to ascertain exactly why there are still problems of access to Māori land at Puketarata. If such issues do still remain, we recommend that the Crown assists the claimants to take whatever steps may be required to ameliorate the situation.

26.9 KAIWHAIKI QUARRY

26.9.1 Introduction

In 1869, the Native Land Court awarded title to the 1,945-acre Kaiwhaiki block, which included the 100-acre Kaiwhaiki reserve for Māori set aside in the Whanganui Purchase deed of 1848. Most of the block – 87 per cent – remains in Māori ownership today.²¹² Our chapters on the Whanganui Purchase, farming, and socio-economic issues (chapters 7, 19, and 21) examine the owners' struggle to keep and develop this land for agriculture and housing.

From 1878, the Wanganui Harbour Board quarried stone on the Kaiwhaiki blocks north-east of present-day Kaiwhaiki Marae, for use in works to protect the harbour and the lower reaches of the Whanganui River.²¹³ In 1919, the harbour board compulsorily acquired 60 acres for the quarry. Although the Kaiwhaiki quarry was later returned to Māori ownership, some issues remain unresolved: royalties prior to the taking; the compensation award for the land; and the impact of the quarry on *wāhi tapu*.

26.9.2 What the claimants said

Ngā Paerangi claimants (Wai 1051) argued that the Crown's delegation to local authorities of its power to acquire land compulsorily detrimentally affected Ngā Paerangi.²¹⁴ The Wanganui Harbour Board, the taking authority in this case, did not negotiate with the Māori owners, but instead consulted the lessee of the quarry site about the boundaries of the taking and compensation.²¹⁵ The harbour board did not ascertain whether there were *wāhi tapu* on the land that was compulsorily acquired, and this led to the destruction of the Ōhokio Pā site and Ūpokongāruru cultivations.²¹⁶

Ngā Paerangi made other claims relating to the alienation of land adjoining the Whanganui River at Kaiwhaiki, but there was too little evidence for us to consider them in any detail.²¹⁷

Tūpoho, hapū of the lower reaches of the Whanganui River, and the Te Poho o Matapihi Trust also raised the taking of land for the Kaiwhaiki quarry in their draft statements of claim, but made no mention of the quarry in their final statements of claim or in submissions.²¹⁸

The Crown did not address the taking of land for the Kaiwhaiki quarry in its submissions.

26.9.3 Was there a genuine and fair negotiation over royalties in 1878 and 1907?

In 1878, the harbour board approached the Crown to negotiate with the owners for permission to quarry stone from the land. The Native Minister, John Sheehan, negotiated an agreement that allowed the harbour board to take stone from Kaiwhaiki in exchange for royalties.²¹⁹ When Sheehan first met with Kaiwhaiki owners in December 1878, the *Wanganui Herald* reported he had 'explained to them at great length the advantage it would be to them to make amicable terms with the local authorities'. He also made sure to 'place before them the powers of the Public Works Act'.²²⁰ Thus enlightened, the Kaiwhaiki owners reached an agreement with Sheehan that set the price for the stone that the harbour board would purchase at two-pence halfpenny per cubic yard for the first 60,000 yards and twopence per yard thereafter.²²¹

In 1907, the harbour board renewed its arrangement to take stone from the quarry. Compulsory acquisition was mentioned as a potential alternative to a negotiated agreement. The *Wanganui Chronicle* reported that, while negotiating with the Kaiwhaiki owners, the harbour board had decided that 'steps [were] to be taken to acquire the land under the Public Works Act' should they fail to achieve a satisfactory arrangement.²²²

The owners did not want their land to be acquired compulsorily. Two days after the *Wanganui Chronicle* reported the harbour board's plans, the newspaper received the following letter:

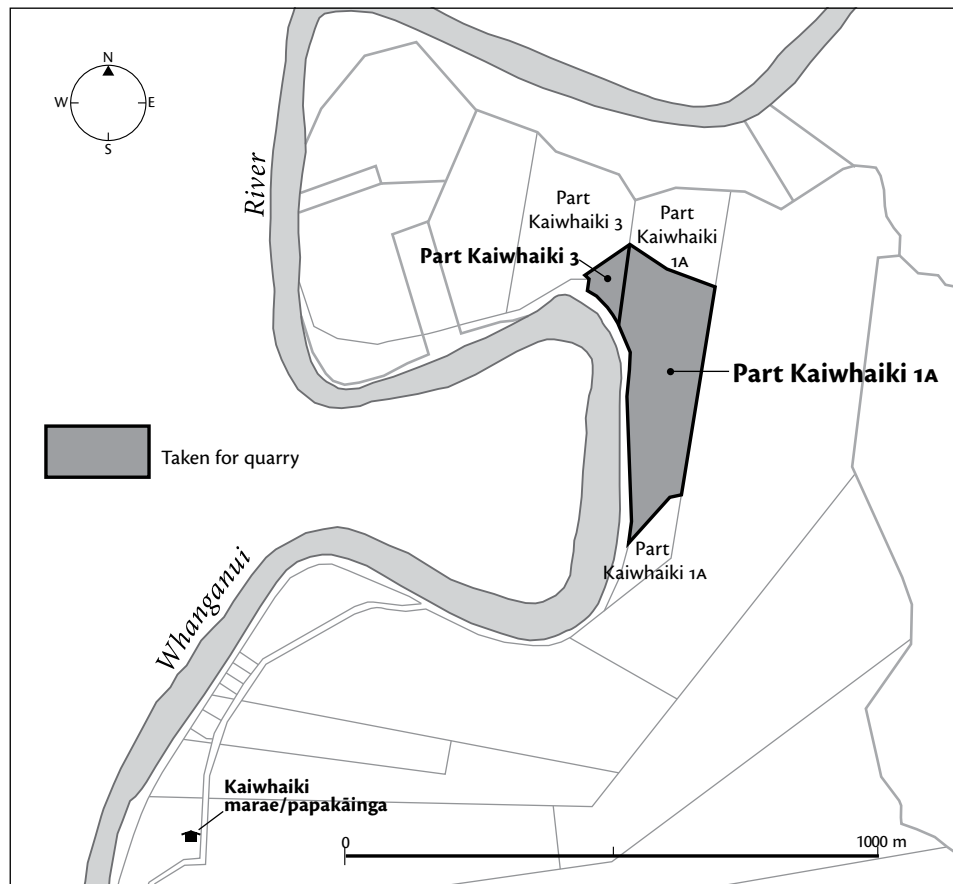
we, the native owners, do not agree that the Harbour Board should try and bring our land under the Public Works Act. We are willing to let them or any one have the stone at a fair price, and we also agree to let them have their first request, 32,000 yards, at 3d per yard, but do not agree for a lease for 15 years, but would give more stone if required.²²³

Following this letter, a compromise was reached, and the harbour board continued to purchase Kaiwhaiki stone for another 13 years at the price stated in the owners' letter.²²⁴ Although we do not have prices with which to compare twopence halfpenny and threepence per yard, we



Shellrock from Kaiwhaiki was the material from which this war memorial was constructed. It is the Whanganui District Native War Memorial at Moutoa Gardens. From 1878 until 1920, the Wanganui Harbour Board quarried stone on land to the north-east of the present-day Kaiwhaiki marae, and paid the Māori owners royalties. When the owners sought to increase the price in 1919, the harbour board compulsorily acquired the 60 acre quarry site.

can see that the owners were threatened with the Public Works Act if they did not agree to the quarry, and it seems likely that this was intended to – and did – influence the price for the stone.



Map 26.6: Kaiwhaiki Quarry

26.9.4 Compulsory acquisition, compensation, and the eventual return of the land

In 1919, when the owners came to renegotiate their agreement with the harbour board, they sought sixpence per yard for the stone, and the threatened taking became a reality.²²⁵ Although it initially agreed to pay at the new rate, in June 1920 the harbour board issued a notice of intention to take 60 acres from Kaiwhaiki 1A and Kaiwhaiki 3 under the Public Works Act 1908, and six months later it owned the land (see map 26.6).²²⁶

In May 1922, the Native Land Court considered the application for compensation.²²⁷ The owners' solicitor sought £1,800.²²⁸ The harbour board offered £1,000,

arguing that the land was of poor quality, and because the stone was unsuitable for roading, it was the only likely user.²²⁹ The court was apparently persuaded by this, and awarded £1,275 to the owners of Kaiwhaiki 1A, and £25 to the owners of Kaiwhaiki 3.²³⁰ In reaching its decision, the court considered the quantity of stone that the quarry was estimated to contain, the value of the stone, the value of the land, and the effect on the value of the balance block.²³¹ The wāhi tapu that included Ōhokio Pā and cultivations called Ūpokongāruru that Ngā Paerangi witness Kenneth Clarke told us about formed no part of the court's consideration.²³²

It is not apparent that the award took into account the

owners' loss of income from royalties. Between October 1908 and January 1910, the harbour board paid the owners £2,039.²³³ This might have included royalties for more than one year, or advance payments for following years. Even so, it seems likely that, over the quarry's lifetime, the owners might have expected rather more than the £1,300 they received in compensation.

By the 1970s, the harbour board no longer required the quarry and returned the land to Māori ownership. At about this time, the owners of other Kaiwhaiki blocks vested their land in a section 438 trust to be administered by the Māori Trustee. The quarry land also went into this trust to be administered by the Māori Trustee for a number of years.²³⁴

26.9.5 Conclusion, findings, and recommendations

The Wanganui Harbour Board's compulsory acquisition of land at Kaiwhaiki for a quarry is an example of how public works legislation could be wielded for commercial ends rather than for public purposes. The Māori owners at Kaiwhaiki controlled a resource that the harbour board wanted and needed – stone. Initially, the harbour board was prepared to pay for it, but when the owners sought a higher price, the harbour board thwarted market forces by compulsorily acquiring the land where the resource was located. This is not how compulsory powers of acquisition are supposed to work, and if the owners of Kaiwhaiki had been citizens with more political power, no public authority would have moved against them in this way.

This is one of the many problems with the Crown's delegation to local authorities of power to take land for public works. This is a clear case where the Crown should have supervised the harbour board's exercise of the power to ensure (1) that the compulsory acquisition was necessary for a legitimate public purpose; and (2) that the compulsory acquisition did not breach the guarantee of *te tino rangatiratanga* in article 2. The early involvement of a Government Minister in promoting the arrangements between the harbour board and the Kaiwhaiki landowners emphasised an obligation to ensure that the arrangements were proper ones, entered into in good faith. If such

monitoring had been in place, this acquisition would not have proceeded. It was apparent from the arrangements that preceded the land purchase that the harbour board could have continued to purchase the stone without owning the land. We note here the element of unfairness in the agreements for royalties themselves, considering they were entered into under threat of the Public Works Act being used to take the land.

We identify these egregious features of this case:

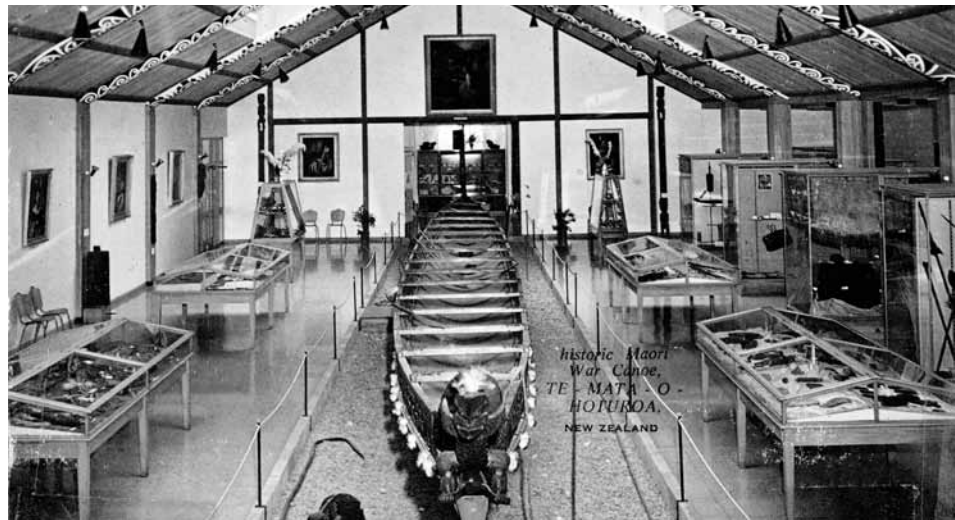
- ▶ negotiations about the royalties for the stone were carried out under threat of the land being taken compulsorily;
- ▶ when the landowners sought a higher royalty, the land was taken compulsorily;
- ▶ the land was not required for a public purpose, but was bought to circumvent the need for a public authority to engage in the market for a resource;
- ▶ the taking fulfilled none of the criteria for a legitimate compulsory acquisition of Māori land (that is, that it was a last resort in the national interest where there were no alternatives);
- ▶ although the Crown was involved at the outset, it did not monitor the delegated power of compulsory acquisition to ensure that it was used properly and in accordance with the Treaty;
- ▶ at no stage in the process of taking or compensating for the land were *wāhi tapu* taken into account; and
- ▶ the compensation methodology does not appear to have taken into account the owners' lost future income from royalties for the stone.

Happily, the land was later returned, but the owners lost the benefit of their land for 50 years.

We find that in this case, the Crown did not fulfil its Treaty duties. It breached the guarantee of *te tino rangatiratanga* in article 2 by delegating and failing to monitor the power of compulsory acquisition, in so doing failing to actively protect Māori interests in this land.

We recommend that the Crown compensates the owners of the land taken at Kaiwhaiki for the quarry by paying them the royalties for the stone (plus interest) that they forwent as a result of the wrongful compulsory acquisition of their land.

Te Mata o Hoturoa, Whanganui Regional Museum, 1960s. Built some time before 1810 from a single tōtara, *Te Mata o Hoturoa* could hold 70 men. It is still held by the Whanganui Regional Museum.



26.10 TAONGA TŪTURU

26.10.1 Introduction

Several claimant groups brought to our attention their concerns about the management and display of their taonga tūturu (moveable cultural heritage, artefacts, or cultural objects) by Te Papa Tongarewa and the Whanganui Regional Museum. Patu, taiaha, carvings, and korowai were mentioned in claimants' briefs, but it was necessary for us to undertake further inquiry to supplement the information provided.²³⁵

In this case, we focus on four specific Whanganui taonga tūturu: the waka *Te Mata o Hoturoa*, *Teremoe*, *Te Wehi o Te Rangi*, and *Te Koanga o Rehua*. The claims raise questions about how these taonga came into the possession of Te Papa Tongarewa or the Whanganui Regional Museum, and the policies that govern their management and display.

Unlike Te Papa Tongarewa, the Whanganui Regional Museum is not a Crown entity and is not subject to Tribunal findings and recommendations. However, we discuss the relationship between the museum and Māori as it relates to the history of these claims.

Both museums have had various names since they were established in the nineteenth century. Te Papa Tongarewa

was known as the Colonial Museum (1865–1907), Dominion Museum (1907–72), National Museum (1972–92), and the Museum of New Zealand Te Papa Tongarewa (1992 onwards).²³⁶ The Whanganui Regional Museum has been called the Wanganui Public Museum (1894–1928), the Alexander Museum (1928–73), and the Whanganui Regional Museum (1973 onwards).²³⁷ We use the name that corresponds with the relevant time period.

26.10.2 What the parties said

The claimants generally argued that they have an ongoing right to exercise rangatiratanga or kaitiakitanga over their taonga tūturu, many of which are held in museum collections.²³⁸ Te Iwi o Whanganui (Wai 167) claimed that the Crown delegated the governance of taonga tūturu to third parties such as museums without ensuring the protection of their rights and interests.²³⁹ They said that this prevented them from accessing their taonga tūturu, and removed the taonga from Māori control.²⁴⁰

Another concern for claimants is how museums care for and exhibit taonga.²⁴¹ Ngāti Pāmoana claimants (Wai 180) pointed to deficiencies in how the Whanganui Regional Museum displays its waka, *Te Wehi o Te Rangi*.²⁴² Similarly, claimants for Te Whare Ponga Taumatamāhoe



Teremoe, Dominion Museum, Wellington, 1969. *Teremoe* was used during the Battle of Moutoa in May 1864. It is currently on display at the Museum of New Zealand, Te Papa Tongarewa, Wellington.

Incorporated Society and Te Whare Ponga Whānau Trust (Wai 1393) submitted that Te Papa Tongarewa did not consult them before transporting one of their taonga, *Te Koanga o Rehua*, to Japan for exhibition.²⁴³

The claimants argued that losing possession of taonga has contributed to a loss of mana and Whanganui Māori cultural identity.²⁴⁴ Te Iwi o Whanganui, Ngāti Pāmoana, Te Whare Ponga Taumatamāhoe Incorporated Society and Te Whare Ponga Whānau Trust, and Uenuku (Wai 1084, 1170, 1202, 1229, and 1261) requested the return of taonga.²⁴⁵ Ngāti Pāmoana suggested that the Crown provides the necessary resources so that they can exercise full control and rangatiratanga over their taonga.²⁴⁶

In its submission on the development and use of tikanga Māori and mātauranga Māori, the Crown touched on the relationship between Whanganui iwi and Te Papa Tongarewa, saying that tikanga Māori underpins this relationship, and guides the 'manner of taonga care and display, and iwi exhibitions.'²⁴⁷

26.10.3 From Māori possession to museum collections

(1) *Te Mata o Hoturoa*

Te Mata o Hoturoa, a waka taua, was carved under the direction of the Ngāti Manunui rangatira Te Tarapounamu.

A single tōtara was used to construct the waka, which on completion measured 72 feet in length and six feet in girth.

During the nineteenth century, *Te Mata o Hoturoa* was used in many conflicts, including the taua expedition that Te Mamaku of Ngāti Hāua raised in 1847 against the European settlement at Whanganui.²⁴⁸ When the taua withdrew from Whanganui, *Te Mata o Hoturoa* was given as a peace offering to Pūtiki rangatira Hoani Wiremu Hipango who, in turn, passed it to his son Waata Wiremu Hipango.

Following the latter's death, his widow, Ema Hipango (also known as Ema Te Huatahi), presented the waka to the Wanganui Public Museum where it can still be seen today.²⁴⁹ According to Hōri Hipango, the son of Waata Wiremu Hipango, there was some dispute between various families over the waka, and Ema felt that the museum was the only place it could rest in peace.²⁵⁰ Claimant John Manunui told us that none of the people from the upper reaches of the Whanganui River had any say in the decision to place the waka in the museum.²⁵¹

(2) *Teremoe*

The famous Whanganui waka *Teremoe* was originally owned by Te Reimana Te Kaporere and Mātene Te

Rangitauira, Pai Mārire leaders who lived in the upper reaches of the Whanganui River. *Teremoe* was used in numerous battles including the battle of Moutoa in May 1864, when it transported Te Rangitauira to the battle during the fighting, and later took the dead from Moutoa to Whanganui.²⁵² *Teremoe* also frequently carried produce downriver to the Whanganui market at Pākaitore, and was used as a sea-fishing vessel.²⁵³

By 1917, *Teremoe* was in the care of the Hīpango family, who began negotiating with the Wanganui Public Museum about its inclusion in its collection. In 1924, Ema Hīpango presented *Teremoe* to the museum, along with *Te Mata o Hoturoa*. In 1930, she and her uncle, Hōri Pukehika, gave their permission for *Teremoe* to be moved to the Dominion Museum.²⁵⁴ It remains in the museum's collection, and is currently on display at Te Papa Tongarewa.

Witness Don Robinson stated that he found it disappointing that *Teremoe* was passed among different people without any discussion with the iwi that make up the claimant group of Te Whare Ponga Taumatamāhoe Incorporated Society and Te Whare Ponga Whānau Trust. 'This in itself,' he told us, 'is a disconnection that continues to this day.'²⁵⁵

(3) *Te Wehi o Te Rangi*

The Ngāti Pāmoana waka *Te Wehi o Te Rangi* began its life on the northern edge of the Whanganui inquiry district. Parāone, of Ngāti Pāmoana and Ngāti Maniapoto, commissioned a waka from Ngāti Hari, who carved *Te Wehi o Te Rangi* from a tree at Taringamotu, the stump of which is said to still stand.²⁵⁶ The waka was used for a variety of purposes, including warfare, river transport, and as a famously speedy vessel in the Whanganui regatta competition.²⁵⁷

Care of *Te Wehi o Te Rangi* later fell to Roka Tihore of Ngāti Pāmoana and Ngāti Maniapoto and her whāngai daughter Rora Te Oiroa and, from the 1880s, Wineti Nōpera, a relative of Rora Te Oiroa, and his son, Maihi.²⁵⁸ Hōri Pukehika then took over as kaitiaki of *Te Wehi o Te Rangi* with the blessing of Ngāti Pāmoana, building a special house for the waka at Pungarehu, and carrying out extensive repairs. *Te Wehi o Te Rangi* remained

at Pungarehu until Pukehika's death in 1932, when it was taken to Parikino.²⁵⁹

Local kaumātua discussed what should be done with *Te Wehi o Te Rangi*, debating whether to entrust the waka to the care of the Alexander Museum.²⁶⁰ Despite arguments in favour of keeping *Te Wehi o Te Rangi* in Ngāti Pāmoana hands, kaumātua and the legal owners agreed to transfer the waka to the museum, subject to certain conditions. Kaumātua John Maihi told us that the museum and Ngāti Pāmoana representatives agreed that a trust would be established to ensure that the iwi retained control over their taonga, and that:

- ▶ the owners' representatives could remove the waka at any time for regatta or other public use, so long as they gave two weeks' notice of their intentions and met the costs of removal themselves;
- ▶ the owners' representatives were to act with the museum trustees in any discussion that occurred in relation to the waka;
- ▶ the museum would house the waka, insure it against loss by fire, and keep it in good condition; and
- ▶ the waka would be made available upon request for public viewing.²⁶¹

In February 1938, 15 men and two women transported *Te Wehi o Te Rangi* to the museum, paddling downriver from Parikino to Whanganui.²⁶²

(4) *Te Koanga o Rehua*

Te Koanga o Rehua is a grave marker made from a waka cut in two and carved to mark the resting place of the chief Te Mahutu at Pipiriki. It was erected in approximately 1824.²⁶³ Following the siege of Pipiriki in 1865, the marker was taken to Pūtiki under the authority of Te Keepa Te Rangihwinui (Major Kemp) and erected in the urupā there.²⁶⁴ The marker stood for almost 20 years, but eventually fell to the ground. As it was tapu, it was left where it had fallen for the next 10 years until Te Keepa presented it to lawyer and naturalist Sir Walter Buller.²⁶⁵ Te Keepa sold Buller land at Lake Papaitonga, south of Levin, and it was here that Buller brought *Te Koanga o Rehua* in 1894.²⁶⁶ On one of the lake's two islands, he sank one end of the waka into the earth to serve as a memorial

to Te Riunga, a woman of rank and ancestor of Te Keepa who was slain when Te Rauparaha captured the island in the early 1820s.²⁶⁷

The waka passed to the Dominion Museum some time after Buller's death, and is now in Te Papa Tongarewa. Thomas Heberley, the Māori carver at the museum, re-carved the lower part of the marker, the original having rotted away.²⁶⁸ In early 2007, Te Papa Tongarewa exhibited *Te Koanga o Rehua* and other taonga tūturu from its collection in the Tokyo National Museum.²⁶⁹ The claimants expressed their distress about this, because Te Papa Tongarewa did not talk to them about taking their taonga to another country to go on display there. Don Robinson, witness for Te Whare Ponga Taumatamāhoe Incorporated Society and Te Whare Ponga Whānau Trust, said he was upset 'that we who descend from Te Mahutu were never asked permission prior to the portrayal of what is essentially his gravestone, before foreigners'.²⁷⁰

26.10.4 How do Te Papa Tongarewa and the Whanganui Regional Museum provide for Māori interests?

At first glance there appears to be little provision for the recognition of Māori interests in the day-to-day running of our national museum. Te Papa Tongarewa was established under the Museum of New Zealand Te Papa Tongarewa Act 1992, which mentions neither the Treaty of Waitangi nor its principles. In accordance with the Crown Entities Act 2004, a board comprising six to eight members runs the museum. The Minister for Arts, Culture and Heritage appoints members, but there is no requirement for Māori to number among them.²⁷¹

Even so, Te Papa has established comprehensive protocols for Māori participation in the management of the museum and the presentation of Māori taonga. 'A Concept for the Museum of New Zealand Te Papa Tongarewa', a document that sets out the museum's principles and goals, clearly states that Māori will have 'effective' representation on the board, and makes a commitment to honour the Treaty principles in all that it does.²⁷² It recognises that New Zealand is bicultural, and states the museum's intention for Māori to play a 'key role' in the presentation of their taonga and culture.²⁷³

To implement its bicultural approach, the board adopted its 'Bicultural Policy', which is built around four guiding principles: Te Papa in the Community, Te Papa's Collections, Organisational Capacity, and the Te Papa Experience. These aim to improve engagement with the Māori community, and to ensure that tangata whenua voices are heard both in matters concerning the display and care of taonga tūturu, and in board decisions.²⁷⁴ In addition, Te Papa Tongarewa established the position of kaihautū, which shares with the chief executive officer responsibility for the museum's cultural leadership and strategic management, leading bicultural development and managing relationships with iwi and Māori stakeholders.²⁷⁵ However, we have no evidence about how these policies were or are implemented – for instance in the context of the 2007 exhibition in Japan, about which claimants complained to us.

The Whanganui Regional Museum is also managed in accordance with a comprehensive bicultural policy. The joint council that governs the museum comprises two sub-committees, Civic House and Tikanga Māori House.²⁷⁶ The six members in each house represent their communities' interests.²⁷⁷ Before any proposal is implemented at the Whanganui Regional Museum, the joint council must be satisfied that the communities they represent have been properly consulted, and that proposals are consistent with the Treaty.²⁷⁸ The overarching goal of the joint council is to ensure that tangata whenua have an equal say in the management and direction of the museum. In addition, the museum has created the position of kaitiaki taonga Māori, who ensures that museum policies are in line with tikanga, and maintains relationships with iwi, hapū, hāpori (communities), and whānau.²⁷⁹

The claimants had mixed views about the Whanganui Regional Museum. Some expressed satisfaction with its structure. Rangi Wills, for example, said that although the decision-making process was slower under the joint council, its establishment was 'a positive move' as it implemented 'thorough and generally positive outcomes'.²⁸⁰ Other claimants were similarly positive, saying they could easily liaise with the museum about the care of their taonga.²⁸¹ Ngāti Pāmoana claimants raised concerns,

however, as to whether the Whanganui Regional Museum was fulfilling the conditions of the agreement about *Te Wehi o Te Rangi*.²⁸² Mr Maihi thought that if the waka was not on permanent display at the museum it should be returned to the iwi, though he acknowledged that Ngāti Pāmoana do not currently have the resources necessary to care for their taonga.²⁸³

26.10.5 Conclusion

Several Tribunals have considered the place of taonga tūturu in the Treaty relationship.²⁸⁴ In *The Hauraki Report*, the Tribunal found that the Crown was obliged to provide 'robust protection' for taonga tūturu, primarily because of the guarantees made in article 2 and article 3 of the Treaty:

Article 2 explicitly promised, in the Maori version, 'te tino rangatiratanga o ratou wenua o o ratou kainga me o ratou taonga katoa', that is, in the English version 'the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties'. Clearly, wahi tapu and taonga are covered by article 2. Article 3 promises to Maori the rights and privileges of all British citizens. A basic tenet of citizenship is the right to protect property and chattels, including items of great personal or cultural significance.²⁸⁵

The Wai 262 Tribunal opined most fully on this topic. It said there is a clear, ongoing Treaty interest in taonga as the products of mātauranga Māori, and the embodiment of mana, tapu, and mauri. How taonga were removed from Māori possession determines the type of Treaty interest in particular taonga. In cases where taonga were taken without the consent of iwi, their ongoing interest is in the nature of rangatiratanga. Where Te Papa Tongarewa holds taonga in which iwi have a rangatiratanga interest, those taonga should be returned to iwi in a way that ensures their preservation.²⁸⁶ In cases where objects passed from Māori hands by gift or sale, iwi have a kaitiakitanga interest, and this should afford them continued association with those taonga.²⁸⁷ Whether iwi retain an interest in the nature of rangatiratanga or kaitiakitanga can be ascertained by assessing (1) whether those who, according to tikanga, had an interest in the taonga



Te Koanga o Rehua, a grave marker made from a waka cut in two and carved to mark the resting place of Te Mahutu at Pipiriki, 1870s. It was reportedly erected around 1824 and is currently held at the Museum of New Zealand, Te Papa Tongarewa, Wellington.

consented to the transfer; and (2) whether the recipients of the gift or transfer have honoured any conditions that the donor or transferor stipulated.²⁸⁸

We think this is a helpful approach, and adopt it.

With respect to the taonga tūturu raised in this district inquiry, it is yet to be determined whether the interests that tangata whenua retain are in the nature of rangatiratanga interests or kaitiakitanga interests.

None of the taonga tūturu were removed from Māori possession without the active participation of at least one interest-holder. Ema Hipango presented *Teremoe* and *Te Mata o Hoturoa* to the Whanganui Public Museum, and Te Keepa Te Rangihwinui transferred *Te Koanga o Rehua* from Māori ownership to Sir Walter Buller. Similarly, *Te Wehi o Te Rangi* was placed in the care of the Alexander Museum following discussion with Ngāti Pāmoana and their ultimate agreement.

Questions remain as to whether all those with interests under tikanga Māori were properly involved or consented, and answers to those questions will have a bearing on whether the ongoing interests are in the nature of rangatiratanga or kaitiakitanga. Should it emerge that any of the taonga tūturu were wrongfully acquired then the right course might well be for them to be offered back to their traditional kaitiaki or owners. These matters should be the subject of either hui or wānanga (or both) involving relevant museums and iwi.

We are satisfied that Te Papa Tongarewa and the Whanganui Regional Museum have consultation processes in place. We therefore encourage claimants who wish to pursue these kaupapa to approach the relevant museum.

In particular, we acknowledge claimants' concerns about the display of *Te Koanga o Rehua* in Tokyo without their consent, although we have insufficient evidence to make findings. Perhaps, in this instance, Te Papa Tongarewa's processes did not accurately gauge the feelings of the local community. The Crown and Te Papa Tongarewa must recognise that the claimants' distress about this is a vivid reminder that the tenets of the bicultural policies must be constantly attended to and upheld.

26.11 KAITOKE LAKE AND LAKE WIRITOA

26.11.1 Introduction

Lake Wiritoa and Kaitoke Lake are located a few kilometres south-east of Whanganui city. They are dune lakes: freshwater lakes created near the sea when sand dunes block water runoff.²⁸⁹ The lakes were once part of a coastal area of great importance to Whanganui Māori, stretching

from offshore coastal fisheries to inland waterways, estuaries, and wetlands. Tuna, kōura, and kōkopu flourished in the coastal area, as did birds such as tētē (grey teal), pūtangitangi (paradise shelduck), and pūkeko.²⁹⁰ Early European visitors to the lower Whanganui commented on how the Māori population increased during the summer fishing season. Tangata whenua fished daily near the Whanganui river mouth in fleets of waka, and set up temporary camps to dry and preserve the catch.²⁹¹

Ownership of Lake Wiritoa passed to the Crown in 1848. Title to the lake bed was divided in two, with one part sold to private owners and the other part eventually coming under the control of the local council.²⁹² By contrast, Māori still own the lake bed of Kaitoke Lake. We now inquire into claimants' grievances about how the Crown disregarded and undermined their customary ownership of the lakes.

26.11.2 What the claimants said

The hapū of the lower reaches of the Whanganui River and Te Poho o Matapihi Trust (Wai 999) said that they can no longer access Lake Wiritoa to exercise their customary fishing rights, because of the way the local council manages it.²⁹³ They said that the council does a poor job of protecting the lake environment, which offends their values as kaitiaki.²⁹⁴

Although Kaitoke Lake remains in Māori ownership, claimants said that the Crown's decision to set it aside as a wildlife sanctuary and refuge in the twentieth century unjustifiably prevented their exercise of te tino rangatiratanga there.²⁹⁵ This taonga is an important tuna fishery, and they criticise the level of care exercised by DOC and local government.²⁹⁶

The Crown made no submissions on Lake Wiritoa or Kaitoke Lake.

26.11.3 The lakes in the nineteenth century

Prior to the arrival of Europeans in the Whanganui region, hapū and iwi exercised customary rights over lakes and the resources in them. Particular hapū and iwi would exercise te tino rangatiratanga over a particular tuna fishery, with authority to allocate use rights to other iwi, hapū,

or individuals and whānau, usually on the basis of take tupuna or ancestry.²⁹⁷ At Kaitoke Lake, for example, particular whānau and individuals built pā tuna (eel weirs) according to those allocated rights.²⁹⁸ As well, several iwi had rights in Kaitoke Lake. These included Ngāti Pāmoana and Ngāti Tūwharetoa; other groups throughout the Whanganui region were likely to have rights to the lake's resources.²⁹⁹ Although an iwi from the upper reaches of Whanganui, Ngāti Hāua gained its rights through their whakapapa connections to the area. Ngāti Tūwharetoa's rights arose out of marriages between lower Whanganui women and men of Ngāti Tūwharetoa. In addition, before 1840, tangata whenua of the lower Whanganui wanted to strengthen the relationship between them and Ngāti Tūwharetoa, and so gave Ngāti Tūwharetoa ariki Te Heuheu permission to use resources at Kaitoke Lake.³⁰⁰

When in 1843 William Spain investigated the New Zealand Company's purported purchase of land at Whanganui, he recognised that tangata whenua 'would not consent to part with [lakes], having been in the habit of fishing there from time immemorial'. He recommended that the Crown should reserve pā tuna and fishing rights.³⁰¹

The Crown followed his advice to the extent of setting aside for Māori, as reserve 1, all the tuna (eel) and inanga cuts in many bodies of water, including Kaitoke Lake and Lake Wairitoa. The Crown gave added protection to Kaitoke Lake, measuring 85 acres, by amalgamating it with 280 acres of surrounding land, and setting it aside as reserve 7.³⁰²

In 1862, an official report to Parliament on native reserves throughout New Zealand stated that the 'right to eel fishing' at Wairitoa, Pauri, Kaitoke, Ōkiri, and Ōakura had been sold. There is some evidence of negotiations and sale of eel fishing rights at some of the streams in the purchase area, coinciding with settlers moving onto the land.³⁰³

All of the land surrounding Lake Wairitoa was granted to settlers in 1856 and 1858, with at least one of the land blocks including title to the Wairitoa lake bed. We know nothing about any transactions that specifically transferred fishing rights, and we know that Māori continued to gather tuna at Lake Wairitoa after 1862.

As far as Kaitoke is concerned, we know that Māori retained ownership of the lake as part of reserve seven.³⁰⁴ It is difficult to imagine why they would have sold their right to gather tuna there. We do not know to what the 1862 report was referring, and in the absence of further evidence we regard the comment about the sale of eel fishing rights in Wairitoa and Kaitoke as unreliable.

26.11.4 Subsequent ownership and management of Lake Wairitoa, and its effects on Māori

The Crown and private owners have held legal title to the lake bed at Wairitoa since the Whanganui Purchase of 1848.³⁰⁵ However, for a long time after that, not much changed for tangata whenua, and they carried on using Wairitoa as before. Even when settlers took up the land surrounding the lake, tangata whenua continued to camp there annually to gather tuna, and this continued well into the twentieth century.³⁰⁶ John Tauri told us that the Takarangi whānau had a kaitiaki role at Lake Wairitoa. According to a record made in 1901, their tupuna owned a pā tuna there.³⁰⁷ Claimants told us how they went to the lake to gather kōura and tuna when they were young, and that they have always believed that they retained customary rights there.³⁰⁸

In 1971, the Crown transferred control of the water in its portion of the lake to the Wanganui County Council to assist in the development of the lake and adjacent land as a recreation area. The Crown also granted the council the same powers as a harbour board, including the right to enact bylaws relating to the use of vessels at Wairitoa.³⁰⁹

Today, the Wanganui District Council administers the lake and its surrounds as a park, to provide 'safe, informal, active and passive recreation opportunities with easy family access in suburban areas'.³¹⁰ Organisations such as the Wanganui Acclimatisation Society and the Fish and Game Council have not had an official role in the lake's management, but they have both been involved in aspects of shooting and fishing at the lake, and the acclimatisation society continued to release trout in the lake through to the 1980s. The public continue to use Wairitoa for fishing, duck shooting, boating, and water-skiing, and beside the lake there is a scout camp.³¹¹



Lake Wiritoa, south-east of Whanganui city. Formerly an important fishing resource for Māori, the lake is now a reserve under the control of the Wanganui District Council.

Although they have continued to gather eels there, lower Whanganui hapū have had little say in the management of the lake. Management has passed through the hands of various groups and authorities. Mr Tauri told us that on a number of occasions tangata whenua have been told that their activities were illegal, and the sheer number of authorities involved has made it hard to know who they should talk to about fishing rights.³¹²

26.11.5 The Crown assumes control of Kaitoke Lake

Unlike Wiritoa, Kaitoke Lake remains in Māori ownership. But when the Crown declared it a wildlife sanctuary in the early twentieth century, it acquired considerable authority over its use and management.

Kaitoke Lake and surrounding land remained as papatupu (customary land where the Native Land Court has not determined title) until 1901, when the Native Land Court awarded the entire reserve (including the lake) to four owners.³¹³ In 1917, the Native Land Court separated the title of the lake from the title of the adjoining land block, and issued a title for each. Wikitōria Keepa, Waata Wiremu Hipango, Ripeka Te Tauri, and Te Hira Matiu

were awarded the lake title in unequal shares. The boundary of the lake title was the shore, though Māori did own riparian rights at the western end of the lake.³¹⁴ From 1909, the land portion of the original Kaitoke reserve was leased, and in 1961, its owners sold to the lessee for £1,600.³¹⁵

In 1914, the Wanganui Acclimatisation Society urged the Crown to set Kaitoke Lake aside as a no-shooting sanctuary to protect the breeding grounds of game such as waterfowl, and thereby promote recreational hunting.³¹⁶ According to the secretary of the society, 'all the property owners surrounding the lake' agreed with the reserve proposition.³¹⁷ The Department of Internal Affairs took the secretary at his word, and did not investigate further. In April 1914, Kaitoke Lake was declared a sanctuary under the Animals Protection Act 1908. No imported or native game was allowed to be taken or killed on the lake or in the 10 chains surrounding it.³¹⁸ Non-compliance with the Act incurred steep fines.³¹⁹

The secretary of the Wanganui Acclimatisation Society may have misrepresented the level of owners' support for the sanctuary. One month after the Crown reserved the lake, he wrote to the Under-Secretary for Justice saying

that although one owner, Waata Wiremu Hīpango, had expressed his support, another man, Nēpia Tauri, 'claims the right to give permission to shoot over the Lake – as he says that it is his own property'.³²⁰ This issue shuttled between the Department of Internal Affairs and the Native Department, but was not resolved.³²¹

In 1917, a Pākehā landowner whose property adjoined the lake wrote to the Under-Secretary for Internal Affairs, complaining that Māori were ignoring the lake's sanctuary status and were granting Europeans permission to shoot game. He asked whether the Treaty of Waitangi guaranteed Māori the right to shoot and fish on Kaitoke Lake.³²² Officials responded that as the lake was a sanctuary, the killing of all imported and native game was prohibited.³²³

The lake remained under the 1908 Act until 1957, when it was declared a wildlife refuge under section 14 of the Wildlife Act 1953.³²⁴

Under the Wildlife Act 1953, the Crown can establish a refuge on private land; there is no requirement for it to obtain the consent of the owners.³²⁵ The occupier is free to carry out most day-to-day activities but the Act deems it unlawful to:

hunt or kill for any purpose, or molest, capture, disturb, harry, or worry any wildlife in the wildlife refuge, or to take, destroy, or disturb the nests, eggs, or spawn of any such wildlife, or for any person to bring onto the wildlife refuge or have in his possession or discharge in the wildlife refuge any firearm or explosive, or have in his possession or control in the wildlife refuge any dog or cat, or to do anything likely to cause any wildlife to leave the wildlife refuge.³²⁶

The term 'wildlife' covers any mammal, bird, reptile, or amphibian, as well as any terrestrial or freshwater invertebrate declared an animal in the Act.³²⁷ Neither the long-finned eel nor the short-finned eel is so declared, so taking tuna from Kaitoke is not prohibited.³²⁸ The occupier of the refuge may keep domestic animals, use firearms, and destroy certain species of animals there, but only with the authorisation of the Minister of Conservation.³²⁹ Any person may carry out acts that are 'necessary for the

carrying on of the normal use of the land' as long as they have the written authorisation of the minister and the occupier's consent.³³⁰ Kaitoke Lake remains a wildlife refuge today.³³¹

26.11.6 The effects of Kaitoke Lake's sanctuary status

When the neighbouring landowner questioned the right of Māori to shoot and fish in the sanctuary in 1917, Crown officials instructed police to caution owners that if they fished the lake, they risked prosecution.³³² There was little subsequent enforcement, and eeling and the collection of kōura continued throughout the twentieth century.³³³ Kuia Arahia Olney recalled whānau gathering tuna at Kaitoke Lake when major tangihanga were held at Pūtiki.³³⁴ Ngāwai Maraea Tamehana, a witness for the lower Whanganui hapū, told us that the customary collection of tuna went on throughout her life:

My father would also go to Kaitoke Lake in the horse and cart, put the hīnaki in, leave it there overnight and collect eels the next day. . . . The local males from Putiki and their relations were the only people who caught eels at Kaitoke Lake. Eeling there was a customary right, a tradition transcended down through the generations. My husband carried on the tradition and took our sons.³³⁵

Even so, Mr Tauri told us that the designation of Kaitoke as a wildlife refuge has meant that 'the local rangers have from time to time questioned the owners' right to be on the lake'.³³⁶

Māori owners have had little say in the management of Kaitoke. For instance, over a period of 20 years, the Crown paid for flood control works at Kaitoke Lake at least three times without consulting the owners or lower Whanganui hapū, despite the works' potential impact on the tuna fishery.³³⁷ In 1954, willows surrounding one of the outlets at Kaitoke Lake were cut and sprayed. Around two years later, an outlet stream was widened. Additional drainage works were completed in 1970. The Soil Conservation and Rivers Control Council subsidised all of these works on the recommendation of the Ministry of Works.³³⁸

Crown officials knew that Kaitoke Lake was an important eel fishery. In early 1951, the Registrar of the Aotea District Māori Land Board informed Ministry of Works' officials of the lake's reputation as the best local source of tuna, and the opposition that some flood control measures might face:

The Kaitoke Lake is well known to the Wanganui Tribe as one of the finest eel fishing lakes in the district, and the lake has been for years the main source of eel supply to the Maori population of Wanganui City and Putiki settlement, and is still extensively fished today.

It is not considered that there would be any objection by the Maori owners to the clearing and widening of the outlet to allow of the quicker run off of flood waters, but they certainly would object, and would I think be justified in doing so, if the proposal is to allow the lowering of the lake level, and provide the farmers abutting with more grazing land, and at the same time reduce or spoil the source of food supply to the Maoris.³³⁹

The same year, Ngene Takarangi, the chairman of the Whanganui South Tribal Executive, contacted the Minister of Māori Affairs on behalf of Pūtiki Māori, objecting to flood control works that would lower the level of Kaitoke Lake and interfere with their collection of eels and their fishing rights.³⁴⁰ The minister is said to have assured Takarangi that the lake would not be interfered with, but in fact the first flood control works were completed only three years later.³⁴¹

From time to time, the Government issued licences under the Wildlife Act 1953 for others to fish at Kaitoke, although individuals still needed permission from owners to enter the lake.³⁴² It seems Crown officials did not communicate with owners about granting licences. In 1979, owners objected strongly to a licence that gave an individual the right to gather tuna commercially. They, along with the Wanganui County Council, expressed concern that this would deplete tuna stocks that were already diminished as a result of previous permissions.³⁴³ The licence was revoked. But historian David Alexander

concluded that this event did not motivate the Wildlife Service to change its practice of making decisions about the refuge without reference to owners, and it continued to do so until its demise in 1987 with the advent of DOC.³⁴⁴

Kaitoke Lake owners also disliked how the lake's water was used. For several years prior to 1983, Wanganui County Council pumped water from Kaitoke Lake to maintain the level of a nearby oxidation pond. The lower lake level threatened the tuna fishery. Some of the lake's owners complained that they had not given permission. The county clerk acknowledged that there was no record of approval from the owners, but 'from reported discussions which took place at the time, I feel confident that the matter was raised.'³⁴⁵ He also claimed that, in return for the draw-off of water, the county council had not imposed rates on the lake bed.³⁴⁶

In more recent times, the situation has improved. In 2006, the Minister of Conservation and Mr Tauri, chairman of the Kaitoke Lake Trust, signed a Ngā Whenua Rāhui kawenata under which the Government provides funding for conservation purposes while Māori owners retain te tino rangatiratanga.³⁴⁷ Tangata whenua 'control and manage the existing weir and will retain all existing water rights from the Lake and that this practice will continue unimpeded', and the trust has 'an exclusive right to any income generated from, or incidental to, any commercial use of the land', as long as it is consistent with the conservation and cultural objectives of the kawenata.³⁴⁸ Under the agreement, the Government paid for fencing to keep stock out of the lake.³⁴⁹

Mr Tauri told us of claimants' desire for the Kaitoke Lake Trust to gain a commercial licence to fish, farm, and sell tuna to generate income and 'assist with the development and sustainability of this particular taonga'. However, the trust lacks the necessary funds to develop a commercial tuna fishery.³⁵⁰

26.11.7 Conclusions, findings, and recommendations

Waterways and fisheries are taonga over which Māori have te tino rangatiratanga guaranteed in article 2 of the Treaty.³⁵¹ This obliges the Crown to actively protect the

customary rights of the hapū of the lower Whanganui River in their waters and fisheries.

The circumstances of these two lakes are different, and we set out below our findings for each.

(1) Lake Wairitoa

Ownership of the bed of this lake passed out of Māori ownership at the time of the Whanganui Purchase in 1848, but at that time, the Crown reserved for Māori all the tuna and inanga cuts in many bodies of water, including Lake Wairitoa. There was mention in a report to Parliament in 1862 that the eel fishing rights in this lake (among others) had been sold, but we have seen no other documents that give substance to this. It is hard to imagine any scenario in which such a course of action would recommend itself to tangata whenua, and certainly they did not change their customary practices at the lake, going there annually to camp and take tuna for at least 100 years after the lake bed was sold. Mr Tauri gave evidence of the exercise of fishing rights at the lake right up to the present. We saw no sign that tangata whenua of Lake Wairitoa relinquished te tino rangatiratanga over their taonga there.

Because their rights in Lake Wairitoa were not absolute, tangata whenua could expect that others would also seek to exercise rights there. There was nothing wrong in principle with the development of the lake and adjacent land as a recreation area, but the Crown should have been careful to ensure that any such development was compatible with the exercise of tangata whenua rights. Hapū of the lower Whanganui River have had little say in decisions about Lake Wairitoa, however, and their continued exercise of fishing and eeling rights has been in spite of, rather than because of, the various authorities that were in charge over time. This breached the Crown's guarantee of te tino rangatiratanga in article 2, and the Crown's duties of active protection and partnership.

(2) Kaitoke Lake

Tangata whenua maintained their legal title to Kaitoke Lake, and should have been able to exercise the full extent of their rangatiratanga. But in 1914, the Crown declared

Kaitoke Lake a sanctuary under the Animals Protection Act 1908 without communicating with the owners. The Department of Internal Affairs accepted the assurance of the secretary of the Wanganui Acclimatisation Society that all the owners agreed. This assurance was either mistaken or false. Māori disagreement was evident immediately after the sanctuary was declared.

While the Treaty allows the Crown to exercise its kāwanatanga to conserve, control, and manage the environment, the Treaty guarantee of te tino rangatiratanga must be weighed in the balance, and the conservation interest should prevail only when natural resources are so endangered that they require protection.³⁵² It was not the depletion of an important species that inspired the decision to make Kaitoke Lake a wildlife sanctuary, but rather the desire to produce better recreational hunting in the Whanganui region. This is not an interest that the Treaty protects, and the Crown had no proper basis for infringing the full exercise of te tino rangatiratanga of the traditional owners of Kaitoke Lake. We saw neither word nor action signifying that tangata whenua relinquished any part of that rangatiratanga.

The Māori owners have been allowed far too little influence in the use and management of their lake, and have suffered prejudice as a result. They ought to have been able to develop it in accordance with their preferences, whether for customary purposes, or as a commercial fishery, or both. The Crown's actions breached the principle of partnership and the duty of active protection.

(3) Recommendation

We recommend that the governance of these lakes changes in order to fully recognise the rights and interests of Whanganui hapū and iwi, while maintaining any necessary protection of the lakes for conservation purposes.

26.12 KAI IWI ISSUES

26.12.1 Introduction

Kai Iwi is a large area to the north-west of Whanganui city, in the rohe of Ngāti Tamareheroto. Its southern boundary

is the Tasman Sea, where Ngā Paerangi, Ngāti Tuera, and Ngāti Hinearo once gathered every summer for the fishing season.³⁵³

The Native Land Court awarded the Kai Iwi block (12,434 acres) to Ngāti Tamareheroto in 1869.³⁵⁴ It was a struggle for the hapū to develop this land over the next century, and while they still held 80 per cent of the Kai Iwi blocks in the 1920s, this had fallen to 30 per cent by the 2000s.³⁵⁵

In this inquiry, Ngāti Tamareheroto (Wai 634) brought to our attention two issues concerning their land at Kai Iwi: the Crown's failure to reserve their fishing kāinga Taipakē permanently for their use, and the compulsory acquisition of land to supply water to Whanganui city.³⁵⁶

26.12.2 What the claimants said

Ngāti Tamareheroto (Wai 634) said that when the Crown reserved land at Taipakē for them to land and store fishing vessels as an adjunct to their traditional fishing activities, the true nature of the reserve was not recorded. Because the land was not specifically set aside for Māori use, the Crown was able to reclassify the land and transfer it to local authorities without reference to them.

Losing their seaside fishing reserve has severed their links both with the sea and their traditional fishing knowledge.³⁵⁷

Local authorities have not discussed the management of the land with the hapū.³⁵⁸

Ngāti Tamareheroto's claim also concerned land taken from them for the Whanganui water supply. About nine kilometres north of Taipakē are three bores that together supply the majority of water for Whanganui city.³⁵⁹ The Wanganui Borough Council and the Wanganui City Council worked with the Crown in 1904 and 1969 respectively to take over five acres from various subdivisions of the Kai Iwi block for the development of the water scheme. The claimants focused on the taking of part of Kai Iwi 5E2 in 1969, saying that the owners were not consulted about the taking, received inadequate compensation, and were not involved in the compensation process.³⁶⁰

The Crown did not respond to these claims.

26.12.3 The boat landing reserve at Taipakē

At Mōwhānau Village, located about 15 kilometres north-west of Whanganui city, there is a children's playground which overlooks the mouth of Mōwhānau Stream, and is a popular spot for holiday-makers at Kai Iwi Beach. Yet the playground is relatively new. In previous times, this was the location of Taipakē, a kāinga (settlement) where fish and shellfish were dried, stored, and traded.³⁶¹ The Crown bought the land in the nineteenth century, but Māori continued to occupy and use it. In recognition of this use, in 1908 the Crown created a reserve here, designated for the landing and storage of boats. After several decades of petitions from local authorities, however, the Crown reclassified the land as a reserve for public recreation and vested it in the Nukumarū Domain Board.

(1) How did the Crown go about reserving Taipakē?

Taipakē was a hub for fishing activities in former times. Hapū of the lower Whanganui River based themselves there when they engaged in the summer harvest of kaimoana. Two tauranga ika (fishing grounds) were out to sea from Taipakē, and the Kai Iwi and Mōwhānau Streams were the source of kōura (crayfish), inanga (whitebait), and tuna (eel).³⁶² We were told that Ngāti Tamareheroto were the principal occupiers of Taipakē, but other Whanganui hapū, including Ngā Paerangi, also frequented the area.³⁶³ The kāinga was on the main coastal route to Taranaki, and evidence suggests that in the late nineteenth century it accommodated people travelling to Parihaka.³⁶⁴ Reihana Terekuku of Ngāti Tamareheroto and Ngā Paerangi is said to have built a whare, also known as Taipakē, in the area.³⁶⁵

In June 1897, Toko Reihana, the son of Reihana Terekuku and one of the owners of the block on which Taipakē was located, sold the Crown 500 acres of Kai Iwi 6F.³⁶⁶ Kai Iwi 6F1 (92 acres) was created in July 1897, probably with the Crown's purchase in mind. A year later the block was declared to be Crown land.³⁶⁷

The Crown did not reserve Taipakē when it purchased Kai Iwi 6F1, although there were multiple legislative provisions that would have allowed it to do so.³⁶⁸ Had the



Kai Iwi Beach and the Mōwhānau Stream, 2005. Kai Iwi Beach is a popular holiday spot for Whanganui residents and tourists alike, drawing thousands of visitors per year. The playground in the lower right of this picture is located on land formerly reserved for the storage of boats. Before that, it was a fishing kāinga of Ngāti Tamareheroto. Ngā Paerangi and other hapū also engaged in summer fishing there.

Native Land Court set land at Taipakē aside at this point, some of the problems that were later experienced would probably have been averted.

After it purchased Kai Iwi 6F1, the Crown surveyed 73 sections for a new settlement named Mōwhānau Village.³⁶⁹ Taipakē became section 71, measuring 1.5 acres. However, the Crown did not sell the section to settlers, and Māori continued to use the fishing kāinga on a seasonal basis.³⁷⁰

In 1908, several members of the Māori community at Kai Iwi, including Tiopira Takarangi and Ngārino Hōrima, sought to lease section 71 from the Crown, or to have the land reserved as a fishing ground.³⁷¹ The Under-Secretary of the Department of Lands and Survey then suggested that land be reserved as a 'Native fishing ground for the use of Aboriginal Natives' and gave instructions for papers to be drawn up to this effect. However, official correspondence suggests that the Crown became nervous that the European population at Mōwhānau would not be in favour, because Kai Iwi Māori would probably use section 71 to dry fish, and this would 'cause a nuisance to the owners of the adjoining sections'.³⁷² A Crown official suggested that Māori be allowed to continue to use the land informally for storing boats, and build a boat shed there, on the proviso that they not create a nuisance.³⁷³ The Crown did reserve the land, but it abandoned the original

designation and instead called it a public reservation for the landing and storage of boats.³⁷⁴

(2) What happened to Taipakē after it was reserved?

Taipakē remained in Crown ownership. The commissioner of Crown lands maintained oversight, but day-to-day management passed to the local authority.³⁷⁵

In 1918, worried about Kai Iwi's growing popularity as a 'fashionable European seaside resort', the Māori community in Kai Iwi asked the Government to vest the reserve in the district's Māori council (possibly meaning the Aotea Māori Land Board).³⁷⁶ They argued that the land should have been 'set apart for the specific purpose of providing a camping and fishing ground for natives for all time', and they could 'conceive [of] no better way of accomplishing this than by vesting the land in the Maori Council'.³⁷⁷ The Commissioner of Lands refused, assuring the community that the land had been 'permanently reserv[ed]' and therefore there was 'no danger of its being purchased by Europeans'.³⁷⁸

The Crown did rebuff attempts to persuade it to relinquish ownership of the site. Local authorities and members of the public petitioned for the land to be used for sanitation arrangements for the village, erosion protection, the eradication of gorse, and beautification, but the

commissioner responded more than once that section 71 was intended as a landing reserve for Māori.³⁷⁹

By 1950, Taipakē was no longer much used as a fishing kāinga. Almost 20 years before, the whare at Taipakē had been shifted to where it stands today at Kai Iwi, some five kilometres from Kai Iwi Beach. It is not completely clear why this happened. Raukura Waitai suggested that it was because residents pressured her hapū to discontinue their practice of drying fish.³⁸⁰ On the other hand, Te Aroha Waitai thought that Taipakē might have been moved due to a powerful tidal wave that swept many whanaunga (relatives) out to sea.³⁸¹

As the use of Taipakē declined, it became more vulnerable to encroachments by local authorities. In 1953, the Waitotara County Council requested more land at Mōwhānau Village for the public recreation grounds known as Nukumar Domain. The Department of Māori Affairs advised that they could see no reason to decline the county council's request because Toko Reihana, the previous owner, had died over 40 years before:

There is nothing in local records regarding the reserve but I would say that as far as its original intention is concerned it has outlived its purpose, as there are few Maoris resident in the immediate locality and no boats that I know of. The vendor died in 1911 and I can only assume that he would have been the only person entitled to request the reservation. I think the purpose of this reserve could be altered without causing undue perturbation.³⁸²

In 1953, the Crown agreed to declare section 71 a public domain, to be administered by the Nukumar Domain Board.³⁸³ A *Gazette* notice in 1954 reclassified section 71 as a recreation reserve, removing its special designation as a place for the landing and storage of boats.³⁸⁴ It does not appear that anyone talked to Ngāti Tamareheroto about this reclassification.³⁸⁵

(3) *Conclusions, findings, and recommendations*

The Crown did recognise that it was important to ensure that Ngāti Tamareheroto and other Māori could continue to use Taipakē as a base for their fishing activities even

after the land passed into Crown ownership. The steps it took did give tangata whenua a foothold beside the ocean that afforded them access to fishing grounds, and a place where they could stay, and process their kaimoana.

Unfortunately, though,

- ▶ The Crown did not take the definite and permanent step of making Taipakē a Māori reserve when it bought the land.
- ▶ Although the Department of Lands and Survey later recognised the importance of properly designating Taipakē as a reserve for Māori fishing and occupation, after consideration it was unwilling to risk the displeasure of the European population at Mōwhānau and so backed off its original intention. The actual designation instead made it a public reservation for the landing and storage of boats.
- ▶ In the 1950s, officials in the Department of Māori Affairs took the view that because Taipakē was no longer much used for the annual Māori kaimoana harvest, the purpose of the reserve could be changed.
- ▶ At this point, the views of the local Māori population were not sought, and the long historical and cultural ties of tangata whenua to Taipakē were not taken into consideration. Officials did not recall assurances made previously to Ngāti Tamareheroto that Taipakē would be permanently reserved for them, and section 71 was reclassified as a recreation reserve.

This is a situation where the Crown did engage with Māori interests and concerns, and did provide for them to some extent. But ultimately it did not rank them highly enough, or understand them sufficiently, to act to preserve this important site of Māori occupation and cultural endeavour. This failure breached the principles of active protection and partnership.

As the Crown no longer owns the land we cannot make recommendations for its return. We recommend that the Crown now works with claimants and the local authority to find appropriate ways to recognise the traditional importance of this site, and to take into account in settlement negotiations the failure to reserve it permanently for Māori purposes. We also note that traditional interests in Taipakē may involve other southern Whanganui hapū.³⁸⁶

26.12.4 Kai Iwi water supply takings

Three bores located about nine kilometres north of Taipakē supply most of Whanganui's water.³⁸⁷ Wanganui Borough Council in 1904 and Wanganui City Council in 1969 worked with the Crown to acquire five acres from various subdivisions of the Kai Iwi block for the development of the water scheme. Here we consider the processes that the local authorities and Crown used to acquire the land, paying particular attention to the Crown's role in monitoring local authority takings, and the compensation regime.

(1) *The Kai Iwi takings for the water supply*

In February 1904, the Wanganui Borough Council issued a notice of intention to take five acres from three blocks of Māori land for the Wanganui water supply: Kai Iwi 5C, 5E, and 6J. An additional 1,785 acres of nearby European land was also included in the notice.³⁸⁸ Objectors had 40 days to submit their opposition to the taking, but we have no evidence that any objections were made. The Public Works Department prepared a proclamation, and in May 1904, the land was taken and vested in the Wanganui Borough Council.³⁸⁹

In 1968, the Wanganui City Council acquired further land for the development of the Wanganui water scheme. The council issued a notice of intention to take 35 perches from Kai Iwi 5E2 for a water bore. It received no objections. Although there is no record that it discussed its actions with the owners, the council entered the land and erected a concrete shed and water bore in anticipation of the taking.³⁹⁰ The land was transferred to council ownership in June 1969.³⁹¹

Today, the Wanganui District Council owns all the land taken for the Wanganui water scheme.³⁹²

(2) *The Crown's role in the takings, and compensation*

We know little of the Crown's role preceding the 1904 takings, but it oversaw the 1969 taking process. To ensure that legislative requirements were met, the district commissioner of works, the resident engineer, and other officials from the Ministry of Works were involved in inspecting the land, making reports, and preparing the proclamation for taking the land on behalf of the city council.³⁹³

The compensation process differed for the two takings. In 1904, it was the Wanganui Borough Council's responsibility to apply to the Native Land Court for compensation. At the compensation hearing in 1905, the council's representative informed the court that he and the owners' representative had agreed to compensation of £10 for the owners of Kai Iwi 6J. The owners of Kai Iwi 5C and 5E were not eligible for compensation, he argued, because the land was not damaged as a result of the taking. Historian Philip Cleaver told us that these two blocks were used for underground piping, and that the council intended to grant an easement over the land in order to provide for the owners' ongoing use of the blocks. The court accepted the proposal, and awarded £10 to the owners of Kai Iwi 6J only.³⁹⁴ The borough council subsequently established the promised easement over the land.³⁹⁵

By the time of the 1969 taking, the compensation regime had changed. From 1963 until 1974, the Māori Trustee was solely responsible for negotiating compensation on behalf of owners of multiply owned Māori land.³⁹⁶ The claimants before us argued that, in vesting responsibility for compensation negotiations in the Māori Trustee, the Crown alienated the owners of Kai Iwi 5E2 from decisions about their land and displayed a 'blatant disregard' for their rangatiratanga.³⁹⁷ However, we note that Cleaver was unable to locate any details of the compensation negotiations or settlement with regard to the second taking, including whether owners took part in compensation discussions.³⁹⁸ Because there is no evidence to support the claimants' arguments, we make no comment about how the compensation regime operated for the 1969 taking.

(3) *Conclusion, findings, and recommendations*

Concerning the taking of Kai Iwi land for the Wanganui water supply during the twentieth century, we find that:

- ▶ The compulsory acquisitions were not as a last resort in the national interest, and therefore do not meet the Treaty standard.
- ▶ Although the Crown was in a monitoring role, it does not appear to have taken any steps that ameliorated the approach of the local authority.
- ▶ It does appear that Wanganui City Council, before

taking the land or having any formal basis for being there, entered Kai Iwi 5E2, sank a well, and built a shed. In the event that the owners did not give permission for the council to enter their land and undertake activities there, it violated the owners' property rights, and the Crown took no steps to intervene.

- The Crown did not pay compensation to the owners of Kai Iwi 5C and 5E, even though it compulsorily acquired ownership of their land and laid pipes under it. The argument that the owners could continue to use the land does not provide a fair basis for not compensating them at all: they lost the freehold title to their land, and the control over it that ownership connotes.

These failings constitute breaches of the Crown's duties of active protection and partnership, and prejudicially affected the claimants. We recommend that they are taken into account in future settlement negotiations with Ngāti Tamareheroto and with other Whanganui groups with interests in Kai Iwi lands.

Notes

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2. Submission 3.3.104, p 24
3. Ibid, pp 23–24
4. Ibid, pp 17–18, 20, 26
5. Ibid, p 20
6. Memorandum 3.2.523
7. Memorandum 3.4.23, pp 1–2
8. Memorandum 3.4.104, p 1
9. *Wanganui Chronicle*, 17 May 1905, p 5; *Wanganui Herald*, 22 May 1905, p 6; *Wanganui Chronicle*, 2 December 1905, p 4
10. *Wanganui Herald*, 19 August 1904, p 7; *Wanganui Herald*, 29 August 1907, p 7; *Wanganui Chronicle*, 24 November 1905, p 2
11. Document A51 (Walzl), pp 264–265; doc A145 (Bayley), pp 53–54; doc N3(a) (Pōtaka and Flight supporting documents), pp [65]–[66]
12. Document A51 (Walzl), p 66
13. *Wanganui Chronicle*, 23 October 1905, p 7
14. Transcript 4.1.2, p 311; doc A68 (Walzl), p 151; doc B59 (Tangaroa and Maihi), pp 3–4
15. Document B59 (Tangaroa and Maihi), p 4, app B; doc N3(a) (Pōtaka and Flight supporting documents), app 18
16. Document B13 (Maihi), p 6; 'Laying Out and Taking a Road', 13 February 1912, *New Zealand Gazette*, 1912, no 17, p 805
17. Document B12 (Tangaroa), para 53
18. Reserves and Other Lands Disposal and Public Bodies Empowering Act 1913, s 56
19. Document A145 (Bayley), pp 54, 57
20. Document B3 (Ashford), p 7
21. Document B12(a) (Tangaroa), p 1
22. Document A68 (Walzl), p 154
23. Document B12(a) (Tangaroa), p 1, app B
24. Ibid, p 1; doc B5 (Pātea), pp 8–9
25. Document A68 (Walzl), p 152
26. Document A66 (Mitchell and Innes), p 87
27. Document B3 (Ashford), p 7; doc A68 (Walzl), pp 151–152
28. 'Lands Permanently Reserved', 7 November 1904, *New Zealand Gazette*, 1904, no 90, p 2703
29. Document A37 (Berghan), p 434
30. Document B13 (Maihi), pp 11–12; doc B59 (Maihi and Tangaroa), p 4
31. Document B59 (Maihi and Tangaroa), apps H, I
32. Ibid
33. Ibid, app I
34. Document B13 (Maihi), p 8
35. Memorandum 3.2.523, p [1]
36. Waitangi Tribunal, *He Maunga Rongo: Report on Central North Island Claims, Stage One*, revised ed, 4 vols (Wellington: Legislation Direct, 2008), vol 2, p 853
37. Document B12 (Tangaroa), para 86
38. Submission 3.3.104, p 18; doc B12 (Tangaroa), para 48; doc B13 (Maihi), p 13; doc B5 (Pātea), p 7
39. Document B5 (Pātea), p 7; doc B13 (Maihi), p 13; transcript 4.1.2, p 313
40. Submission 3.3.104, p 18
41. Ibid, p 33
42. Transcript 4.1.2, p 305
43. Document O2 (Peet), pp 50, 51
44. Document A37 (Berghan), pp 434, 565–566
45. Document O2 (Peet), pp 50, 51
46. Department of Conservation, *Conservation Management Strategy, Wanganui Conservancy 1997–2007* (Wanganui: Department of Conservation, Wanganui Conservancy, 1997), p 81; doc O2 (Peet), p 50
47. Document O2 (Peet), pp 50, 51
48. Document B13 (Maihi), p 13
49. Document O2 (Peet), p 51
50. Document B12 (Tangaroa), paras 48, 57; doc B13 (Maihi), p 13
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54. Document 02 (Peet), p 51
55. Document B13 (Maihi), p 13; doc 02 (Peet), p 50
56. Document 02 (Peet), pp 50–51
57. Ibid, p 51
58. Ibid
59. Ibid
60. Document B12 (Tangaroa), para 57
61. Document 02 (Peet), p 51
62. See Ngāti Apa (North Island) Claims Settlement Act 2010, ss 38(1)(b), 40; doc B13 (Maihi), p 12; doc B55 (Ngāti Apa agreement in principle), p 15; doc B56(a) (Ngāti Apa negotiations status report attachments)
63. Document N4 (Flight), pp 2–3
64. Ibid, pp 3–4
65. Memorandum 2.5.30
66. Submission 3.3.92, pp 3–4 6, 8
67. Ibid, p 8
68. Document A37 (Berghan), pp 476–478
69. Ibid, pp 478, 479; doc A149 (Waho, Wilson, Hāwira, and Tinirau), p 41; doc N3(a) (Pōtaka and Flight supporting documents), apps 10, 12
70. Document N3(a) (Pōtaka and Flight supporting documents), apps 8, 9
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74. Ibid
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77. Minutes of meeting of assembled owners, 19 December 1910, Ohotu 6F2 file, 1909–11, ACIH 16036 MA1/1010, 1910/4058, Archives New Zealand, Wellington; doc N3(a) (Pōtaka and Flight supporting documents), app 11
78. 'Applications for Survey Charging Orders', 11 March 1912, *New Zealand Gazette*, 1912, no 24, p 1058
79. Document N3(a) (Pōtaka and Flight supporting documents), app 13; Aotea District Māori Land Board, transfer of Ohotu 6F2, 22 February 1911, Ohotu 6F2 file, 1909–11, ACIH 16036 MA1/1010, 1910/4058, Archives New Zealand, Wellington
80. Document N3(a) (Pōtaka and Flight supporting documents), app 5, 11
81. Document N4 (Flight), p 3
82. Document N3 (Pōtaka), p 3
83. Ibid, p 4, photos 6A13–6A18
84. Document N3 (Pōtaka), p 3; doc N3(b) (Pōtaka and Flight responses to questions in writing), app A
85. Document N3 (Pōtaka), p 4
86. Document N3(b) (Pōtaka and Flight responses to questions in writing), pp [1]–[2]
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89. List of owners; minutes of meeting of assembled owners, 19 December 1910, Ohotu 6F no 2 file, 1909–1911, ACIH 16036 MA1/1010, 1910/4058, Archives New Zealand, Wellington
90. Document N4 (Flight), pp 3–4
91. Document N3 (Pōtaka), p 4
92. While the school and the surrounding community have often been spelt 'Koroniti', the correct spelling in the view of Ngāti Pāmoana is Koriniti, and is used throughout this local issues case study: see submission 3.3.90, p 11 n 32.
93. Submission 3.3.90, p 19
94. Ibid, p 12
95. Ibid, p 19
96. Submission 3.3.5, p 10; submission 3.3.90, p 39
97. Submission 3.3.90, p 41
98. Memorandum 2.3.90, p 5
99. Submission 3.3.43, p 7; submission 3.3.126, p 11
100. Submission 3.3.126, p 11
101. Ibid, p 12
102. Document A57 (Cleaver), p 159
103. Ibid, pp 159–160
104. Document A66 (Mitchell and Innes), p A191
105. Document A57 (Cleaver), pp 160–161
106. Ibid, pp 161–162
107. Ibid, p 162
108. Ibid
109. Document B46 (Tuka and Te Utupoto), p 3; doc B49 (Marshall), p 4; Inspector of Native Schools to Inspector-General of Schools, 31 March 1899, AJHR, 1899, E-2, p 6
110. Document A61 (Rose), p 540; doc A61(h) (Rose document bank, vol 8), p 3925
111. Claim 1.1.9, p [7]
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113. Document A57 (Cleaver), p 164
114. Ibid
115. Ibid, pp 164–165
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117. Ibid, pp 164, 166
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119. Ibid, p167
120. Claim 1.1.9, p 3; doc A57 (Cleaver), p168
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130. Document A145 (Bayley), pp101–102
131. Submission 3.3.131, p13; claim 1.2.55, pp11–12
132. Claim 1.2.55, p12
133. Submission 3.3.132, p31
134. Submission 3.3.6, pp6, 18; submission 3.3.111, p5
135. Document E12 (Wiari-Southen); doc N21 (Ranginui)
136. Submission 3.3.120, p64
137. Waitangi Tribunal, *Te Kāhui Maunga: The National Park District Inquiry Report*, 3 vols (Wellington: Legislation Direct, 2013), vol 3, pp1073–1074, 1083
138. Ibid, p1083
139. Ministry of Works, 'Wanganui River Power Development Interim Report on Investigations, No 4 Site (Atene)', May 1963, p ii, ABRP W5484 box 58 A138/04 pt1, Archives New Zealand, Wellington; 'Schedule of Maori Lands within Red Perimeter', not dated, ABRP W4598 6844 box 252, 2/342, pt2, Archives New Zealand, Wellington; submission 3.3.6, pp12–14; doc A37 (Berghan), pp983–985; doc A34 (Hodge), pp82, 127, 150
140. Document A61(j) (Rose document bank, vol 10), p4831
141. 'Background To Proposed Hydro-Electric Dam Project At Atene', not dated; 'Final River Scheme May Cost about £60M', not dated; 'Problems in Atene Dam Scheme', *Wanganui Chronicle*, 13 July 1964; 'Huge Compensation if Atene Built', *Wanganui Chronicle*, not dated; and 'Foundation Problems for Smaller Dams on Wanganui River', *Wanganui Chronicle*, 4 August 1965, ABRP W4598 6844 box 252, 2/342, pt1, fols 8, 9, 26, 90, 92, Archives New Zealand, Wellington
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151. Transcript 4.1.2, p210; doc B44 (Ranginui), p11
152. Document B45 (Paki), p12
153. Document E12 (Wiari-Southen), p13
154. Document N12 (Tamakehu), p11
155. Document A157 (Aqualinc Research Ltd), pp64–76, 90–91
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163. Document B54 (Tapa), p16
164. Document B45 (Paki), pp6–7
165. Document N21 (Ranginui), p6
166. Document B45 (Paki), p5; '£2M in Compensation for River Dam Land', not dated, and 'Atene Maoris Want Land, Not Money', *Daily News*, 21 May 1964, ABRP W4598 6844 box 252, 2/342, pt1, fols 9, 20, Archives New Zealand, Wellington; doc A61(j) (Rose document bank, vol 10), p4832
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Running a Road through a Sacred Place

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CHAPTER 27

PREJUDICE, CAUSATION, AND LIABILITY**27.1 INTRODUCTION**

In this report, chapter by chapter, we looked at historical events, and identified the Crown's acts and omissions that breached the principles of the Treaty. Many of those acts and omissions had large and immediate – or at least proximate – effect, and consequential prejudicial effects on Māori living at that time were reasonably easy to see, infer, and identify. Here though, we address the claimants' contention that those historical acts and omissions that occurred over 175 years had a cumulative effect, and that, taken together, they caused the situation of social, economic, and cultural deprivation in which Whanganui Māori find themselves today. Claimants in other Waitangi Tribunal inquiries put forward similar arguments, and findings were generally made in favour of claimants. However, the Crown in this and other inquiries denied that the claimants' argument was sound, contending that the connection between its acts in breach of the Treaty and present-day Māori deprivation cannot be demonstrated. This is an important difference between the parties, and merits close attention.

We wanted to set out the approach we take in this inquiry to questions of prejudice, causation and liability in order to explain how we come to our findings. In particular, we elaborate on causal connections between the Crown's Treaty breaches in the past, and negative outcomes for Māori in the present.

We ask and answer these questions:

1. How do we approach prejudice?
 - (a) How does our jurisdiction require us to deal with the issue of prejudicial effects – that is, harm or injury? We look into the connection between prejudicial effects and a well-founded claim.
 - (b) What do we call harm or injury? We recap the changes that occurred in Māori lives, and outline their socio-economic condition today. We inquire into how we conceive of the changes in Māori lives that followed upon colonisation. Can we distinguish that change from harm or injury?
2. How do we approach causation?
 - (a) After exploring what constitutes prejudicial effects (harm or injury), we look at causation. We ask whether, on a common sense analysis, the Crown's acts, taken together, were more likely than not – or probably rather than possibly – the cause of the adverse changes in the situation of Whanganui Māori over time, and ultimately their generally deprived condition today.

- (b) In this context, we look at the connection between the Crown's acts and omissions and adverse outcomes for Māori, and the other factors that were also at play.
- 3. How do we approach liability?
 - (a) Is the Crown liable for the prejudicial effects of all its acts or omissions that breached the Treaty?
 - (b) What factors influence liability? For example, where the Crown's Treaty breach caused a negative effect, is it liable for the consequences whether or not it foresaw, or could have or should have foreseen, that negative effect?

27.2 WHAT THE PARTIES SAID

Much of the disagreement between Crown and claimants was over the causal link between Crown acts and socio-economic outcomes. The Crown submitted that there was no clear link, and that its power to influence the economy or alleviate socio-economic deprivation was very limited. By contrast, the claimants submitted that the Crown was substantially responsible for their present-day situation.

27.2.1 What the claimants said

The claimants submitted that their position of socio-economic disadvantage was caused primarily by large-scale land alienation carried out or facilitated by the Crown.¹ While the exact connections between these actions and particular outcomes can be difficult to trace, 'when various Crown policies and practices are viewed collectively, their impact . . . becomes clear'.² The Crown's various actions and omissions interacted with each other to create a devastating cumulative effect.³

As we explained in chapter 9, the claimants agreed with the Crown that land loss did not necessarily lead to poverty, but argued that their tūpuna were nevertheless dependent on land ownership to participate in the colonial economy.⁴ They rejected the proposition that the Crown had no real power to intervene in the colonial economy in aid of Whanganui Māori, because the evidence demonstrated that the Crown did do so, almost always in the interests of settlers rather than Māori.⁵

Following the definitions of other Tribunals, the claimants considered that 'sufficient land' meant enough land to engage in the new economy created by settlement and the Treaty, in particular through farming.⁶

According to these definitions, the claimants submitted, Whanganui hapū and iwi did not retain sufficient land for their present or future needs.⁷ Not only did they not have enough land, but the land they did have was of low quality, fragmented, awkwardly shaped, and difficult to access.⁸ Most of the good quality land in the district was in the area of the Crown's first purchase, the 1848 Whanganui purchase.⁹ The claimants also submitted that the question of whether they were left with sufficient land must be assessed in terms of quality as well as quantity.¹⁰ They stated that many groups were left without enough land even for subsistence agriculture, as they had lost papakāinga and cultivations, or had become landless.¹¹ Māori incorporations did not necessarily solve the problem of insufficient land holdings, because many Whanganui Māori did not own incorporation shares, and even incorporation shareholders have limited control over incorporation land, and often could not use or live on it.¹²

27.2.2 What the Crown said

The Crown agreed that Whanganui Māori have suffered ongoing socio-economic disadvantage and deprivation.¹³ However, it submitted that the evidence does not demonstrate Crown culpability, and that in many cases it is 'difficult to determine with any precision' the causes of socio-economic disadvantage.¹⁴ We note that the Crown did not generally argue in this inquiry that its actions were *not* a significant contributor to Whanganui Māori socio-economic disadvantage; rather it submitted that such a connection was not proved.

As we saw in chapter 9, the Crown contested the general proposition that large-scale land alienation was a key cause of economic deprivation. Drawing on the evidence of its witness Professor Gary Hawke, the Crown submitted that land ownership has never guaranteed prosperity, and nor is land ownership necessary to become prosperous.¹⁵ Following Hawke, it argued that economic development is inherently dependent on a process of 'creative destruction',

and that failure to adapt to change inevitably leads to disadvantage. Historically, the Crown could not control, direct, or prevent broad economic trends and changes, nor could it stop these changes from disadvantaging any groups who failed to adapt.¹⁶

The Crown agreed that it has a duty to protect Māori land and resources, including cultural sites and non-agrarian resources.¹⁷ However, it seemed to regard this as applying mostly when land owners did not want to alienate their land.¹⁸ It placed great emphasis on the fact that Māori did sometimes want to sell land, submitting that the ‘ability to alienate land is a fundamental right of ownership. It is inherent in the rights guaranteed Maori under Article III of the Treaty’.¹⁹ Further, the Crown submitted, ‘governments faced an extremely difficult balancing exercise between protecting Maori land on the one hand, and enabling Maori to use land for raising finance on the other’.²⁰ It did not state how this should have been resolved.

The Crown submitted that it was ‘highly unlikely’ that anyone in the nineteenth century would have seen ‘sufficiency in terms of every Maori having sufficient lands to operate a successful farm as Claimants argue’.²¹ Instead, the Crown argued, ‘sufficiency’ meant ‘having sufficient land and resources to meet their primary needs, in the sense of having a place of residence and a plot to cultivate’.²² The Crown concluded that its Treaty duty was only to ensure that the primary needs of Māori, as defined above, were met. It had no duty to give effect to Māori economic aspirations; ‘or rather a present conception of what those aspirations should have been’.²³

With these standards in mind, the Crown submitted that Whanganui Māori retained ‘a significant amount of land’ in the inquiry district, and it ‘has not been shown that this amount of land is insufficient for meeting the current and future needs of Whanganui Maori in a modern economy’.²⁴ It added that the claimants have underestimated the amount of Māori land in the district by failing to take all the land held by Māori incorporations into account.²⁵ It did acknowledge that some groups had retained ‘very small amounts of land’ and that some groups ‘are no longer able to or have impeded access to sites of particular

significance’, but did not concede that this was necessarily the result of its own acts or omissions.²⁶

27.3 HOW DO WE APPROACH PREJUDICE?

27.3.1 Assessing prejudicial effects: our jurisdiction

We now look at what our jurisdiction requires of us in terms of assessing prejudicial effects.

Under the Treaty of Waitangi Act 1975, any Māori may submit a claim if he or she or the group to which he or she belongs ‘is or is likely to be prejudicially affected’ by acts or omissions of the Crown inconsistent with the principles of the Treaty.²⁷ The Tribunal inquires into the claim,²⁸ and if it finds the claim to be well-founded, it may ‘having regard to all the circumstances of the case’, recommend to the Crown that it take action to compensate for, or remove the prejudice, or to prevent others from being similarly affected.²⁹

It is implicit in determining that a claim is well-founded that the Tribunal is satisfied that there *was* prejudicial effect, as alleged. In this inquiry, investigating prejudicial effects is part of addressing the claimants’ argument that the Crown’s various acts have had significant adverse economic consequences, and have also damaged their culture and way of life. The Crown said no, it did not cause these negative effects, and that the claimants did not prove causation.

(1) *Assessing prejudicial effects over time*

The difficulty of tracing the long-term effects of particular actions is one reason why the Waitangi Tribunal has tended towards a restorative approach to recommending how the Crown should go about redressing prejudice from Treaty breaches. The Tribunal has conceived this as doing what is required to put Māori in a position where they have capacity to realise their economic and cultural potential in a modern context. The Muriwhenua Land Tribunal employed this approach, saying that ‘where the place of a hapu has been wrongly diminished, an appropriate response is to ask what is necessary to re-establish it’. A remedy should ‘not depend solely upon a measurement of past loss’, but would also be forward-looking, ‘to

compensate for past wrongs and remove the prejudice, by assuring a better arrangement for the hapu in the future.³⁰

The alternative, a compensatory damages approach, would involve asking what was necessary to put claimants into the situation they would have been in but for the Crown's Treaty breaches. It is obvious that it will be extremely difficult to do that when a lot of time – often more than a century – has elapsed, and much more has happened than just the Crown's wrongful acts and omissions.³¹ The Crown's insistence that the claimants did not prove causation of socio-economic effects was not proved rests on that reality.

But although the lapse of time does necessarily raise problems with proof, those problems are not necessarily fatal to Māori Treaty claims. Tribunals look to the evidential standard in our Act – a Tribunal must find that a claim is 'well-founded' before it can make recommendations. 'Well-founded' enables an approach that overcomes the difficulties arising from the events complained of having happened a long time ago.

(2) What does well founded mean?

In order for the Tribunal to decide that a claim is well founded, it must be satisfied that the claimants' evidence and arguments meet the necessary standard of proof.

The standard and burden of proof were live issues between the parties in the Tūrangi Township Inquiry, during both the hearing of the claim and the remedies stage. The Tribunal in that inquiry comprised four senior Tribunal members, now all deceased: Professor Gordon Orr, Sir Hugh Kawharu, Professor Evelyn Stokes, and Mrs Hepora Young. The decisions that Professor Orr made with the authority of the other two members on standard and burden of proof in Tribunal findings remain the Tribunal's most comprehensive treatment of that topic, although they date from the 1990s. We find Professor Orr's learned and compelling treatment of the topic very helpful – and we note that recent court decisions have endorsed his approach to the standard of proof for binding recommendations.³²

In the course of the hearing of the main Tūrangi Township claim, the Crown argued:

When a claim is made to the Waitangi Tribunal alleging breaches of the principles of the Treaty by the Crown, we submit that it is for the claimants to establish that breach. There is no presumption of a breach unless the facts establishing the breach are proved to the normal civil standard on the balance of probability. The next step then is that if a breach has been established, to determine whether the claimants have been prejudiced and if so, to what degree.³³

The Tūrangi Township Tribunal responded:

This, in effect, calls for the application of the onus of proof on a plaintiff in civil proceedings in courts of law. However, the Tribunal is not a court of law. It has the powers of a commission of inquiry and has the unique power to regulate its procedure by adopting such aspects of *te kawa o te marae* and *tikanga* as it thinks appropriate in any particular case.³⁴

The Tribunal proceeded to outline how it, the claimants, and the Crown all furnish evidence to the Tribunal.

It went on:

We consider it unhelpful to suggest that either the claimants or the Tribunal should be bound by court rules of civil procedure as to the burden of proof. The Tribunal's mandate is to ascertain the truth of what happened in any particular matter before it. In so doing, it must ensure, as far as possible, that both parties, the claimants and the Crown, do all they reasonably can to assist the Tribunal to achieve this outcome. When all the evidence is in, the Tribunal must then decide on the totality of the relevant evidence before it the extent to which, if at all, the claims before it are made out. It is then appropriate to do so on the balance of probability.³⁵

Later, in the context of considering its approach to remedies – and particularly its making binding recommendations – the Tribunal conducted an in-depth inquiry into standard of proof, burden of proof, and the practical effect of an assessment on the balance of probabilities. The Tribunal reflected on the process that had led to its findings on the main claim before it.

The Tribunal said:

Thus, in deciding whether the claim before us was well-founded in terms of s6(3), the Tribunal was not concerned with the burden of proof as such but rather with whether, on the totality of the relevant evidence, irrespective of by whom it was produced, a finding was justified that part or the whole of the claim was well-founded. As indicated, we thought it appropriate to weigh the evidence on the balance of probabilities.³⁶

In the remedies hearing, the Crown contended that the Tribunal's assessment of the balance of probabilities should be more stringent when considering whether there was a proper basis for issuing binding recommendations. We are not contemplating such recommendations here, but the discourse is nevertheless relevant, because the Tribunal looked to judgments in court cases to ascertain what weighing evidence on the balance of probabilities really meant. It found most helpful these passages from a judgment of renowned New Zealand jurist Sir Owen Woodhouse, then president of the Court of Appeal:

For myself I would say at once that the provision for questions of fact to be 'decided on a balance of probabilities' when that is considered merely in terms of the required *standard* of proof is the definition of a constant. There are no gradations, whatever might happen to be the subject matter. What is required is an affirmative demonstration that the relevant and suggested inference is more probable than not. Nothing less than this will be sufficient. At the same time no more is necessary. But having said that it is not only usual but in any evidential context it is logically right for conclusions in the area of inference and judgment to be influenced both by the purpose to which they are directed and the significance of the assessment being made. Just as there are shades of possibility so the point at which there is satisfaction as to probability will vary depending upon the subject matter. Whether the occurrence under review will seem to be something that is probable or possible or even unlikely is bound to be affected in this way; and as a natural process of thought it has been widely accepted and acted upon throughout the common law world when attempts have been made to explain the civil onus of proof.³⁷

His Honour Sir Owen Woodhouse quoted from a number of judgments that expressed the principle that the nature and gravity of an issue will influence the manner of attaining reasonable satisfaction of its truth. He concluded,

In my view those various observations are all aimed at explaining the simple need to be careful in estimating whether or not the inference to be drawn is in truth probable rather than merely possible. It is the principle of good common sense that the more serious the issue the greater should be the care used in assessing it. No doubt, as Lord Scarman said in the *Khawaja* case, the decision in the end is 'largely a matter of words'. I would simply add that the exercise of that kind of caution or care must not be taken to such a stage that the level of satisfaction required by a Judge on some particular occasion really amounts to introducing a new and more stringent standard of proof than the balance of probabilities actually requires.³⁸

The Tribunal observed that the marae setting where much evidence is given in Tribunal hearings ensures that evidence is likely to be of a higher standard. It quoted from a memorandum of the Tribunal in the Mōhaka ki Ahuriri inquiry, which said that where kaumātua give evidence on marae, '[t]he spiritual presence of their tipuna and the physical presence of their whanau and hapu create the highest standard of accountability'.³⁹ Furthermore,

Many Maori grievances relating to their Treaty rights and breaches of those rights by the Crown have been the subject of discussion on the marae by generations of Maori who, as often as not, have petitioned the Crown over the decades for relief. It is possible to exaggerate the difficulties about obtaining a reliable account of past events.⁴⁰

The thrust of the Tūrangi Township Tribunal's decision was thus that, where binding recommendations were in prospect, no new and more stringent standard of proof was required, but the principle of good common sense would dictate that the Tribunal would be influenced by the significance of the assessment being made.⁴¹ The

corollary of that decision for claims where no binding recommendations are contemplated is that the Tribunal's role in evaluating the evidence is essentially the same.

Our job in considering whether a claim is well-founded will necessitate assessing the reliability of the totality of the evidence and whether that evidence is sufficient to justify a decision that the claims are well-founded. We find particularly helpful the way His Honour Sir Owen Woodhouse expressed the standard of proof: when looking at the evidence, we must estimate whether or not the inference to be drawn is in truth probable rather than merely possible. That will involve scrutinising the connection between the conduct that breached the Treaty and the consequences for Māori and determining whether, on the balance of probabilities, the connection is more or less likely to have been as alleged. If there are deficiencies in the evidence, we take that into account, along with all other relevant circumstances, when deciding whether or not the claim is well-founded. The nature of our jurisdiction is such that we must put historical evidence into the same crucible as more recent evidence.

Because this is a district inquiry in which 83 claims were amalgamated, we are not considering only one claim at a time. The exercise of assessing the totality of the evidence is affected when inquiring into multiple claims – and where, as here, in the interlocutory process before hearings we derived a statement of issues that were common to the many parties that filed statements of claim. The exercise of assessing all the allegations of Treaty of Waitangi breach, all the evidence, all the arguments about their consequences, and deciding on the balance of probabilities whether the inference to be drawn is probable rather than possible is inevitably more complex and on a larger scale. Also, the issues that we identified became the focus of the parties' evidence and submissions. One of them, of course, was the issue that we address in this chapter: whether the prejudicial effects arising from the Crown's acts and omissions in breach of Treaty principles included the adverse socio-economic conditions that Māori experience today.

It needs to be emphasised that, even if we were to take the view that the Crown's past actions, and their

cumulative effect, did not lead to today's adverse socio-economic situation for Māori, or led to it only in part, we could find their claims to be well-founded nevertheless, because the Crown's acts and omissions prejudicially affected Māori in other ways and at other times.

(3) *The approach of other Tribunals*

Previous Tribunals looked at the relationship between Crown Treaty breaches and present-day socio-economic disadvantage. To varying extents, they formed the view that the Crown's actions must have caused the negative situation in which they saw today's Māori population or, at least, that the Crown was complicit in that situation.

All the Tribunals accepted the general proposition that it is difficult to establish an exact causal connection between land loss and poor socio-economic outcomes for Māori, particularly what role the Crown's actions had to play alongside other factors. The Mōhaka ki Ahuriri Tribunal, in one of the first sustained considerations, noted the

immense difficulties in establishing a direct causal relationship between, on the one hand, land loss and, on the other, poverty, social dislocation, poor health, and low educational achievement.⁴²

The Hauraki Tribunal noted that it was 'not possible to be precise as to the relative impact of the Crown's actions and other factors'.⁴³

However, these Tribunals also concluded that – in the particular circumstances of their respective inquiries – land loss was a strong contributor to the socio-economic conditions Māori experienced, because owning too little land limited the potential of Māori economic development. They also concluded that the Crown was responsible for this land loss, in breach of the Treaty. The Mōhaka ki Ahuriri Tribunal concluded that there is

ipso facto, a connection between land loss and poverty in cases where insufficient land has been retained for subsistence and insufficient income is available from intermittent part-time work to make up the deficit.⁴⁴

The Hauraki Tribunal concluded that, though the Crown was not wholly responsible for social and economic outcomes, its land purchase policies ‘undeniably affected Maori socio-economic circumstances’.⁴⁵ Along the same lines, the Tauranga Tribunal found that ‘loss of land almost to the present, contributed to the economic and social marginalisation of Māori in the Tauranga district’. Because of the role that the Crown played in that land loss, it was also heavily implicated in ‘the negative socio-economic impact of land loss on Tauranga Māori’.⁴⁶

Similarly, the Te Tau Ihu Tribunal concluded that ‘the rapid alienation of the greater proportion of the land, for which the Crown conceded it had considerable responsibility, left the iwi with a grossly inadequate land base’, which ‘set the scene for the downward spiral of Maori life in Te Tau Ihu’:

We cannot say with certainty that if more land had been retained by Maori in Te Tau Ihu they would have prospered. In the circumstances of nineteenth-century Te Tau Ihu, however, such retention would have made prosperity far more likely.⁴⁷

The Te Tau Ihu Tribunal was the only one that had much to say about the Crown’s attempts to mitigate the adverse effects on Māori of its acts and omissions. It cited the provision of social services like health and education, and land development schemes, as instances of the Crown taking steps to improve Māori lives.⁴⁸ The Tribunal that inquired into Tauranga Moana 1886–2006 linked the Crown’s provision of services in the areas of health, housing, and education to its duty to provide a remedial response to the plight of hapū affected by land loss.⁴⁹

27.3.2 What do we call harm or injury?

When we come to look at prejudicial effects, we are of course talking about harm or injury to Māori. Treaty discourse can tend to talk about the changes that transformed traditional Māori society as if harm and change were synonymous. That is understandable in the context of colonisation and indigenous people. However, we endeavour to look more closely at the concept of harm.

We start by synthesising this report into a brief summary of what happened in the various time periods from 1840 to the present day. We do this because our discussion of prejudice requires an immediate context. Only when we have identified the principal happenings can we determine whether and to what extent their consequences should be characterised as harmful.

(1) *The changes that occurred and the influencing factors*

We have explained how the Whanganui district was home to as many as 100 hapū and iwi, which exercised rights to land and resources in different parts of the district. The Whanganui River was the most heavily settled area, with many pā and kāinga were located, but no part of the district could be characterised as ‘waste land’. Tangata whenua lived by growing crops, by resorting to resources near and far, and by carefully managing rights to these. Inland groups were recognised as having the right to occupying the Whanganui River mouth seasonally to fish, for example (see chapter 2).

(a) 1840–70: From initial contact with Europeans, Māori in Whanganui supplemented their traditional practices of gathering and cultivation with new technologies and crops. Soon, the food they grew for their own consumption became dominated by potatoes and pigs, and they also produced an excess for trade and exchange. Their acquisition of new knowledge, equipment, and technology came from direct engagement with traders and settlers, rather than from interaction with the Crown (see chapter 19).

The Whanganui purchase was the Crown’s first major influence in the district. Settlers became established at the mouth of the Whanganui River, and the settlement patterns of hapū and iwi whose land was primarily in the purchase area changed. Elsewhere in the district, Māori generally continued their traditional practices of occupying kāinga up and down the river valleys on a seasonal basis, and also took on new crops and technologies. The Crown offered some limited assistance to Māori in setting up flour mills, but the drop in wheat prices in the 1850s showed that Māori fortunes would be dependent as much

on events outside of New Zealand as they would be on the actions of the Crown (see chapter 19).

Not too many years after the wheat crash, the conflicts that occurred in the 1860s also checked economic growth. Māori in Whanganui, as elsewhere in New Zealand, were frustrated by their exclusion from the colonial political structures, and by how the Crown was going about the purchase of their land. New alliances and affiliations formed, with some gravitating to the Kīngitanga, and others embracing the spiritual message of Pai Mārire. River communities were disrupted: some villages and crops were destroyed, and there were casualties. Conflict also caused division between communities that took years to resolve (see chapter 18). Meanwhile, the settlers of the Wanganui township became more self-sufficient, and less reliant on Māori produce. The settler population soon exceeded that of Māori (see chapter 19).

(b) 1870–1900: For Māori, perhaps the biggest change to occur in the period immediately after the wars was the drastic drop in their population. In a couple of decades from the 1860s, infectious disease cut a swathe through the Māori communities of the Whanganui district, with their population falling from about 3,500 to a low of around 1,200 (see chapters 19 and 21). Medical science had no answer to epidemics then, so it may be that no amount of healthcare would have made a difference, but in fact State-funded health care was minimal. However, Māori initially made up the majority of patients of the Wanganui Hospital. Admission of Māori patients dwindled once the hospital became reliant on rates collected from local settlers. The Crown instead instituted a system of native medical officers. A creditable innovation of the time, the system did not really benefit those living distant from the town (see chapter 21). Other factors that took a toll on Māori health in this period were alcohol, and the effects of attending Native Land Court sittings. The population did not begin to recover until the 1890s (see chapters 19 and 21).

From the mid-1870s, Māori in Whanganui became pre-occupied with responding to the transformation of their customary interests in land into legal title. Māori were

unable to control what happened in the courtroom, but they sought to influence proceedings from the outside. The land court process was time consuming and disruptive, taking them away from their homes and cultivations for considerable periods. However, Māori also worked at making improvements to their land, creating better access in some cases (see chapters 10 and 11). Some were able to expand into sheep farming – a new endeavour that was beginning to generate wealth for those in the colony with access to land and capital (see chapter 19). Another opportunity presented itself in the Murimotu area, where various Māori groups sought to earn income from leasing large acreages to private interests. Then the Crown acquired these leasing rights, and soon moved to buy up the land (see chapter 12). Pākehā were later able to establish successful farms on this land, like Joseph Studholme's 9,000-acre station (see chapters 12 and 19). Frustrations arising from the Murimotu experience led Te Keepa Te Rangihīwinui to form a trust, which he hoped would more effectively manage Māori land. But the Crown would not cooperate, and by the mid-1880s, the trust was defunct, and the Crown was beginning to ramp up its efforts to purchase individual interests across the district – initially to facilitate the construction of the main trunk railway (see chapters 10 and 12).

Māori sold land to pay off debt, to buy consumer goods, and to fund land development such as sheep farming and small-scale dairy units. The Crown purchased more land towards the end of the nineteenth century, and development opportunities on the land Māori retained were constrained by the low prices they received and by the nature of Māori land title, which made it hard to borrow money (see chapter 12).

Although Māori were enthusiastic about acquiring education and vocational training, because of the upheaval in their lives, and possibly also because European pedagogy was alienating, children did not attend school regularly. The Crown closed the native schools it had opened in the Whanganui district, and did not re-establish them for another 20 years (see chapter 21).

By the turn of the century, Māori owned only one-third of the land in the inquiry district – 712,000 acres

(see section 12.9).⁵⁰ Very few of the Crown's purchases had involved reserving land for those who had agreed to sell. The Whanganui purchase and the Waimarino purchase were among the exceptions. We have seen how the Māori owners of the Whanganui purchase land were left with less than 10 per cent, and were pressed to give up many kāinga and pā in the finalisation of the purchase. In the Waimarino block, sellers and non-sellers were left with about 20 per cent of their original holdings, and many of their kāinga and urupā were not included in the blocks they were allocated (see chapter 13).

Māori now owned random acreages that were what was left when the Crown's and others' purchases were partitioned from blocks, and land that the Crown or private parties had elected not to purchase. This land became increasingly fragmented, as interests were partitioned into increasingly smaller holdings; and succession laws made for more and more owners, particularly as the population began to increase from the early nineteenth century (see chapter 11).

It may have taken some time for Māori settlement patterns to change, but it is likely that they became concentrated in particular kāinga that remained in Māori ownership – particularly in the kāinga along the Whanganui River. They relied less on traditional food gathering, as the effects of the potato blight in the early twentieth century made evident: potato had become their staple food (see chapter 21).

Meanwhile, the settler population continued to grow with the expansion of the town of Wanganui, as the technological advancements of the early 1880s saw the development of the port and local industry. This was in keeping with a general economic transformation occurring in New Zealand from the 1880s, which – despite a period of economic downturn – ultimately saw the colony develop into a successful exporter of meat and dairy products (see chapter 19).

(c) *The twentieth century*: Although it was widely acknowledged that Māori needed to be left with enough land for their future use, the purchase of Māori land continued into the twentieth century. Private purchasers played

an ever-larger role in buying up land – including blocks that the Stout–Ngata commission earmarked as critical for Māori to keep and farm, and 50,000 acres of the land retained in Māori ownership after the Crown's the Waimarino purchase (see chapters 15 and 20). The Crown and local authorities also targeted Māori land for public works takings for scenic and other purposes (see chapter 16). This continued apace until about 1930, by which time Māori owned just under 400,000 acres – less than 20 per cent – of the district.⁵¹

Proceeds from sales remained too small to fund development, and barriers to borrowing remained. The Government Advances to Settlers Fund was effectively unavailable for Māori (see chapter 19). The vested lands scheme, which had shown promise initially when under Māori land councils, did not bear the promised fruit: Māori lost control of their land, and received low returns (see chapter 18).

By 1900, Māori commanded fewer agricultural resources than non-Māori, even though farming was by then established in only a few parts of the district. Māori did increase the amount of their land in grass, and the number of animals they owned. In some parts of the district, Māori were able to move into dairy farming. Generally, however, farming was small scale, and largely for subsistence purposes. External influences were hard to manage: fluctuating commodity prices in the 1920s, and then the Depression, only made worse the often overwhelming difficulty of coping with land disastrously prone to erosion and reversion. In the 1930s, there were people across the district who simply abandoned their farms – Māori and Pākehā alike (see chapter 19).

The Crown's land development schemes yielded some benefits for Māori, but most proved unprofitable. The exception was the Morikau station, created out of 15,000 acres and vested in the land board in 1906 and 1907 with the intention of eventually creating owner-occupier farms for Māori. In 1910, this land became managed as a single farm, including small papakāinga farms for residents. Although the operation did go quickly into debt, by 1934 it had begun turning a profit, and all debt was cleared at the end of the Second World War. Less ideal was that Māori

were not significantly involved in management, and received little in the way of training and assistance.

Other development schemes were less successful. In particular, the Rānana scheme (which comprised small papakāinga blocks taken out of the Morikau station in 1924) laboured under a huge debt burden, mainly due to the individual farms' small size and indifferent land quality. Farming became the pursuit of only a small minority of Māori in the district (see chapter 19).

From early in the twentieth century, more and more people moved into wage labour – initially on farms, public works projects, and in the timber industry, which prospered briefly. Employment was seasonal and casual, often manual, and low paid. The booming post-war economy resulted in nearly full employment, but these jobs tended to be in cities – the local manifestation of the international phenomenon of urbanisation (see chapter 19).

To get better jobs, Māori needed education. Before the turn of the century, Māori in Whanganui actively sought education for their children, and lobbied for the creation of new schools. Six were established between 1900 and 1935. Primary and secondary education became more readily available to Māori who lived in or near towns. In some ways, the native schools probably provided better schooling for Māori children, but part of their social agenda was encouraging amalgamation. Pupils were punished for speaking te reo Māori for a considerable period during the twentieth century. Fluency in te reo Māori declined, and parents lost confidence in Māori knowledge and promoted the acquisition of skills that they believed would help their children advance in the Pākehā world. Māori schools were disestablished in 1969, because many Māori had moved to urban areas, and there were also misgivings about segregation. Even before this, most Māori attended general schools. However, it was not until quite late in the twentieth century that education began to be inclusive of Māori culture (see chapter 21).

Higher rates of Māori ill-health than Pākehā were especially evident in infant and maternal mortality, and in tuberculosis and typhoid. They suffered disproportionately during epidemics, particularly the influenza epidemic of 1918. Although the State increasingly saw itself as

having a role in providing healthcare, it was not until 1938 that State-run health services became readily available to the general public. Until that time, Māori in Whanganui were put off by fees, the unsuitability of the health services provided, and their distance from the main providers in Wanganui. They petitioned for particular people whom they trusted to provide medicine to their communities, but the Government refused to offer the necessary assistance. After the Second World War, there was a significant drop in mortality from infectious diseases, particularly tuberculosis. Still, mortality was higher for Māori than it was for non-Māori. The shortage of doctors in rural areas was alleviated by public health nurses, but cultural barriers remained, as well as discrimination (see chapter 21).

Poor housing was another reality for Māori from early in the century. By 1936, 30 per cent were said to be living in huts or whare. This was a continuation of previously existing conditions, but it was not an indication of how Māori wanted to live. They lacked the means to improve their living conditions, and faced obstacles to raising funds for housing improvements. Māori housing did improve after the war, especially once they could capitalise State benefits to realise a deposit for a house, and because of the booming post-war economy. Disparity between Māori and non-Māori continued, but less so in the towns, where there were more jobs (see chapter 21).

Māori also took up welfare benefits that the State began to provide. Old age pensions were available from the late nineteenth century, but measures introduced in 1926 reduced Māori pensions if they owned land: Māori living costs were considered to be less because of their 'communal living'. Such discrepancies remained until 1945. Māori also became eligible for other benefits, like the unemployment benefit. But by the early 1980s, many rural places in Whanganui and elsewhere were classified as 'limited employment locations'. This rendered Māori living there ineligible for the dole, to force them to move to town to seek work (see chapter 21).

Rural Whanganui gradually transformed. The establishment of native townships in Taumarunui and Pipiriki had helped create communities – but did not deliver financially (see chapter 17). The failure of many farms across

the district was not the only reason rural towns gradually began to decline during from the middle of the twentieth century, but it was a significant contributing factor for places like Pungarehu and Koriniti (see chapter 21).

Māori steadily migrated from their rural homelands to live in urban centres. The Whanganui Māori population was 80 per cent rural in 1936, but by 1971 it was 70 per cent urban. While the total number of Māori living in rural areas declined, their population in the whole district nearly doubled. The Māori population of the town of Wanganui grew dramatically. These changes were in keeping with national and international trends, and as elsewhere both push and pull factors operated: people left because of the dearth of employment opportunities in the country, but also responded to the lure of better health, housing, and education in town. Urbanisation did not sever the connections between all those who left and their rural tūrangawaewae, but those back-country marae struggled to continue to function fully (see chapter 21).

(2) *The situation of Māori at the time of our inquiry*

We have just seen that much change occurred over the 175 years from 1840 until now, and that although the Crown generated a lot of it, other forces were also at play.

Next, we outline the modern-day situation of the Māori people of our inquiry district, as revealed in census data from the 2006 census, when our inquiry was underway. This data is a useful tool for ascertaining the economic condition of Māori vis-à-vis other parts of New Zealand society. Statistics are of course only one lens through which to view that, and we want to note, in reciting figures that depict Māori as being in a sorry state, that in the course of our inquiry we were constantly in the presence of vibrant and successful Māori people whose situation and perspective is not discernible in census data.

Now we give a socio-economic snapshot of Whanganui Māori in the first decade of the twenty-first century. It is based primarily on the 2006 census. Then, Whanganui Māori were worse off in nearly every measurable way than their non-Māori neighbours. A people who had once owned and controlled the entire district were now a minority, outnumbered by non-Māori almost everywhere

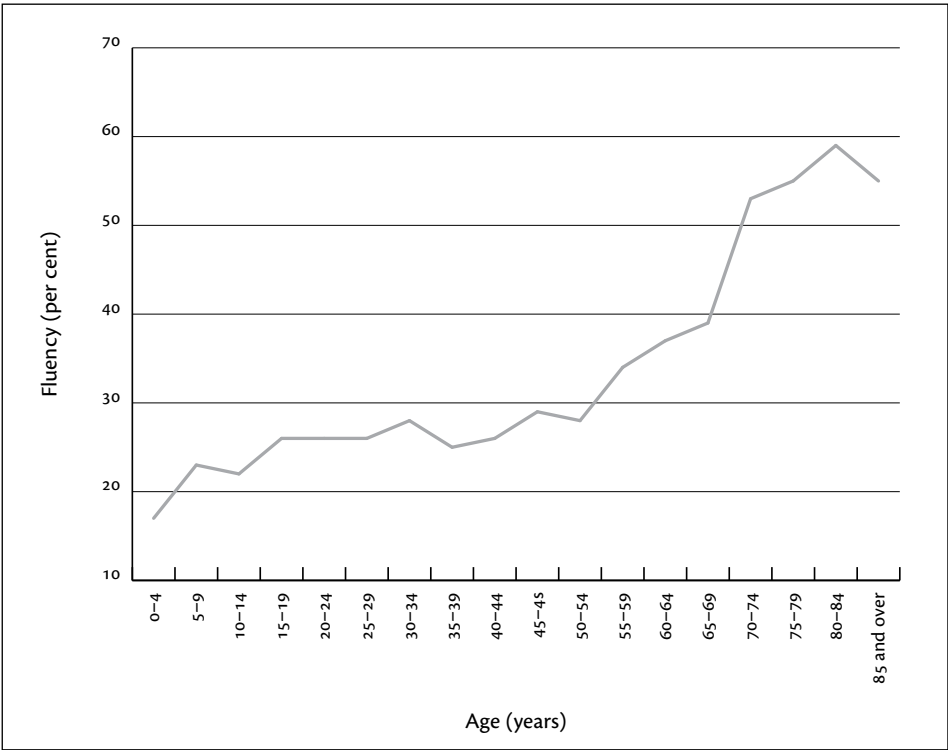
in the inquiry district, and in most cases unable to speak or understand their own ancestral language. Although newer statistics for the region – arising out of the 2013 census – were released recently, the data arrived too late for us to factor it into our assessment in a detailed way.

(a) *Culture and identity*: We noted in chapter 21 that in 2006, Māori comprised one-quarter of the population in this inquiry district. From the census data we derived the information that the iwi with the highest population resident in the district was Te Āti Haunui-ā-Pāpārangi (3,291 people), followed by Ngāti Tūwharetoa (2,106 people). The iwi with the highest percentage of its members living in our inquiry district was Ngāti Apa, of whom nearly half were resident here. Two-thirds of Te Āti Haunui-ā-Pāpārangi lived outside the inquiry district.

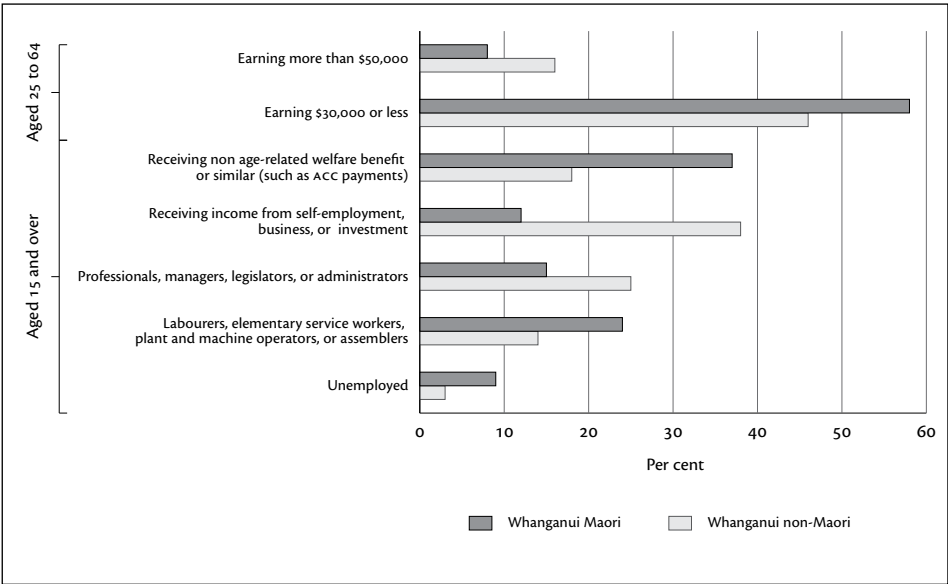
The majority of Māori cannot speak or understand te reo Māori, and many have little or no understanding of tikanga such as marae protocol. In 2006, 15.8 per cent of Māori in the inquiry district did not know their iwi. Rates of fluency in te reo were highest in older age groups, as graph 27.1 shows.⁵² A relatively high number of young Whanganui Māori were being educated in te reo Māori, and the Māori rate of fluency in te reo Māori was higher in our inquiry district than elsewhere. These are good signs, and indicate a better situation than in most other parts of the country – but not enough to return te reo to a majority language among Whanganui Māori. The risk remains that, as the older, more fluent generations pass away, they will be replaced as kaumātua by people with much lower levels of fluency.

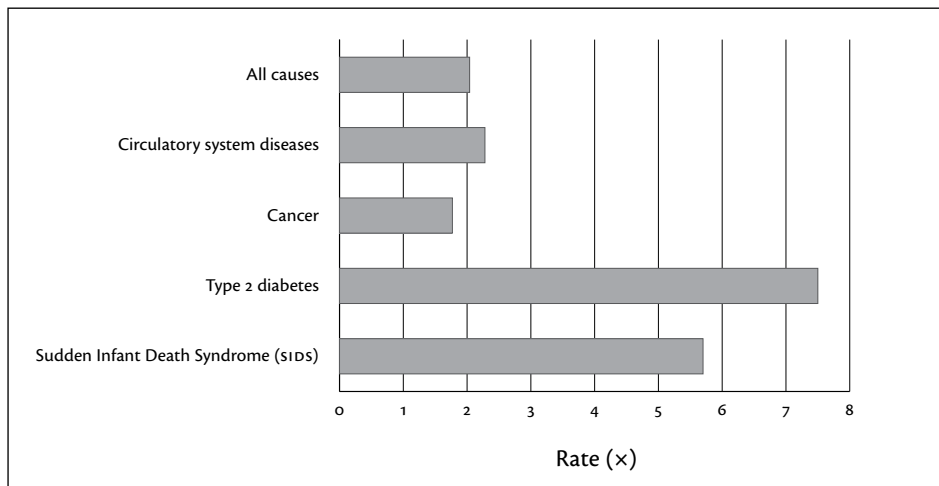
(b) *Disparities in employment*: Māori in our inquiry district were worse off than non-Māori by every socio-economic measure we looked at. In relation to income and employment, graph 27.2 shows that Māori in the Ruapehu and Whanganui districts had lower incomes, were more likely to work in low-skilled jobs, and were more likely to be unemployed than non-Māori in the same districts. Māori and non-Māori were about equally likely to be in receipt of a benefit, but most non-Māori beneficiaries were receiving a pension or superannuation, whereas Māori

Graph 27.1: Te reo fluency rates amongst Māori in Whanganui and Ruapehu districts, by age group, 2006



Graph 27.2: Employment and income related data for the Whanganui inquiry district, 2006





Graph 27.3: Māori mortality rates from selected causes as multiples of non-Māori mortality rates, 2000 to 2004

beneficiaries tended to be on non age-related benefits such as the unemployment, domestic purposes, and sickness benefits.⁵³ Whanganui Māori were therefore more likely to be on a benefit during what should have been their peak earning years, whereas non-Māori tended to receive their benefits once they reached retirement age.

(c) *Disparity in health*: National statistics show that Māori were significantly less healthy than non-Māori. We took the view that these data probably applied similarly to Māori in our inquiry district, although we received no area-specific statistics.

Graph 27.3 shows that overall age-adjusted mortality rates were twice as high for Māori than for non-Māori, and that for some diseases the difference was much higher. It is therefore not surprising that in the mid-2000s Māori men died on average nearly nine years earlier than non-Māori men, while Māori women died nearly eight years earlier than non-Māori women.⁵⁴

Researchers have argued that Māori ill health is inextricably linked with poverty and general socio-economic disadvantage. One study, *Decades of Disparity*, explored the socio-economic gap between Māori and non-Māori, which grew wider over the 1980s and 1990s. The report suggested that widening socio-economic inequalities had

in turn led to widening health inequalities. Ethnic disparities in health arise from differential access to the political, social, environmental, economic and behavioural determinants of health, resulting in differential incidence of disease.

It added that: ‘Differential incidence is then compounded by differential access to health care and differential quality of care leading to differential mortality.’ In the long term, health disparities could be reduced by ongoing efforts, outside the health sector, to reduce socio-economic inequality.⁵⁵ A sequel to the study argued that Māori were disproportionately likely to experience ill health caused in part by poor living conditions and other socio-economic problems. Socio-economic disparities accounted ‘for at least half of the ethnic disparities in mortality for working-age adults and one-third of the disparities in mortality for older adults.’ Other factors included behaviours such as smoking, diet, alcohol consumption, and lack of physical activity; psychosocial stress, including that arising from poverty, rapid social change, and racial discrimination; and poor access to health services.⁵⁶

(d) *Disparity in education*: We had some education statistics that were specific to our district, but not all were directly comparable to national statistics. They did

indicate, however, that the gaps between Māori and non-Māori achievement in our inquiry district were similar to those nationwide. Both nationally and in our inquiry district, Māori were significantly more likely to be expelled, stood down, or excluded from school.⁵⁷ The 2006 census showed that Whanganui Māori aged 15 or older were significantly less likely than non-Māori of the same age to hold school, tertiary, or trade qualifications.⁵⁸ More positively, Whanganui Māori entering primary school in 2007 had similar rates of participation in early childhood education as non-Māori.⁵⁹

(e) *Disparity in housing*: Census statistics show that Whanganui Māori had lower standards of housing than their non-Māori counterparts. Among Whanganui Māori households, 45 per cent were renting, compared to just 21 per cent of non-Māori households, and Māori renters were nearly twice as likely to have Housing New Zealand as their landlord.⁶⁰ Māori households that did own their homes were more likely to be paying off a mortgage.⁶¹ Māori also seemed to experience more crowding than non-Māori; half of Māori households of five or more people had three or fewer bedrooms, compared to just under one-third of equivalent non-Māori households.⁶² We saw no housing data that reflected housing quality. However, claimant witnesses told us that many Whanganui Māori lived in low-quality homes.⁶³ For example, Frana Chase told us about Māori in the Taumarunui area living in cold, damp houses because of poverty, and said that because they had grown up in such conditions they thought they were normal.⁶⁴ Jennifer Tamehana noted the health problems arising from lack of insulation and inability to meet heating costs.⁶⁵

In short, at the time of our hearings, Māori in this district had on average less money, worse health and housing, and lower levels of educational achievement than non-Māori.

(3) *How we assess changes in Māori well-being*

We have summarised the sweeping changes in Māori society that occurred over 175 years, and the census data just referred to gives a thumbnail sketch of present-day Māori

deprivation in socio-economic terms, relative to the rest of the population.

The poor status conveyed by the census data invites us to compare how Māori were and how Māori are in a way that makes change and harm synonymous. Is that the only or best way of analysing it, though? There are different ways of viewing the past as good, bad, or neutral, and the judgement often depends on the lens you apply to it.

We turn now to the perspective provided by a present-day leader among Whanganui Māori, who played a significant role in the Tribunal's process. Tūrama Hāwira offered to the Tribunal in the course of hearings a distinctive Māori take on Māori life, grounded both in Māori cosmology and tikanga. In his evidence to us, he reflected on how those elements functioned in the past, and how they operate today.

(a) *A Māori view*: Mr Hāwira gave us insight into the way Māori in Whanganui might understand the effects of colonisation, particularly the effects of land loss. He was offering a personal view, but we regard it as an influential one, because in this region he is seen as a tohunga, and matatau in whakapapa – although he would be too modest to make these claims for himself.

He explained the importance of 'kaupapa', which he described as the 'fundamental ideals that underlie the relationship of the Maori and whenua'. He spoke of 'kaupapa' as a set of ideals that shapes 'the Maori consciousness and provides the moral pathway for one's actions and behaviour'.⁶⁶

Acting in accordance with 'kaupapa' is to act in a way that maintains responsibilities to one's whānau, hapū, and iwi – to act consciously, deliberately, to be both 'selfless and unconditional'. This, he said, is to be in a state of being 'balanced' and 'grounded', for the word 'kaupapa' derives from 'papa', which is the earth. Land is integral to balance:

The relationship between Maori and their land is a symbiotic one. To be a landless person is to be like a tree without a root system, whereby you now become the flotsam unrestrained on the winds of adversity, without control and without purpose.⁶⁷

Mr Hāwira contrasted a ‘kaupapa’ existence with one characterised by ‘pore’, which is a state of imbalance, or being without. Pore leads to:

Pirangi – intensive desire bordering on unhealthy obsession
 Wairangi – state of confusion
 Haurangi – describing indecisiveness, stumbling, lack of focus
 Porangi – darkened mental capacity
 Wheturangi – a deep state of psychosis⁶⁸

Being in a state of ‘pore’ is one outcome from land loss, and from this flows more harm:

The state of imbalance amongst today’s generations is symptomatic of a race that has evolved from being the victim of loss through colonization to now being the perpetrator. The old counselor’s whakatauki – ‘Hurt people hurt people.’ The land base and the communal safety net required to ameliorate our plight is all but diminished.

Mr Hāwira said that there are many people who ‘have no identity and no standing in either of the two worlds’.

Mr Hāwira explained that in traditional terms, the rights of hunōnga – those who married in to a host community – depended on ‘the contribution they made to the welfare of the hapu to whom they married. Theirs was never the right to over-ride, lest they be ostracized.’ He said that any invitation of ‘marriage’ to the settlers would have meant that they would

live in the iwi house on the terms and conditions prescribed by tangata whenua. It was never an invitation for the hunonga to import their whole iwi and then usurp their hosts. The modern-day interpretation of this is ‘home invasion’.⁶⁹

He summed up:

Today we are experiencing the fall-out of colonization where there is a huge proportion of Maori who are urban-centric and caught in the vortex between the two cultures, Maori and Pakeha. They claim to neither, and have no sense of true identity. They are young and they are angry.⁷⁰

(b) *What are the relevant criteria?*: Economic data depict Māori in a poor state compared with other members of society. Mr Hāwira’s perspective on Whanganui Māori, though, did not emphasise poverty viewed in economic terms; he saw poverty in spiritual and emotional terms, connected with land loss, and leading to poor outcomes for Māori that were primarily to do with their loss of identity. This evidence reminds us that, when we look at change and the harm that can result from it, we should be looking not only at criteria that measure socio-economic factors, but at other indicators of people’s wellbeing. He observed – and other witnesses said this too – that many (particularly young) Māori suffer a sense of cultural dislocation and alienation.

Mr Hāwira reported that Māori had most sense of purpose when they were acting to fulfil a common objective. Satisfaction in traditional Māori society was surely derived by individuals from their role in the group, and the success of the group. They were communal people who together had control over their lives, and who could organise their communities to maximise their common utility, or ability to derive satisfaction. If they were asked to measure their wellbeing, what criteria would they use?

Going back to what is change and what is harm, we can see that the cultural change wrought by colonisation removed Māori from the circumstances of communal society and put them, over time, into a more atomistic western frame. Māori now live their lives within that frame – as opposed to a traditional Māori one – to some extent, although to differing degrees. The state measures Māori wellbeing, like everyone else’s, principally in terms of access to wealth and social services. We can safely say that the criteria for wellbeing that the Māori of traditional communities might have come up with – or indeed that Māori like Mr Hāwira might apply today – would not be criteria of that kind.

The claimants made submissions that sought to persuade us to find that there is a causal connection between the Crown’s historical acts and omissions and the statistical data that reveal Māori socio-economic deprivation today. The premises of this argument are that the material changes in Māori lives brought about by Crown acts were

damaging, the results can be seen in those data, and the Crown should be held responsible. That is reasonable as far as it goes – but it is our impression that the changes that were in many ways most damaging for Māori were ones that are mostly unmeasured by the census or other State information-gathering tools. (As we have seen, the census does record iwi affiliation and self-assessed competence in te reo Māori.)

The physical circumstances of Māori in times past – their health, housing, and mortality, for example – were not demonstrably better than they are today. By modern standards, they would probably be assessed as worse. But we do not believe that those circumstances are likely to have been determinative of Māori wellbeing then. That is because, first, how well off people feel is influenced most by their assessment of how well off they are relative to other people with whom they compare themselves, and generally speaking the living conditions for Māori of those times were broadly similar. Secondly, and partly as a result of our first observation, those conditions probably mattered less to their sense of wellbeing than other factors. Those factors together constituted the social and cultural circumstances of traditional Māori lives: the stability and order of the world of hapū and iwi, defined by social and genealogical links and the norms of tapu and noa; the shared ideology and belief system of the collective; their inter-dependent relationships; their shared goals – and their power to achieve them. Those were the hallmarks of their coherent and functioning communities. It is the distance from *those* circumstances of the lives that most Māori live in the present that is, we suggest, the most telling consequence of colonisation.

This leads us to conclude that, whether we apply the kinds of criteria for measuring wellbeing that are used in the census or we conceive wellbeing in terms of criteria designed to measure community and culture, the evidence presented to us, including Mr Hāwira's, suggests that today the Māori people of Whanganui in too many cases live lives in which they are not well off on either terms.

We now turn to what acts, events, and influences caused this situation, and to what extent the Crown was, and should be held, responsible.

27.4 HOW DO WE APPROACH CAUSATION?

27.4.1 Causation

What can we say about the effect that Crown acts had on the lives that Māori were able to live? Can we demonstrate a connection between those acts and adverse change in Māori lives? How strong is the connection? How strong does it need to be?

We have set up the socio-economic data of the present, and we have looked at the events and developments of the past. We saw that the Crown relied on the evidence of Professor Gary Hawke to argue that the Crown's acts and omissions were not the cause of the failure of Māori to thrive. Hawke maintained that the State had little role in directing the course of economic development; rather, it set the framework in which economic development occurred.

However, we also saw how the Crown set up a system for defining Māori interests in land that primarily suited the Crown's intentions, and then went about purchasing land in the Whanganui region in a manner that put itself at the centre of the land market and resulted in the purchase of nearly all the land. We saw how those acts had a raft of negative effects at the time when they happened. But here we are focusing on those long-term, cumulative effects. Did those Crown acts cause or influence the situation of Māori today, or not?

(1) *Focusing on our jurisdiction again*

Here we return to our jurisdiction, which is to determine whether a claim is well-founded. Because this is a district inquiry in which 83 claims are amalgamated, we are in fact looking not only at individual claims, but at claim issues raised by multiple claims. As we have said, in this chapter we are focusing on the claimants' argument, and the evidence they led in support of the argument, that the totality of the Crown's actions caused their deprivation today. In order to be persuaded of this, we must see, and understand, and conclude – on the balance of probabilities – that there is a sufficient causal link between the Crown's actions of the past and the current situation. Deciding the matter on the balance of probabilities means, His Honour Sir Owen Woodhouse said, determining whether

the connection we infer – because it cannot be absolutely demonstrated – is one that *is probable rather than merely possible*. The balance of probabilities is of course the civil standard of proof, which is considerably easier to satisfy than the criminal standard of ‘beyond reasonable doubt’. His Honour Sir Owen Woodhouse cautioned against making the balance of probabilities a more rigorous standard than it needs to be – or, we would add, than the ‘well-founded’ language of section 6 requires. Although common sense must be exercised in assessing what it means in any particular situation, that should not involve thinking about it in a way that makes it more stringent than it is.⁷¹

It is therefore our task to decide whether, on a common sense analysis, the Crown’s acts, taken together, more likely than not – or probably rather than possibly – caused an accumulation of negative effects that led ultimately to the relative socio-economic deprivation of present-day Whanganui Māori.

(2) *Different degrees of connection*

Some of the connections between Crown acts and consequences for Māori are more direct and demonstrable than others.

Some prejudicial effects were immediate and observable upon completion of the Crown’s acts. For example, when the Crown purchased Māori land that included an urupā, its act very soon changed profoundly the relationship between that community of Māori and their dead, and between those people and that significant land. The Crown’s act clearly caused those prejudicial effects.

In other situations, the connection between the act and the outcome was less direct, and less demonstrable. For example, where the Crown purchased a lot of land at low prices, and the land left in Māori hands was small in quantity and low in quality, did the Crown’s actions, taken in aggregate, limit the likelihood that Māori would be able to get into an advantageous position in the new colonial world? In terms of causation, there is of course a higher level of certainty that the Crown’s act caused the outcome in the first example than in the second. However, if we ask whether the outcome in the second example was a *probable* consequence of the Crown’s action, the answer might

still be yes – depending on the cogency of the totality of the evidence, and the extent to which counsel were able to argue persuasively that it supported their arguments about consequences and liability.

27.4.2 Crown acts, omissions, and prejudicial effects

In chapter 12, we took a particular approach to causation when we identified certain Crown misconduct from which we said we could automatically infer damage or harm without its needing to be demonstrated. That was where the Crown gained ownership of Māori land in circumstances that lacked basic elements of just and fair dealing. Each such event, we found, was *ipso facto* – that is, in and of itself – prejudicial to Māori interests. That was because, when the State rode roughshod over the basic property rights of Māori – and the property in question was land, critical to Māori identity – their whole position vis-à-vis the State was called into question in a fundamental way. The acts denied them basic respect as citizens, and violated their human rights. We found that irrespective of whether such instances also caused other kinds of harm about which we had evidence, they inevitably damaged the wairua (the spirit of someone or something) and mana (authority, influence, and prestige) of Māori people and their communities. This constituted a finding that, on the balance of probabilities, we could infer from evidence that when a particular kind of Crown act occurred, certain prejudicial effects would follow.

We wish now to identify two other categories of Crown acts that we consider on the balance of probabilities caused Māori to suffer a wide range of prejudicial effects. These categories are where the Crown committed acts designed to limit Māori ability both to function in the legal and political worlds so as to determine the course of their future and to decide on the disposition of their land. We now outline the acts that we consider fall into these categories.

(1) *Category 1*

Into the first category – Crown acts designed to limit the ability of Māori to function in the legal and political worlds so as to determine the course of their future

– we put the act of constructing political institutions that excluded Māori. The Crown created political institutions that settlers controlled, and in which there was neither Māori participation in nor approval of legislative decisions that determined how society would define and dispose of their property, and otherwise materially affect their culture.

Later, the Crown delegated power to local authorities over matters such as compulsory acquisition for public works, and control of the environment. These changes were in effect unilateral amendments of the Treaty, but they were made without Māori input or agreement, as were local authorities' decisions that affected them.

(2) *Category 2*

Into the second category – Crown acts designed to limit the ability of Māori to decide on the disposition of their land – we put these acts:

- *Creating a legal system for Māori land tenure that excluded Māori from a significant role in defining their interests or making decisions about them:* The Crown's process for defining Māori title to land denied them power to control who owned what land.

The Crown's system also created titles where individuals owned alienable interests, rather than titles that communities owned and managed.

- *Facilitating wholesale purchase of Māori land in a way that denied Māori communities the ability to control the means or rate of alienation:* The Crown purchased land from Māori, or facilitated others' purchase of land from Māori, in ways that deliberately excluded rangatira from a role in making decisions about which land they would keep and which they would give up.

The Crown purchased land interests from individuals before the court determined who actually owned the land and in what proportion.

The Crown effectively used Māori land as a public resource when it acquired, and authorised local authorities to acquire, land for scenic reserves and other public purposes through compulsion and sometimes

without compensation, in a period when most communities had already sold the land they wanted to sell.

(3) *Causation of prejudicial effects*

At the beginning of this section on the connection between the Crown's acts and prejudicial effects, we discussed our approach to causation in the case of unjust and unfair land transfers. Then, we put certain Crown acts into two further categories, which have these characteristics in common with unjust land transfers:

- they breached the Treaty;
- they concern denial of basic and fundamental rights and entitlements of Māori flowing from the Treaty, and from their status as citizens; and
- without more information about particular circumstances applying in specific cases, it is a reasonable and logical inference from such acts that negative consequences for Māori would usually result.

We now describe why and how the acts in the two categories gave rise to prejudicial effects, and the role of those cumulative prejudicial effects in present-day deprivation. We also discuss the kinds of intervening factors – that is, effects not under the Crown's control – that were also at play.

(a) *Category 1:* The Crown constructed a polity that quite consciously provided Māori no effective means of participating in decisions about law, or of making or influencing decisions about Government practices and policies, affecting their interests – and especially their land interests. Exclusion from these processes hindered, and ultimately precluded, their ability to exercise te tino rangatiratanga. Indeed, denied any significant decision-making role in the definition and control of either their property or their ability to participate politically, they were destined to inhabit a world in which others defined the very limited avenues through which they could determine how they would play a role in the new colonial world.

This was vividly illustrated in the life and work of Te Keepa Te Rangihwinui, who initially wanted to work

cooperatively with the Crown, but who became frustrated and alienated by the stubborn refusal of the Government system to afford rangatira effective control over land. He spent much time and money pursuing legal means to exercise more authority – especially, in the short term, over the pace and extent of land alienation. In the end, and through no want of knowledge, skill, or application to the kaupapa (cause), his efforts failed.

If a personage like Te Keepa was unable, despite his own concerted efforts and considerable support and assistance from others, to find ways to make the new dispensation work in the better way he advocated, the chances for most others were practically non-existent.

Frustration about exclusion from authority over their own destinies had many consequences in their own time, such as new political and religious affiliations, and resort to arms. Longer term, there are the effects of marginalisation that Tūrama Hāwira and others told us about, and also the inability to determine what happened to them and their property, which resulted in the prejudicial effects that we describe below.

(b) *Category 2:* As regards the Crown's approach to Māori land, we saw a steady commitment to the goals of defining title in ways and by means that facilitated its purchase, and then purchasing it. The Crown conducted purchases so as to provide Māori as little scope as possible to control the amount purchased, the mode of purchase, or reserves.

Right from the beginning, with the Whanganui purchase, the Crown's acts cut off options for Whanganui Māori. By cheating the interest-holders in the 89,000 acres, paying them too little, and creating reserves of 7,400 acres for a resident population of approximately 800 people, the Crown left tangata whenua with too little land for much else than residence and very small-scale agriculture.

But there was much more to come after 1866, when the Crown, having created the Native Land Court, introduced it to the Whanganui district.

The Crown pursued and largely achieved its ideology of unconstrained land purchase by pushing Māori land

titles in the direction of individualisation, which made it easier to garner Māori consent to sell. Also, philosophically, colonists and their political leaders were in favour of leading Māori in a western, individualist direction. The Crown was able to pay consistently low prices, because for most of the decades when it was fully engaged in land purchase, it completely dominated the market. It did not monitor the extent or quality of land left to Māori, nor analyse the consequences for them of selling land in this quantity, or indeed allowing private purchasers to buy it. It had no regard to the economic, psychological, spiritual, and cultural fall-out of such drastic change over a comparatively short period. In fact, and unsurprisingly, the policy of buying up as much land as possible in each block purchased left only a small proportion of the land in reserves for Māori. In our inquiry district, only 19 reserves totalling 34,151 acres were set aside in the period from 1870 to 1900 (see sections 12.7.2 and 13.7.7).⁷² Adding this to the land reserved from the Whanganui purchase (7,447.25 acres), reserves amounted to 41,598.25 acres – just 0.33 per cent of the 1.26 million acres of Māori land that the Crown purchased in the nineteenth century (see sections 7.5.3 and 12.9).

There was information along the way that confining Māori to small-scale holdings might have unexpected consequences. For example, the report of the surveyor, Cussen, described the general limitations of land in the Waimarino block when he came to survey it in 1883. He thought that, in order to be viable, most farms would need to be 1,000 acres or more, because of the poor quality of the soil.⁷³ The Crown was not in the business of gathering this kind of information but remained intent from the 1880s on its close settlement ideology. Land purchase steamed on without any sustained consideration of whether the Crown's plans for the land were viable or sustainable, or what Māori might need.

The Crown continued to purchase into the early twentieth century, when the question of Māori land retention was assuming a central position on the political stage during the 'taihoa' period. Its own commission of

inquiry, the Stout–Ngata commission, strongly advised the Government against purchasing Māori land in Whanganui on the wholesale basis that had characterised practice in the preceding decades (see section 15.3.5):

though a minority of owners can afford to sell a proportion of their interests, it will not be wise to treat the mass as having surplus lands for sale. We do not think it advisable that the present system of purchasing should be continued in this district.⁷⁴

Stout and Ngata recommended that Māori land in particular blocks in our district should be left for their owners to farm (see section 20.3.1). But the Crown disregarded the commission's well-reasoned advice, and allowed land purchase to go on apace – both its own, and that of private parties. Acquisitions by the Crown and private parties (who did the majority of the purchasing) saw Māori landholdings go from 712,000 acres at 1900, to under 400,000 acres by 1930 (see sections 12.9 and 15.5.1). This included land that was acquired by compulsion for scenic reserves and other public purposes.

One immediate and direct effect of being denied control over the disposition of their land was that Māori could not choose which land they were willing to give up. The prejudice to them was especially profound where, as we saw multiple times in this district inquiry, tangata whenua lost as a result their kāinga (places of permanent occupation), māra (cultivations), urupā (burial grounds), and other sites of cultural significance. Those events took place in the nineteenth century, but even now, in the twenty-first century, Māori feel and express resentment and grief that they no longer own such traditional areas, especially because the process by which that situation came about was one in which their ancestors had far too little authority and control.

More broadly, the consequences of the Crown's usurpation of Māori control over the disposition of their land are evident in the history of Māori farming in the district, from the late nineteenth century – when there were early

signs of promise – to the mid-twentieth century – when Māori agriculture in the region was in decline.

Māori landholdings were too small, too scattered, and of insufficient quality. Sometimes it seems the Crown consciously decided that the better land would go to settlers, at the expense of Māori land development potential. (For the history of the Kaitieke reserve, see section 20.4.3.) In order to make significant income from leasing, or to farm successfully on their own account, they would have needed properties of a size comparable to those owned by the likes of Joseph Studholme, who ran stock on multiple thousands of acres. Operations like his were profitable in the late nineteenth and early twentieth centuries even in the not-so-fertile parts of the region. Māori farms, though, were on a scale that enabled most only to farm for subsistence. To develop their land and become successful agriculturalists, Māori landowners would have needed to combine holdings, and access capital. This was complicated, with titles in multiple ownership, avenues of lending almost non-existent, and the kinds of structures that might have made it possible not well understood or fully developed. Morikau Station was the one example of a model that might have succeeded long-term. Its lessons came too late to make a difference, though, because too much of the land had by then been purchased. The later farm development schemes were universally unproductive, except to the extent of keeping some land in Māori title.

Thus, we can say that, in pursuing the course of action that it did in purchasing and facilitating the purchase of Māori land in the nineteenth century, and by continuing to purchase it into the twentieth century, the Crown considerably lessened the potential for Māori to become part of the mainstream economy, and prosper. We know that other factors were also at play, and we must take account of the totality when we assess Crown liability.

(c) *Relationship to socio-economic conditions*: When we say that the Crown lessened the potential for Māori to participate in the economy and prosper, we cannot be precise

about exactly how, or to what extent. Similarly, we can say that if the Crown had done some things differently, and Māori had prospered more, they would in all likelihood feature differently in socio-economic data today. Again, it is impossible to be definitive about exactly how, or to what extent.

The critical period was, we think, the late nineteenth and early twentieth centuries. That was when the Crown's ongoing purchase of Māori land foreclosed on the possibility of Whanganui Māori setting up the kinds of large-scale, cooperative enterprises that, given their mainly poor quality land and difficult titles, might still have succeeded. If those kinds of enterprises had taken off at that time, when the Māori population was expanding, Māori families would have had more and probably better jobs on their own land, and more income from the farming operations. This was a period when the Crown provided minimal assistance with health, education, and housing, and when wage labour in the district was low paid and often seasonal.

What kind of effect would increased prosperity have had on communities, in the generation before the economy began to transform, before farms began to falter, and before the pull of better employment, housing, health, and education came to have its considerable effect? That alternative reality is one about which we can only speculate. Looking at what did happen, though, it is not difficult to see that the Crown's acts very palpably limited the potential for Māori prosperity through agriculture. The Crown argued that land was not necessarily the basis for prosperity, but at that time, agriculture did generate most wealth in New Zealand outside the cities. Especially in an essentially rural area like our inquiry district, where the Māori populace did not have available to it the means to become educated much beyond primary school level, it is difficult to see that there were many other avenues for economic success.

(d) *Intervening factors*: There were other things going on during the nineteenth and twentieth centuries that also

prejudicially affected Māori, and in some of these the Crown played no significant part.

Chief among them was infectious disease, which decimated the Māori population of this inquiry district over the latter part of the nineteenth century. In those days, there was little that even the most attentive Crown could have done to reduce the effects of this scourge, which was undoubtedly traumatic in the lives of Māori who lived then. For decades, they were encumbered by the knowledge – surely almost overwhelming at times – that they were inexplicably susceptible to illnesses like measles, tuberculosis, typhoid, and the rest; that they were powerless to do anything about it; and that in any wave of infection many of them would die. The grief alone must have been disabling for significant periods, never mind the reduction in human resources that would have burdened the survivors for at least a generation. The effect of this phenomenon on Māori prosperity, and on their potential to prosper, must have been considerable.

Another factor, the prevalence and effect of which is difficult to quantify, is culture shock. As long ago as 1974, A Cesar Garza-Guerrero identified in 'Culture Shock: Its Mourning and the Vicissitudes of Identity'⁷⁵ a condition said to be triggered by violent removal from a known environment, and subsequent exposure to a relatively unpredictable, strange new one. Mourning ensues for massive loss of loved objects, abandoned culture, and concomitant threats to the individual's identity. He described the stages of culture shock, from initial mourning and identity threats to final transformations and reintegration of identity. How long this process takes, and how successful the reintegration, varies.

The effect of culture shock on Māori individuals (and, by extension, their communities) as a result of colonisation is a largely unexplored area as far as we can tell, but we think it unlikely that the generations first colonised were unaffected by it. In one sense, it is a factor intimately connected with the Crown, because the Crown was responsible for the formal process of colonisation. But the change that arrived with newcomers to Aotearoa would

inevitably have had some kind of significant psychological impact, whoever they were, simply because of the scale of the change. Māori moved in only a few years from a life where everything was cast in terms of tapu (sacred, restricted) and noa (free from tapu), where all was certain and known, and nothing much changed from one decade to the next, to the enormous upheaval of newcomers from a foreign culture bringing new language and religion, land sales, armed conflict, the Native Land Court processes, and disease, and must surely have taken a psychological toll. We think Tūrama Hāwira's evidence depicts Māori as people who have suffered impacts that are not dissimilar to the effects of culture shock.

We do not know how many did experience culture shock, of course, nor how it manifested in their behaviour, nor how long it lasted. We think, though, that it is likely to have been a factor in the nineteenth century at least. Perhaps it might also have re-emerged in the twentieth century, in the lives of those who moved from rural Māori communities to the cities. Again, we can only speculate.

Another factor that affected Whanganui Māori and their communities was urbanisation. Māori communities far from town struggled – and continue to struggle – to remain viable. Those who moved to a life in town had to deal with the loss of Māori social and cultural norms in the new environment. Although the Crown's acts and policies influenced what we identify as 'push and pull' factors, in this period urbanisation was a world-wide phenomenon, and New Zealanders – and especially Māori – were part of that movement.

These are some of the myriad circumstances of life that would have influenced outcomes for Māori and that were not specifically related to Crown policies or practices. We take such factors into account when we try to assess causation, and when we move to consider Crown liability.

(4) Conclusion on causation

Considering the totality of the evidence about the numerous Crown acts in the categories we have described, we can infer that the Crown limited the potential for Māori to prosper along with the rest of the society. The Crown's

various acts happened at different times, and we can be satisfied on the balance of probabilities that Māori experienced prejudicial effects at those points in time. The critical question that we address in this chapter is whether those many effects that we can trace through history worked together and led, more probably than possibly, to the situation of relative deprivation that Māori experience in the present. This involves drawing an inference from all that we know, and being satisfied that it is, more probably than not, a correct inference. We must also put into the balance the other factors over which the Crown exercised no control. There is no doubt that they too had a role to play. We must be satisfied that it was the accumulation of the Crown's acts that was most influential on the adverse outcomes for Māori.

We do not pretend that it is an easy task in this situation to draw an inference about which we can be confident that it is more probably than not a correct inference. There is much in the mix. Our state of knowledge is by no means perfect. However, by a fine margin we have come to the view that, taking everything into account, it is possible to infer from the Crown's many acts and omissions over time, some of which had effects on tangata whenua that were so devastating and disabling at the time when they happened that it was inevitably difficult for them to recover, that their effects then and in aggregate more probably than possibly led to the situation of disadvantage in which many Whanganui Māori live today.

27.5 HOW DO WE APPROACH LIABILITY?

The Treaty of Waitangi Act 1975 provides no assistance with measuring when or whether the Crown's liability for the consequences of its breaches of the Treaty has limits.

When we say 'liability' we are not of course talking about the kind of legal liability that results from breaches of tort law, or breaches of contract. Defendants in court are liable for damages or compensation in tort or contract law if the plaintiff wins, but in this forum successful claimants elicit from the Tribunal *recommendations* to the Crown to do something about their situation. We

therefore use ‘liability’ as a catch-all, simply to convey that the Crown is culpable, answerable, and responsible for its acts that breached the Treaty.

Is the Crown liable for all its acts and omissions that breached the principles of the Treaty and which we find, on the balance of probabilities, caused prejudicial effects to Māori? We have addressed how factors other than the Crown’s acts and omissions shaped Māori lives to a greater or lesser extent. We take those into account in the balance of probabilities: on the totality of the evidence, and on the balance of probabilities, did the Crown cause the prejudicial effects? If the answer is yes, is the Crown always liable? Does the answer change if particular consequences were not predicted or predictable? Is it enough that general consequences could have been, or were foreseen or foreseeable?

As the legislation does not address the question, how should we think about for what prejudicial effects the Crown is liable? We turn now to consider some models of liability.

27.5.1 Models of liability

(1) *Strict liability*

Strict liability, also sometimes called absolute liability, is legal responsibility for damages or injury without the need to demonstrate proof of carelessness or fault. Strict liability developed in the late nineteenth century in cases involving hazardous activity such as possession and use of explosives, wild animals, poisonous snakes, or assault weapons. The idea was that their inherent danger made the owner or user automatically liable for harm or damage regardless of intention. Strict liability discourages reckless behaviour and needless loss by forcing potential defendants to take every possible precaution. It also has the effect of simplifying and expediting court decisions in such cases. This kind of liability is more likely to be imposed where the risk inherent in the dangerous activity or product is not balanced by value to the community.

Contemplating whether this kind of liability is applicable to the Crown’s acts and omissions in the colonial context, there is a sense that it is probably *too* absolute. It is

intended for a particular category of human activity that is abnormally dangerous, carrying a substantial risk to others’ property and safety, where lives are automatically threatened, and injurious outcomes are so predictable as to be almost inevitable.

(2) *Liability in negligence cases*

A more helpful field to explore may be negligence, a branch of tort law that applies to human activity that is not inherently hazardous, but where harm *may* result if the actor is not sufficiently careful. The question there, when determining the liability of the actor, is whether the harm that resulted was reasonably foreseeable. In our context, this would involve asking whether the outcomes of its actions were outcomes the Crown could reasonably have foreseen. This is perhaps an articulation in a legal context of the primary historical maxim of judging actions by the standards and knowledge of the times, and not presuming the knowledge that comes from hindsight.

27.5.2 What was predictable and foreseeable?

A background circumstance that underlies our assessment of Crown liability is that although particular consequences of its acts were not foreseeable – such as the land in the Whanganui purchase comprising the best land in the district, which left to Māori mostly inferior land elsewhere – the potential for the outcome of colonisation to be overwhelmingly negative for indigenous peoples was well understood.

(1) *Normanby’s instructions*

Normanby’s instructions to Hobson in 1839 captured what was known then about the likely downstream effects of Britain’s decision to colonise New Zealand. The instructions read:

There is probably no part of the earth [he was speaking of Australia and New Zealand] in which colonization could be effected with a greater or surer prospect of national advantage.

On the other hand, the Ministers of the Crown have been restrained by still higher motives from engaging in such an

enterprise [because] the increase of national wealth and power promised by the acquisition of New Zealand would be a most inadequate compensation for the injury which must be inflicted on this Kingdom itself by embarking in a measure essentially unjust, and but too certainly fraught with calamity to a numerous and inoffensive people, whose title to the soil and to the sovereignty of New Zealand is indisputable, and has been solemnly recognised by the British Government. We retain these opinions in unimpaired force, and though circumstances entirely beyond our control have at length compelled us to alter our course, I do not scruple to avow that we depart from it with extreme reluctance.⁷⁶

The circumstances to which he referred were that the New Zealand Company had already set out to effect colonisation, and would proceed without the involvement of the British Government if left to its own devices. This was unthinkable:

The spirit of adventure having been effectually roused, it can be no longer doubted that an extensive settlement of British subjects will be rapidly established in New Zealand, and that unless protected and restrained by necessary laws and institutions, they will repeat unchecked in that quarter of the globe the same process of war and spoliation under which uncivilised tribes have almost invariably disappeared, as often as they have been brought into the immediate vicinity of emigrants from the nations of Christendom.⁷⁷

The instructions set out the action that would be taken:

To mitigate, and, if possible, to avert these disasters, and to rescue the emigrants themselves from the evils of a lawless state of society, it has been resolved to adopt the most effective measures for establishing amongst them [that is, among the lawless emigrants intent upon coming to New Zealand] a settled form of civil government.⁷⁸

This was what Hobson was instructed to achieve.

Normanby's prediction – that colonisation would be 'fraught with calamity' – was informed by results in other colonies around the world. The 1836 report of the

parliamentary select committee on the 'aboriginal tribes' specifically addressed this topic, and Normanby referred to it in his instructions to Hobson.

Although these passages of the instructions were crafted to amplify the story that Britain had arrived at its decision to colonise New Zealand with great reluctance, they also reveal that the Crown knew that colonisation would probably result in significant injuries to Māori with or without Crown involvement, that the undertakings set out in the Treaty were intended to mitigate that harm, but that, inevitably, irrevocable change was on the way for te iwi Māori.

(2) *Standard of care*

In this context, we can usefully take further the analogy with negligence law. The foundation of liability for negligence is the knowledge that the act or omission involves danger to another. Negligence presupposes a duty of taking care and the duty of taking care presupposes knowledge or its equivalent. When a person has no reason to suspect a danger, she or he is not required to look for it. The foreseeability of harm is a prerequisite for the recovery of damages.

What the Normanby instructions do is to establish plainly that, as far as potential harm to Māori was concerned, the general danger was well anticipated. The Crown was on notice that, unless it was very careful, many deleterious effects could, and very likely would, ensue. The Treaty, which Hobson and others drafted in the light of Normanby's words, might thus be viewed as a statement of the kind of care that the Crown would need to take in order to avoid them.

(3) *The Treaty and the Crown's obligations*

Because the British offered a Treaty to Māori, they proceeded on the understanding that they needed to obtain the consent of the Māori people in order for the Crown to be established as the sovereign authority in New Zealand. It was thus vital, as they saw it, that the document had legal effect. As we explored in chapter 4, the Crown did in due course acquire sovereignty, but not immediately, nor as a direct result of the Treaty.

Normanby's instructions outlined to Hobson a layer of objectives in addition to what would be required to obtaining the agreement of Māori to cede their sovereignty. They may be characterised as the humanitarian objectives of the Treaty. Implicit in the various guarantees – of *te tino rangatiratanga* over land and valuables, and the rights of British citizens – was a duty of care. The Crown entered into the Treaty arrangements against a backdrop of knowledge about negative outcomes it was to try and avoid. In order to do that, it would be necessary to go about the business of colonisation in a manner that took seriously, and did not read down, the Treaty guarantees. As we observed in chapter 4, this would at least involve negotiating sound purchases with knowledgeable owners, in accordance with the standards of British law. The instructions did not specify a proportion of land that Māori should retain, but the figure applied in the first New Zealand Company transaction was one-tenth. Stanley later confirmed this proportion, endorsed the terms of colonisation set out in Normanby's instructions, and instructed Governor Grey to uphold the Treaty of Waitangi in the Crown's interactions with Māori.

If the Crown did not conduct itself in these careful ways, the foreseeable harm would probably ensue, and the Crown would be liable.

27.5.3 Conclusions on Crown liability

Our jurisdiction is statutory, and our ability to find the Crown responsible for acts and omissions derives entirely from the Treaty of Waitangi Act 1975. That Act seems to contemplate the Crown's being found liable for all the consequences of its acts and omissions that breached the principles of the Treaty and which we find, on the balance of probability, caused prejudicial effects to Māori. The Crown is liable whether or not the outcomes of its conduct were predicted or predictable.

Moreover, we are satisfied that, in general terms, the potential harm that could flow from the Crown's conduct as coloniser was understood and anticipated, and the obligations that it undertook in the Treaty were in part intended to manage that risk. We saw how the Crown later departed from the view that it needed to manage the risks

of colonisation for Māori – perhaps most notably in the area of purchasing their land, where Normanby's specific warnings about what not to do were relegated to oblivion. Now, the Crown proceeded as if the potential for harm no longer mattered; was perhaps inevitable; or did not need to be considered because other things (like the economic growth of the colony) were more important. The Crown was not entitled to change the basis on which colonisation could legitimately proceed. That it did so is undeniable – but not with impunity. The broad-ranging scope in the Act to find the Crown responsible for the consequences of its acts or omissions without limiting factors like intention or foreseeability, perhaps reflects that fact.

In the case of the Crown's conduct in the Whanganui purchase, it was apparent that the Crown's deceptive behaviour would have immediate negative effects. At minimum, *tangata whenua* would lose ownership of much more land than they intended and would be paid as if they had sold only half as much. The Crown was indifferent to those negative consequences for Māori. In fact, though, there were much more far-reaching and longer-term consequences that the Crown could not then foresee. As we have explained, these were to do with the Whanganui purchase area being among the few parts of the district ideally suited to agriculture, and the prejudicial effect for Māori of forgoing the ability to live on and develop those areas from a very early stage in colonisation. The Crown's conduct lacked good faith and is therefore assessed at the higher end of grievousness. There is every reason to find the Crown liable for *all* the negative consequences of its acts, whether or not they were foreseen or foreseeable at the time.

While the Act provides no basis for limiting the Crown's liability for the consequences of acts it did not intend, or did not foresee, intention and foreseeability can be factors in increasing the Crown's culpability.

Generally speaking, the most egregious breaches of the Treaty will be ones where the Crown knew or ought to have known that what it did breached the Treaty; that its act was very likely to have a deleterious effect on Māori; but it went ahead anyway.

In cases where the Crown *intended* harm for Māori

– an example might be the raupatu or land confiscations of the 1860s that the Crown carried out in other parts of the country – that would be the worst kind of scenario, in which the Crown's liability would be greatest.

There is no doubt that, in this inquiry district, the Crown's acts and omissions caused Māori to be prejudicially affected in many ways and at many points of time over the 175 years since the Treaty was signed. The Crown is now liable to remedy that harm. In the next chapter, we set out both our findings and specific and general recommendations. We hope that, together, these will set the parties on the path to implementing ways and means to alleviate the deprivation that Māori in Whanganui continue to experience.

27.6 CONCLUSION

Our primary focus in this chapter has been to establish whether, as the claimants alleged, the Crown caused the socio-economic conditions that Whanganui Māori experience currently, through acts and omissions we found inconsistent with Treaty principles. It is by a fine margin that we have decided that, to the extent that they relied on this argument, the claims were well founded.

27.6.1 The factors that influenced our decision

It is important that we now explain what influenced our decision.

(1) *The standard of proof*

The standard of proof is the balance of probabilities. We do not make this a more stringent standard than it needs to be. Applying it to the present circumstances, it is our task to decide whether, on a commonsense analysis, the Crown's acts, taken together, more likely than not – or probably rather than possibly – caused an accumulation of negative effects that led ultimately to the relative deprivation of present-day Whanganui Māori. We decided that the evidence met this threshold. However, we refer to our conclusion on causation, where we said that it was no easy task on the evidence before us to draw an inference about which we can be confident that it is more probably than

not a correct inference. There is much in the mix, including factors beyond the Crown's influence, and our state of knowledge is not perfect. Nevertheless, we concluded that, taking everything into account and applying our knowledge, experience, and judgement, we *could* infer from the Crown's many acts and omissions over time that their prejudicial effects, when they happened and cumulatively, more probably than possibly contributed to the economic and social marginalisation of Whanganui Māori in a way that led to the situation of disadvantage and deprivation in which many of them live today.

(2) *The nature of the Crown's acts*

The Crown's acts in the two categories we identified as being most relevant to the argument before us were sweeping and damaging: they shut Māori out of political power and made it impossible for them to decide on the disposition of their land. In large part, they took Māori futures out of Māori hands. What makes this worse is that the Crown adopted its course of action by abandoning the duty of care it assumed and, we think, expressed in the Treaty of Waitangi, particularly in the area of land transactions.

Of the acts contained in the categories, those that most critically limited Māori access to prosperity were the Crown's excessive purchase of Māori land, and the land titles that the Crown created for Māori, which were essentially unfit for purpose. These operated to make it extremely unlikely, by the beginning of the twentieth century, that Māori could succeed agriculturally in Whanganui at a time when agricultural wealth was more or less all that was available to them. We are satisfied that it was this Crown-created scenario that, more probably than not, contributed to the economic and social marginalisation of Whanganui Māori in a way that led to their position of relative disadvantage today. We do not limit the disadvantage to socio-economic factors either. As we have explained, we include cultural deprivation.

(3) *The Waitangi Tribunal is unique*

The Waitangi Tribunal is not a court; it is a commission of inquiry. Its job is to engage in an inquisitorial process

to ‘ascertain the truth of what happened in any particular matter before it’.⁷⁹ To do so, it must determine on the balance of probabilities whether, in each such matter, ‘the relevant and suggested inference is more probable than not’.⁸⁰ Our findings and recommendations are not binding on the Crown, but reflect the view of an expert group convened to engage in a large-scale, complex exercise of evidence-gathering and judgement involving multiple parties, claims, and issues. Our jurisdiction is highly unusual, because it requires us to assess evidence of events that took place over a period of 175 years. Inevitably, our assessments will include impression and judgement, because a complete picture will never be possible. This is a very different situation from a court’s, where the law limits the age of the cases before it, and evidence relates to relatively recent events.

Another feature, as we have mentioned, is that its approach to redress is restorative: its recommendations to the Crown focus on putting claimants in a situation where their cultural, social, and economic capacity can be realised. This feature developed partly as a response to the inevitable evidential gaps in the material before the Tribunal. Recommendations for restoration have a future focus, and provide flexibility. To respond to them, the Crown does not need to be in a position of full knowledge about the historical past such as would be necessary if redress were in terms of a compensation model. The Tribunal’s adaptation of the usual approach to redress reflects the reality of its role and jurisdiction: its focus on a time period of 175 years means that it can never have perfect knowledge, and it shapes its processes and practices accordingly.

27.6.2 Finding and recommendation

It was in the light of *all* these considerations that we decided that the claimants’ case met the necessary standard of proof. They argued, though, that while the exact connections between the Crown’s actions and particular outcomes can be difficult to trace, ‘when various Crown policies and practices are viewed collectively, their impact . . . becomes clear’.⁸¹ After careful deliberation on this issue, we would probably differ from the claimants about

how clear it is that the Crown’s was the most significant influence on the condition of Whanganui Māori today, for there was much to put into the balance. Ultimately, though, we were satisfied that ‘the relevant and suggested inference is more probable than not’.

(1) Finding

It is therefore our finding that, applying a common sense analysis to the totality of the evidence about the Crown’s many acts and omissions over time and their prejudicial effects, and weighing also the factors over which the Crown exercised relatively little control, we can infer that more likely than not – or probably, rather than possibly – the Crown caused an accumulation of negative effects that led ultimately to the relative deprivation of present-day Whanganui Māori.

(2) Recommendation

We recommend that the Crown takes into account this significant finding when it works with claimants in settlement negotiations to craft appropriate redress, including generous compensation.

Notes

1. Submission 3.3.65(a), pp 3–4, 6–7
2. Submission 3.3.65(b), p 7, in relation to te reo Māori and Whanganuitanga
3. Submission 3.3.65(a), pp 3–4
4. Submission 3.3.137, pp 17–18; see also submission 3.3.141, p 9
5. Submission 3.3.181, pp 8–9
6. Submission 3.3.52, pp 4–5
7. Ibid, p 9
8. Ibid, pp 13, 17, 22, 24–25
9. Ibid, pp 14–15
10. Submission 3.3.181, p 9
11. Submission 3.3.137, p 4
12. Submission 3.3.52, pp 26–27; submission 3.3.137, p 18
13. Submission 3.3.133, p 1
14. Ibid
15. Submission 3.3.127, p 3
16. Submission 3.3.133, pp 18–19; doc A84 (Hawke), pp 3–4
17. Submission 3.3.127, pp 1–2, 6
18. Ibid, pp 1–2
19. Ibid, pp 11–12
20. Submission 3.3.133, p 20

21. Submission 3.3.127, p 4
22. Ibid
23. Ibid, p 5
24. Ibid, p 1
25. Ibid, pp 7–8
26. Ibid, p 1
27. Treaty of Waitangi Act 1975, s 6(1)
28. Ibid, s 6(2)
29. Ibid, s 6(3)
30. Waitangi Tribunal, *Muriwhenua Land Report* (Wellington: GP Publications, 1997), p 406
31. Waitangi Tribunal, *The Ngāti Kahu Remedies Report* (Wellington: Legislation Direct, 2013), p 74
32. *Flavell v Waitangi Tribunal* [2015] NZHC 1907 per Dobson J; *Haronga v Waitangi Tribunal (Te Ropu Whakamana i te Tiriti o Waitangi)* [2015] NZHC 1115 per Clifford J
33. Wai 84 RO1, doc c3 (Crown counsel), p 6; Waitangi Tribunal, *Turangi Township Report 1995* (Wellington: Brooker's Ltd, 1995), p 293
34. Waitangi Tribunal, *Turangi Township Report 1995*, p 293
35. Ibid
36. Wai 84 RO1, paper 2.57 (Waitangi Tribunal), p 24
37. *T v M* (1984) 2 NZFLR 462 (CA), 463–464
38. Ibid, 464
39. Wai 201 RO1, paper 2.180 (Waitangi Tribunal), p 1
40. Wai 84 RO1, paper 2.57 (Waitangi Tribunal), p 38
41. Ibid, pp 42–43
42. Waitangi Tribunal, *The Mohaka ki Ahuriri Report*, 2 vols (Wellington: Legislation Direct, 2004), vol 2, p 679
43. Waitangi Tribunal, *The Hauraki Report*, 3 vols (Wellington: Legislation Direct, 2006), vol 3, p 1230
44. Waitangi Tribunal, *The Mohaka ki Ahuriri Report*, vol 2, p 679
45. Waitangi Tribunal, *The Hauraki Report*, vol 3, p 1230
46. Waitangi Tribunal, *Tauranga Moana 1886–2006: Report on the Post-Raupatu Claims*, 2 vols (Wellington: Legislation Direct, 2010), vol 2, p 818
47. Waitangi Tribunal, *Te Tau Ihu o te Waka a Maui: Report on Northern South Island Claims*, 3 vols (Wellington: Legislation Direct, 2008), vol 2, pp 1025, 1026
48. Waitangi Tribunal, *Te Tau Ihu Report*, vol 2, pp 1027–1031
49. Waitangi Tribunal, *Tauranga Moana, 1886–2006*, vol 2, p 818
50. Document A66 (Mitchell and Innes), app 1.
51. Ibid, p 61
52. Document P3 (Statistics New Zealand), tbl 3a
53. Statistics New Zealand, 'Sources of Personal Income (Total Responses) by Ethnic Group (Grouped Total Responses), for the Census Usually Resident Population Count Aged 15 Years and Over, 2006', available via <http://nzdotstat.stats.govt.nz/>
54. Statistics New Zealand, 'New Zealand Period Life Tables: 2005–07', 10 November 2008, available at http://www.stats.govt.nz/browse_for_stats/health/life_expectancy/nzLifeTables_HOTP05-07.aspx, accessed 20 February 2014
55. Shilpi Ajwani, Tony Blakely, Bridget Robson, Martin Tobias, and Martin Bonne, *Decades of Disparity: Ethnic Mortality Trends in New Zealand, 1980–1999* (Wellington: Ministry of Health, 2003), pp 50–53
56. Jackie Fawcett, Tony Blakely, Bridget Robson, Martin Tobias, Ricci Harris, and Natalie Paki Paki, *Decades of Disparity III: Ethnic and Socioeconomic Inequalities in Mortality, New Zealand 1981–1999* (Wellington: Ministry of Health, 2006), pp xi–xii, 58–59. The fourth Disparity study (2007) updated the previous reports and indicated a possibility that inequalities in both mortality and socio-economic position may no longer be widening: see Tony Blakely, Martin Tobias, June Atkinson, Li-Chia Yeh, and Ken Huang, *Tracking Disparity: Trends in Ethnic and Socioeconomic Inequalities in Mortality, 1981–2004* (Wellington: Ministry of Health, 2007).
57. Document O5 (Sewell), app C, p 74; submission 3.3.65(a), p 93
58. Statistics New Zealand, 'Ethnic Group (Grouped Total Responses) and Highest Qualification by Sex, for the Census Usually Resident Population Count Aged 15 Years and Over, 2006', available via <http://nzdotstat.stats.govt.nz/>
59. Document O5 (Sewell), p 9, app C, p 39
60. Document P2 (Statistics New Zealand), tbl 6, 7. 'Māori households' are households with at least one resident identifying as Māori.
61. Ibid, tbl 6. This includes households in which the home was owned by a family trust.
62. Document P2 (Statistics New Zealand), tbl 9
63. Document C3 (Rātana), p 3
64. Document K5 (Chase), pp 4–6
65. Document C8 (Tamehana), p 5
66. Document B30 (Hāwira), p 36
67. Ibid, p 37
68. Ibid, pp 37–38
69. Ibid, pp 39–40
70. Ibid, p 40
71. *T v M* (1984) 2 NZFLR 462 (CA), 464
72. Six reserves were set aside for sellers from the Waimarino purchase, totalling 33,140 acres. Of the Crown's other purchases in the period, 13 reserves were set aside for Māori, totalling 1,011 acres.
73. Document A60 (Marr), p 345
74. Stout and Ngata, 'Native Lands in the Whanganui District (interim report on)', AJHR, 1907, G-1A, p 16
75. A Cesar Garza-Guerrero, 'Culture Shock: Its Mourning and the Vicissitudes of Identity', *Journal of the American Psychoanalytic Association*, vol 22, no 2 (1974), pp 408–429
76. Marquess Normanby to Captain Hobson, 14 August 1839, in Robert McNab, ed, *Historical Records of New Zealand*, 2 vols (Wellington: Government Printer, 1908–14), vol 1, p 730
77. Ibid, p 731
78. Ibid
79. Waitangi Tribunal, *Turangi Township Report 1995*, p 293
80. *T v M* (1984) 2 NZFLR 462 (CA), 463
81. Submission 3.3.65(b), p 7. This was in relation to te reo Māori and Whanganuitanga.

CHAPTER 28

FINDINGS AND RECOMMENDATIONS**28.1 INTRODUCTION**

Here, we set out in digest form the Tribunal's findings and recommendations, with relevant Crown concessions. We reproduce our findings here in summary form for ease of reference.

Not all chapters had findings. For some, there are findings but no recommendations. This depends on the subject matter. We make no findings or recommendations about events before 1840. We make findings but no specific recommendations about nineteenth and twentieth century grievances that relate to land, because the Treaty of Waitangi Act 1975 does not allow us to make recommendations about land unless it is still in Crown title. Needless to say, the greater part of the land in the inquiry district is not in Crown title. Redress for those kinds of grievances will be the subject of negotiation between claimants and Crown.

The most detailed recommendations tend to be those relating to the 'local issues', which we canvassed in three chapters of this report. The presentation to us of claims like these was encouraged by our discrete remedies process (see chapter 23 for a description of that process). Although, with one exception, these claims were not dealt with discretely as originally planned, we report on them separately, and anticipate that separate remedies will be available to the particular individuals or groups concerned.

We expect that both the larger and smaller Treaty breaches will be the subject of redress, and it is for the parties to determine its nature and extent, and their priorities. Nevertheless, should there be particular questions that require answers that we may be able to provide, we grant leave to the parties to make further application.

28.2 MATAPIHI 1: WHANGANUI – WANGANUI**28.2.1 What did this matapihi cover?**

In this matapihi we described and analysed:

- › the history of, and controversy connected with, the name of the settlement that was founded at the mouth of the Whanganui River.
- › how this settlement was originally called Petre, but became 'Wanganui' after local settlers successfully petitioned for the name to revert to what they thought was the original name of the place;
- › how, in te reo Māori, the name was 'Whanganui': 'whanga' – the Māori word for a stretch of water or harbour – and 'nui' – large or great; and

- what happened when the question was put to the New Zealand Geographic Board, which referred the matter to the Minister of Land Information.

28.2.2 Findings

We found that Whanganui is a Māori word. To the extent that it is a word used in official contexts, as a name of a place used on maps, and for the names of government or local government entities, the spelling of that word is for tangata whenua to determine, and for the Crown to ratify. The right of Māori to make decisions about Māori language and the names of places is part of the cultural property guaranteed in article 2 of the Treaty, under the rubric of te tino rangatiratanga. The Crown cannot prevent the expression of opinion and debate in the public sphere, but it should not engage in it, and should not allow it to influence how the word is spelled or used officially. Official spheres are under the purview of the Crown, and it should use its authority to uphold the right of tangata whenua to make decisions about their own language and thereby maintain its integrity. The Crown breached the Treaty principles of partnership and good government when it sanctioned a process that allowed people who were not tangata whenua of Whanganui to determine that ‘Whanganui’ and ‘Wanganui’ are equally valid spellings.

28.2.3 Recommendation

We recommend that as part of the Treaty settlement for this district, the Crown passes into law a measure that requires the official spelling of the name of the city to be consistent with the spelling of the river, the national park and the district: Whanganui.

28.3 CHAPTER 2: NGĀ WĀ O MUA: HAPŪ AND THEIR COMMUNITIES UNTIL ABOUT 1845

28.3.1 What did this chapter cover?

This chapter comprises a description of all we know and understand about the traditional tribal landscape of our inquiry district, which featured over forty different hapū and iwi.

28.3.2 Findings

We made no findings or recommendations. Our jurisdiction involves assessing only the Crown’s actions, and begins with the signing of the Treaty at Waitangi on 6 February 1840.

28.4 CHAPTER 3: THE TREATY COMES TO WHANGANUI

28.4.1 What did this chapter cover?

In this chapter, we described and analysed:

- how Henry Williams brought the Treaty to Whanganui;
- the Treaty signing at Pākaitore on 28 May 1840;
- who, among Whanganui Māori, signed; and
- Whanganui Māori understandings of the Treaty.

28.4.2 Findings

We made no findings or recommendations.

28.5 CHAPTER 4: THE MEANING AND EFFECT OF THE TREATY IN WHANGANUI

28.5.1 What did this chapter cover?

In this chapter, we described and analysed:

- the Treaty of Waitangi in relation to the statutory jurisdiction of the Waitangi Tribunal; and
- the ambiguities in the key Treaty concepts and Whanganui Māori understandings of them.

28.5.2 Findings

We made no findings or recommendations, but set out the conceptual framework of our inquiry and our report in terms of the meaning and effect of the Treaty and the relevant Treaty principles.

We concluded that, for Whanganui Māori, the Treaty was an emblem of their relationship with the incoming Pākehā population, and when they signed it they agreed to embark on that relationship. At the beginning, the Crown, too, would have seen the Treaty as describing an evolving relationship.

We also concluded that the Treaty principles most

relevant to this inquiry are those that speak to the kind of relationship that Māori properly expected to be able to enter into:

- *Partnership*: the new society would proceed on the basis of partnership between their leaders and the new arrivals;
- *Duty of good faith*: in order for partnership to work – which involved functioning in the interests of both Treaty partners – it was imperative for the Crown to deal openly and honestly with Māori leaders;
- *Reciprocity*: the exchanges fundamental to being a partner must provide advantage that is mutual, with benefits flowing in both directions;
- *Active protection*: the Crown's duty is 'not merely passive but extends to active protection of Maori people in the use of their lands and waters to the fullest extent practical';¹ and
- *Autonomy*: the iwi of Whanganui did not agree to forgo their independence and autonomy, whether through signing the Treaty or otherwise.

We also came to the view that the very minimum performance this Tribunal can require of the Crown is observance of standards that, in the years immediately following the Treaty, it would have acknowledged it ought to meet. This extends to standards of conduct that Māori were not in a position to articulate at the time. Probably the most basic and incontrovertible of these was that English legal norms and standards of fair and proper practices in land transactions would apply when dealing with Māori landowners. From this, arises the principle of:

- *Good government*: We regard as particularly important the aspect of the principle of good government that holds the Crown wholly responsible for complying with its own laws, rules, and standards, and conducting government in ways that were just and fair.

28.6 CHAPTER 5: WHANGANUI AND THE NEW ZEALAND COMPANY

28.6.1 What did this chapter cover?

In this chapter, we described and analysed:

- the process by which the New Zealand Company brought its deed to Whanganui, and the immediate consequences of the deed that was signed in May 1840;
- Land Claims Commissioner William Spain's investigation of the New Zealand Company's claim to land at Whanganui; and
- the Crown's decision to seek an arbitrated settlement of the company's claims.

28.6.2 Findings

We found that rather than upholding its guarantee in article 2 to protect Māori land ownership unless and until they wanted to sell it, the Crown substantially favoured the interests of the company and settlers.

Properly, both in terms of the Treaty and the common law, the Crown should have found the company's Whanganui purchase null and void. It was thus proceeding on an unsound footing when it moved to arbitrate an agreement between Whanganui Māori and the company.

Many Whanganui Māori believed that some kind of arrangement had been reached that allowed for the establishment of a Pākehā settlement near the mouth of the Whanganui River. This settlement was in place by the time the Crown chose to recognise the company's claim at Whanganui and sought to secure land from Māori. To this extent the Crown's approach to settling the company's claim was pragmatic.

We found that, under the rubric of the Treaty – and in terms of plain fairness – the Crown's performance was wanting in that:

- Māori were not asked if they would participate in the arbitration of the company's claim to their land. Nor were they able to represent themselves and protect their interests, nominate who had rights to which land, or set the price they wanted for their land.
- Māori were also not adequately protected or represented through the appointment as their referee George Clarke Junior, who had the irreconcilable responsibilities of protecting Māori interests and securing land for the company at a reasonable price.
- The Crown changed Spain's role from inquiring into

the validity of the company's land claims, to making the arbitration process work on the premise that the company certainly *was* entitled to land. This delivered the message to Māori that they no longer had the right to say no to the offered payment and retain their land.

Because the Crown abandoned the Whanganui land claim settlement process in 1846, it was later that the prejudicial effects of its poor process in this phase were evident.

28.7 CHAPTER 6: WAR IN WHANGANUI, 1846–48

28.7.1 What did this chapter cover?

In this chapter, we described and analysed:

- ▶ the Crown's extension of martial law to Whanganui on 18 July 1846;
- ▶ the arrest of 10 Whanganui Māori near Porirua, their trials by court martial, the execution of Te Whareaitu, and the transportation of others to a penal colony in Tasmania;
- ▶ Governor Grey's despatch of troops to Whanganui in December 1846;
- ▶ Governor Grey's decision to extend martial law to 1 May 1847;
- ▶ the court martial and execution of those responsible for the attack on the Gilfillan family in late April 1847; and
- ▶ the conflict that subsequently developed between Māori and Crown forces, after the rangatira Te Mamaku led a taua in response to the executions.

28.7.2 Findings

Conflict between some Whanganui Māori and the Crown was a direct result of the Crown's actions in the Wellington region during 1846. However, Governor Grey's initial decision to extend martial law north to Whanganui was justified, on account of the fact that he reasonably interpreted the movement of men from Whanganui to the south as a military action. In fact, the taua had a peaceful motivation, but Grey was unaware of that.

The potential threat immediately disappeared, but Grey chose to maintain martial law over Whanganui, and did so even though there were no soldiers there to enforce it.

While it is unclear what Grey intended through the maintenance of martial law, events that occurred later only heightened the tension between Māori and the Crown. The arrest of 10 Whanganui Māori, their trials by court martial, the execution of one, and the transportation of others to Tasmania, led to a taua being brought downriver to attack and plunder the settlers at Petre. No attack eventuated.

The Crown legitimately exercised its *kāwanatanga* role when it sent troops to Whanganui in December 1846 to defend the settlers at the invitation of rangatira at Pūtiki. But the Crown was at fault when it refused to extend its protection to Pūtiki Māori – the Crown's *kāwanatanga* duty extended to defending them.

Grey made the wrong decision when he decided to delay the lifting of martial law after the alarm caused by the arrival of the taua of October 1846 had subsided. The summary court martial and executions of those found guilty of the attack on the Gilfillan family was a consequence of Grey's decision not to lift martial law. Ironically, these events led to a situation that might have justified a declaration of martial law. But martial law is intended to respond to the breakdown of civil order, not cause it.

War broke out in Whanganui as a result of these executions, which incited the return of Te Mamaku and a hostile taua. The war was not especially bloody, and neither side experienced many deaths or injuries. Nevertheless, the conflict hindered the growth of respect and mutual confidence that should have characterised a developing Treaty relationship. Peace was restored in 1848, but trust was not, and this situation was perpetuated when the Crown maintained a military presence at Whanganui in the decades that followed.

We found that the Crown failed in its duty to provide good government when it

- ▶ maintained martial law over Whanganui as a threat when there were no soldiers on hand to enforce it;
- ▶ extended it when all acknowledged that there was no current state of rebellion or civil disorder, simply as a precautionary move pending the completion of the stockade;
- ▶ created the situation (by extending martial law) in

which Captain Laye was able to deal with the Gilfillans' killers by court martial; and

- executed the Gilfillan murderers without first obtaining the Governor's sanction, which the law of the day required.

We found that the declaration and maintenance of martial law constituted the unwarranted suspension of the civil rights of Māori in the district subject to martial law. The effect on them was the same regardless of whether they supported, opposed, or were indifferent to the Crown, or were at all connected with the events that led to the initial declaration. These acts were inconsistent with the Crown's duty to actively protect Māori, and also breached the principle of good government. Further, in seeking to assert Crown authority and establish substantive sovereignty over the Whanganui district through force of arms, the Crown breached the Treaty guarantee of *te tino rangatiratanga*.

The prejudicial effects on Whanganui Māori were not limited to loss of life and damage to property. They had to live in a climate of fear and suspicion the Crown created and fostered, leading to long-term rifts between settlers and Māori at Whanganui, and also between Māori. The 'rebel' (upper river) versus 'friendly' (lower river) characterisation of *tangata whenua* had its genesis in this war, as Pūtiki Māori were forced to choose between protecting Pākehā at Petre and aligning themselves with their kin.

28.8 CHAPTER 7: THE WHANGANUI PURCHASE

28.8.1 What did this chapter cover?

In this chapter, we described and analysed:

- the negotiations for the finalisation of the Whanganui purchase, after Donald McLean's return to Whanganui in May 1848;
- the signing of a deed by many Whanganui Māori, in late May 1848, by which the Crown purchased over 89,000 acres (minus reserves) for £1,000; and
- the setting out of 7,400 acres of reserves for Māori.

28.8.2 Crown concessions

The Crown made the following concession:

The Crown acknowledges that the Crown's 1848 Whanganui purchase was represented by the Crown to Whanganui Māori as the completion of Commissioner Spain's recommended award. In purchase negotiations, however, the Crown failed to inform Māori that the area they surveyed and purchased greatly exceeded Spain's 40,000 acre award. This did not meet the standard of good faith and fair dealing that found expression in the Treaty of Waitangi, and this was a breach of the Treaty of Waitangi in *[sic]* its principles.²

28.8.3 Findings

Whanganui Māori saw signing the Whanganui purchase deed as signifying their willingness to engage with Pākehā, resulting in settlement, trade and other benefits. Some understood the relationship that would ensue in terms of a marriage – Pākehā were marrying their land – and, by extension, them. The Crown, though, saw the purchase enshrined in the deed in the usual way that the English conceived sale: as the absolute transfer of property from one to another.

McLean went to some lengths to ensure that all those with interests in the land within the purchase boundaries were party to the negotiations. But he represented the purchase as the implementation of the recommendations of Commissioner Spain – the terms of sale would be £1000 for 40,000 acres; Whanganui Māori would retain a tenth of the area as reserves, plus their *pā*, *urupā*, and cultivations then in use.

McLean and the other officials must have known that the deal with Whanganui Māori was not what Spain recommended. Ultimately the only element that remained unchanged was the purchase price of one thousand pounds. The area transacted grew from 40,000 to 89,000 acres, and McLean did his best – following Governor Grey's specific instructions to this effect – to whittle down the areas to be reserved. A fair purchase price would have been at least double the one thousand pounds paid.

If McLean had implemented Spain's recommendations as regards reserves, many more *pā*, cultivations, and *urupā* would have been set aside. We estimate that the total acreage would have exceeded 10,000 acres by a considerable margin. As it was, the figure was 7,400 acres, which for

800 people was too little to allow for much more than a subsistence lifestyle.

The Whanganui purchase was not an agreement reached through open and honest negotiation. That Whanganui Māori did not complain of these iniquities was the result of the Crown's deception.

The Crown conceded before us that it breached the Treaty when it told Māori that it was implementing Spain's recommendations. We agree, and find that the tactics the Crown employed to obtain title to the Whanganui block were mostly heavy-handed, manipulative, and self-serving. The Crown accepted that it breached the Treaty, but did not specify which Treaty principles it breached. We find that its conduct amounted to a serious failure to act towards Whanganui Māori with the utmost good faith. It also acted inconsistently with the principles of partnership and active protection when it failed to:

- include in the negotiations all of those with rights and interests in the land and its resources;
- openly negotiate with Māori a fair purchase price under the changed circumstances of 1848;
- address the fact that Pūtiki Māori and others involved in the 1846 negotiations received a smaller share of the purchase price in 1848 as a result of the Crown's recognising many more vendors than it did in 1846 without increasing the purchase price; and
- allow iwi, hapū, or whānau to retain rights in the land despite their opposition to its alienation.

28.9 MATAPIHI 2: PĀKAITORE

28.9.1 What did this matapihi cover?

In this matapihi, we described and analysed:

- the background to the occupation of Pākaitore, the name Māori called the place officially known as Moutoa Gardens, for 80 days from 29 February until 18 May 1995;
- how Pākaitore started life as a fishing kāinga and a gathering place for Māori of the district;
- why Pākaitore was not reserved to Māori from the Whanganui purchase;

- the location of Pākaitore;
- the 2001 tripartite agreement between the Crown, the council, and Whanganui Māori to administer the site; and
- the 2007 Deed of on-account Settlement, through which the Crown transferred to Māori the local courthouse, which sits at one corner of the gardens.

28.9.2 Findings

Moutoa Gardens is private land, and we may not make recommendations about it. We did note in the matapihi that, at the time of our hearings, disagreement continued about whether Moutoa Gardens or Pākaitore is the better name for the reserve. We expect that this topic will be canvassed in the Treaty settlement negotiations. We trust that the parties will take into account the material contained in this matapihi to come to an arrangement that enables expression of both the history and the symbolic character of the land.

28.10 CHAPTER 8: POLITICS AND WAR IN WHANGANUI, 1848–65

28.10.1 What did this chapter cover?

In this chapter, we described and analysed:

- the emergence of Māori-initiated rūnanga and komiti in Whanganui during the 1850s;
- the Crown's introduction to Whanganui of a system for administering justice in Māori communities from the 1840s, through resident magistrates and Māori assessors;
- the expansion of the roles of resident magistrates and assessors in the 1850s;
- the emergence of the Kīngitanga in the late 1850s, and its importance to Whanganui Māori;
- Whanganui Māori involvement in the first war in Taranaki and the Kohimārama conference;
- Governor Grey's 'new institutions' and their implementation in Whanganui;
- Whanganui Māori involvement in the second Taranaki war;

- the Crown's purchase of the Waitōtara block;
- the arrival of Pai Mārire in the district and the battle at Moutoa in May 1864;
- the battle at Ōhōutahi in February 1865 and the siege of Pipiriki in July 1865; and
- labels applied to Whanganui Māori during and after conflict.

28.10.2 Findings

From 1848 to 1865, Whanganui Māori developed institutions to conduct their own affairs in a non-traditional way, and to engage with the Crown on political and legal matters. This was achieved by refining and expanding traditional modes and structures (like *rūnanga* and *hui*), and through appointing Māori judges to administer justice. Many chose to support the *Kīngitanga* movement in order to safeguard their autonomy, and engage with the Crown on matters of national importance.

At the same time, the Crown attempted to develop institutions through which Māori might be incorporated into the political and legal institutions of the colony. The Crown floated a number of schemes, but rarely sought to incorporate the strategies for self-management that Māori were working on. When it did, it was with the ultimate goal of disabling Māori authority because Māori initiatives were seen as impediments to the Crown's own goal of amalgamating Māori. Local *rūnanga* and *hui* were ignored and the authority of the *Kīngitanga* was challenged. Governor Grey abolished the initiative of annual national *hui* of *rangatira* after the *Kohimārama* conference, as he did not want Māori to develop a unified multi-regional voice, or strengthen their political collectives. Māori were consigned to engage with the Crown at a local level through Crown-designed mechanisms dominated by Crown-appointed officials. The Crown insisted that Māori should be subject to its governance at every level of authority, rather than partners in the governing endeavour.

The predominant theme of Crown–Māori relations in this period was disempowerment of Māori institutions, contrary to the guarantee of *te tino rangatiratanga*

in article 2 of the Treaty. By 1865, far from being integrated into the political and legal systems of the colony, many Whanganui Māori stood apart from them. Those who supported the *Kīngitanga* found themselves in conflict with the Crown following clashes in Taranaki and Waikato.

Other reasonable options were available to the Crown that would have been less prejudicial to Māori interests. At the local level, it could have recognised, promoted, and sanctioned the system of *rūnanga* and *hui* developed by Whanganui Māori. At the regional level, it could have respected the preference of many Whanganui Māori to be represented by the Māori King. It was their right to join the *Kīngitanga*, which was not inherently hostile to the Crown or the settler government. At a national level, the Crown could have pursued its initiative to confer annually with *rangatira*, which actually occurred only once at *Kohimārama* in 1860.

Ultimately, the Crown's refusal to accept the legitimacy of the *Kīngitanga*, and its determination to undermine its influence in Whanganui, resulted in war. This brought death, injury, and capture from fighting in which *whānau* went up against *whānau*. The Crown put communities into simplistic categories depending on whether it considered them to be for or against the Crown. It also loaded the terms 'upriver' and 'downriver' with connotations of allegiance to the Crown. Labels stigmatised groups and created divisions that endured until very recent times.

We found that the Crown:

- did not engage creatively with Whanganui Māori to understand their aspirations for self-management in the new colonial environment, and did not seek ways to work with their communities to give those aspirations expression in State-recognised institutions;
- persisted in the characterisation of Māori initiatives for self-management as an undesirable continuation of old ways that it sought to end by permitting Māori to exercise authority only through Crown structures and processes;
- refused to engage with and recognise Māori-initiated *rūnanga* and *hui*;

- did not support its own system of rūnanga as a form of Māori self governance;
- refused to recognise the legitimacy of the Kīngitanga as the political representative of those Whanganui Māori who joined the movement;
- abandoned annual meetings of rangatira like that at Kohimārama; and
- attached derogatory and/or divisive labels to groups of Whanganui Māori according to its often simplistic assessment of their allegiance.

This was the period when the Crown, having accumulated power and resources to exercise more or less unfettered authority, chose to do so without reference to the interests of Māori. In so doing, it abandoned partnership and reciprocity as defining characteristics of Crown-Māori relations. These acts and omissions of the Crown breached the Treaty guarantee of te tino rangatiratanga, and the Treaty principles of autonomy and partnership, and led both directly and indirectly to conflict and division.

28.11 CHAPTER 9: PROVIDING FOR THE FUTURE NEEDS OF MĀORI

28.11.1 What did this chapter cover?

In this chapter, we described and analysed:

- the question of ‘sufficiency’ – the exercise of ascertaining the nature and extent of the Crown’s obligation to ensure that Māori were left with enough land for their needs, not only at the time, but also for the future;
- the quality of the land in the Whanganui district;
- what can be said about sufficiency in an area like Whanganui, where much of the land is unsuited to agriculture;
- the importance of land in Māori social, cultural, and political life;
- the development of the Crown’s policies on how much land should be left in Māori ownership in the nineteenth and early twentieth centuries;
- the economic development of Whanganui Māori by the mid-1860s; and

- the Crown’s role in promoting economic development in the nineteenth century.

28.11.2 Crown concessions

The Crown believed the nineteenth century concept of sufficiency was properly explained as meaning ‘sufficient land and resources to meet [Māori] primary needs, in the sense of having a place of residence and a plot to cultivate’. The Crown accepted that it ‘has a responsibility to ensure that Māori retain sufficient land for present and future needs’; and therefore ‘a responsibility under the Treaty, at some time and regardless of the wishes of individual Maori, to intervene to prevent further alienation of Māori land’; and that this ‘implies a duty and ability to monitor or assess the level of land holdings.’³ It conceded that

the failure to monitor and assess the ongoing impact of land sales contributed to the position today where many Māori have insufficient land for their present and future needs and is a breach of the Treaty and its principles.⁴

Notwithstanding this principle, however, the Crown submitted that ‘it does not accept that Whanganui Māori are among those groups who have been left with insufficient lands for their present and future needs.’⁵

28.11.3 Findings

Because chapter 9 was in the nature of a stage-setting chapter, setting out our thinking on ‘sufficiency’ for the balance of the report, we made no findings of Treaty breach.

However, we concluded that the Crown accepted that it had to ensure that Māori were left with enough land to sustain themselves at the time, and enough also to facilitate their transition to the circumstances of the new colony. Generally, however, it was the officials on the ground who got to determine what was ‘sufficient’ for Māori purposes, and it was not long before that meant only enough land for subsistence. Later, the concern to develop policy to prevent landlessness was motivated not so much by a desire to protect the interests of Māori as to avoid a

situation where indigent Māori would become a burden on settlers.

For so long as the Crown was in the business of purchasing land on the assumption that land was needed to grow the economy and therefore the colony, it was duty bound – as a Treaty partner; because Māori were also citizens; and in the interests of good government – to conduct that business in a way that at the very least did not exclude Māori from participating in those land-related opportunities. The Crown needed to monitor how much land remained in Māori ownership, so that it could properly address the question of how much land they would need to keep so as to participate in the economic activities that were anticipated. It was not beyond the realms of possibility that the Crown might have engaged in this kind of endeavour.

In order for Māori to retain their cultural integrity, rangatira also had to have the authority to determine which ancestral lands their communities needed to retain, and which they could afford to give up. This was implicit in the guarantee in the Treaty of te tino rangatiratanga, and the emphasis on Māori having a choice as to whether and what land they would sell.

We acknowledge that if the Crown had proceeded as we have suggested it should, it would have been swimming against the colonial tide. It was a time when the settler government was empowered to exclude Māori from decision-making, and – in the wake of the New Zealand wars – the settler population had gained both numerical dominance and actual power to determine what happened in most parts of New Zealand. Nevertheless, the Crown had an obligation, when considering ways of encouraging the growth and development of the colony, to ensure that Māori could participate equally in any opportunities it was promoting. It failed to do so.

28.12 CHAPTER 10: POLITICS AND MĀORI LAND LAW, 1865–1900

28.12.1 What did this chapter cover?

In this chapter, we described and analysed:

- the development and contents of legislation establishing the Native Land Court in 1862 and 1865;
- the Crown's immigration and public works policies, and then return to land purchasing after 1869;
- 1873 reforms to the court's process and titles;
- the expansion in 1877 of the Crown's powers to purchase, and then reduction in purchasing;
- the Crown's public works and associated land policies from 1884, and subsequent reversion to free trade in 1887;
- the further expansion of the Crown's power to purchase from 1892;
- the beginnings of protest against the operations of the court and Crown purchasing, and development of Māori institutions (rūnanga and komiti); and
- the land management initiative of Te Keepa Te Rangihiwini – Kemp's Trust.

28.12.2 Crown concessions

The Crown made a significant concession on the native land legislation as it was first enacted in 1865. It accepted that the so-called '10 owner rule' failed as an attempt to provide a form of communal title, because it did not allow the community to enforce the trustee role of the 10 specified owners, and subsequent amendments were inadequate.⁶ As such, the Crown did not fulfil its duty to actively protect the interests of Māori in their land.

The Crown also noted 'the importance of previous Crown acknowledgements of Treaty breach related to the native land laws and Crown purchasing'⁷ by which the Crown accepted that it:⁸

- did not protect traditional tribal structures by providing communal governance mechanisms before 1894;
- enabled individuals to deal with land without reference to iwi and hapū, making it more susceptible to partition, fragmentation, and alienation, and contributing to the erosion of tribal structures;
- enabled legislation that made the Crown a privileged purchaser, a position that imposed on it significant Treaty obligations of good faith and fair dealing;
- sometimes purchased interests in Māori land using a

combination of aggressive techniques that included the unreasonable and unfair use of monopoly power and advance payments;

- ▶ failed to ensure particular groups retained sufficient land for present and future generations; and, in particular:
 - did not monitor and assess the ongoing impact of land alienation;
 - did not instigate and follow clear procedures to identify and exclude lands to be retained; and
 - did not provide adequate reserves and ensure sufficient protection from alienation for the few reserves that were provided.

Although the Crown acknowledged that the Native Land Court system had ‘significant flaws’, it submitted that ‘the whole system as such, and the Native Land Court as an institution, should not be condemned as breaches of the Treaty’.⁹

28.12.3 Findings

The Treaty conferred upon the Crown the right to exercise *kāwanatanga*, from which the Crown assumed power to legislate for dealings in Māori customary land in the early years of the colony. At the same time, the Treaty conferred upon Māori full rights of land ownership, which included the right to keep their land until they wished to sell it. This meant that, when the Crown came to devise how to determine ownership of customary land for the purpose of creating titles, in order to comply with the Treaty it would need to talk with Māori first, and obtain from them some form of consent to any proposed scheme.

(1) *Māori input into the title system*

When the Crown came to introduce and then almost immediately revise a comprehensive new system for Māori land that established an independent court to determine titles that could be traded on the free market, it did not seek Māori input or agreement. In the main, successive governments saw no need to put proposed policy changes to Māori for their consideration: the only condition on their exercise of power was parliamentary

support. The main exception – Ballance’s consultation on the Native Land Administration Act 1886 – did not alter colonial politicians’ general view that they did not require Māori support for legislation affecting their land.

The Government disregarded *rangatira* and did not involve them in critical decisions affecting Māori futures, which was disempowering. Engagement between the Crown and Māori was channelled into unconnected interactions about land. Those involved in the *rūnanga* and *komiti* might have had informal influence locally, but they were really always on the sidelines, because politicians concentrated on the Crown’s overall agenda for the country. The only way for Māori to be involved in the legislative process was through the Māori members of Parliament, but these were few, and their influence small. It was not until the end of the century that Māori, frustrated by their exclusion, began to voice more collective opposition through *Te Kotahitanga*.

The most coherent opposition locally was Kemp’s Trust. It sought to work within the system rather than go up against it, but it was rejected by the Government – primarily on the grounds that legislation did not provide for it.

The Crown acquired *de facto* sovereignty in the Whanganui district through use of legislation, which enabled systems that were implemented later on the ground. At no point can it be said that Whanganui Māori stopped trying to deter the Crown from exercising this authority in their territories. Protest was ongoing, because the Crown assumed control without properly accommodating the fundamental entitlement of Māori to decide how their land rights would be brought into the legal framework. This was a breach of article 2 – *te tino rangatiratanga*, and the principles of partnership and active protection.

Having been so thoroughly excluded from deciding how their land interests would be recognised, it was unsurprising that Māori did not like the system imposed on them. Māori everywhere, and particularly in Whanganui, opposed the new system on two grounds: the court did not include provision for Māori communal

decision-making in the titles that were issued; and the form of these titles did not enable communal decision-making about the future disposition of land.

(2) *The court's processes*

The court – from the 1865 Act onwards – disabled Māori communal decision making. Right through the period, individual Māori could initiate court proceedings, which meant other interest-holders (both from their own hapū and iwi and from others) had to join in to secure rights. Hapū and iwi could not influence when and how their land would come before the court. And when the court sat, leaders were limited to presenting claims to ownership: Māori participated in formal decision-making only as assessors, who assisted judges presiding in districts outside their own rohe. This was a circumscribed role, and reserved for a select few.

Hapū and iwi were left to exert their collective influence beyond the formal proceedings. Outside of court, they settled boundary disputes, formulated lists of owners, and determined relative interests, in an effort to control what the court was doing, and to lessen the likelihood of its determining their respective interests incorrectly. Māori who advocated alternatives envisaged a system in which they could adjudicate title themselves.

Excluding Māori from the formal aspects of the court's process was a more serious flaw of the system because there was no right of appeal from the court's decisions before 1894. Theoretically, rehearings were available, but in practice the decision to grant them was highly discretionary, and occurred rarely. The fact that it took the Crown three decades from the time the Native Land Court was established – and the better part of two decades from the time the Native Affairs Committee first highlighted the anomaly – to enable appeals as of right, was contrary to its duty to actively protect Māori interests. It was also contrary to its obligation (partly stemming from its undertakings in article 3 of the Treaty) to enable Māori to seek reasonable redress for grievances.

Whanganui Māori rights in land ought to have been determined by their tribal leadership, even if within the

framework of new institutions. The Treaty led them to expect no less, given article 2's confirmation of te tino rangatiratanga combined with guaranteed ownership until they wanted to sell. But the Crown set in place an entirely different system where leaders had no formal role. This breached the principles of partnership and active protection.

(3) *The form of title*

At no point did Māori seek or support land titles that favoured the right of the individual over the collective. It is generally accepted that Māori wanted a form of title that was recognisable at law, and we infer from their reaction to the kind of title that the Crown delivered to them that they were looking for something quite different from that. What would probably have worked was a compromise between existing forms of customary rights to land and resources, which were carefully balanced and distributed within and between hapū and iwi, and legal guarantee of exclusive ownership. Title that granted primary ownership to individuals, though, was not that compromise.

Other Tribunals have condemned the ten-owner rule established under the 1865 Act, which disenfranchised customary owners in many districts. However, as only a small fraction of the land in this inquiry district came before the court when that Act was in force, it was the memorial of ownership introduced in 1873 that was to affect Whanganui Māori landowners most.

Memorials of ownership did at least identify all individuals with interests as owners, but it also allowed those individuals to sell their interests without reference to other owners. There was as usual no provision for collective action, and once individuals sold interests, partitioning them out was costly. In fact, memorials of ownership provided a form of title that was useful primarily for the purpose of selling.

Māori in Whanganui, as elsewhere, considered that their land ought to be managed collectively. Kemp's Trust was an attempt to work within the existing system, holding land in trust so as to direct the pace of settlement.

The kind of title that the 1873 Act ushered in ran entirely

counter to Māori preferences, and breached the Crown's obligations in article 2.

(4) Crown motives

Broadly, the land tenure system that the Crown introduced and developed was intended to advance the economic position of the colony and consolidate its own authority. The court originated from colonial politicians' view that, before land could be safely transacted, it would be necessary to arrive at a sound means of identifying its owners.

This could have involved conferring on tribal groups a legal personality that would enable them to be recognised as corporate landowners. But giving tribes new authority was not the direction in which colonial opinion was heading. The titles that the court produced proved an awkward halfway house between collective and individual title, but they were a step on the way to disabling tribal institutions and progressing Māori towards individualism as early as possible. At no point did those in power see a need to take account of Māori views in any substantive way: to do so would be a concession to Māori authority, which colonial politicians were seeking to erode.

It was not just that the court's process and the titles it issued were intended to enable the transfer of Māori land. In many ways more startling was how the Crown positioned itself at the centre of the land market at several critical points. Legislation enabled it to exclude private parties so as to operate from a near-monopoly position to buy up the land interests of individual owners with scattered interests. The motivation here was to ensure swift passage for its policies of infrastructure development and increased immigration; protecting Māori in their land-holdings did not feature on the policy agenda. Some ministries pulled back the level of Crown intervention, but the overwhelming trend during the period was towards more, against a founding principle that the court would enable a free market in land. The combination put the Crown in a powerful position to choose when and how it acquired land from Māori.

We acknowledge that this path mirrored trends

occurring elsewhere in the world at the time: tenure reform was not unique to colonial New Zealand. Nevertheless, the Crown assumed its authority to govern here from a founding agreement that acknowledged Māori rights to land. In that the Crown established a system in which Māori had no influence on how their customary rights would be brought into the legal system, it breached the principles of partnership, autonomy, and active protection. In that the Crown did so to advance its own position, the Crown breached the principle of good government.

28.13 CHAPTER 11: THE OPERATION OF THE NATIVE LAND COURT IN THE WHANGANUI DISTRICT, 1866–1900

28.13.1 What did this chapter cover?

In this chapter, we described and analysed:

- ▶ the operation of the Native Land Court in Whanganui between 1866 and 1900, when the court investigated and determined title to 1,820,466 acres – 84 per cent of the inquiry district;
- ▶ how land was brought before the court for title investigation;
- ▶ the extent of Māori involvement in the court's general operations and in its deliberative process;
- ▶ the avenues available to Māori for seeking redress for the decisions of the court that they considered were in error;
- ▶ the costs involved in taking land through the court; and
- ▶ the extent of land fractionation.

28.13.2 Crown concessions

The Crown's concessions set out in relation to chapter 10 also applied to material covered in this chapter.

28.13.3 Findings

(1) Engagement with the court

Like other Tribunals before us, we were presented with the paradox of heavy Māori use of the Native Land Court often by the same people who called for its reform or even

abolition. Māori wanted legally recognised title to their land, and the Native Land Court was their only option. One to three individuals could apply for title, and there was no requirement to secure community sanction.

We saw how difficult it was for Māori in Whanganui to stay out of the Native Land Court, even when they deliberately boycotted it. Confronted with the reality that land would be awarded to others if they remained absent, they nearly always returned to the court eventually. This was de facto compulsion. The Crown did not convince us that the Native Land Court was a client-driven institution. It was apparent that its ongoing activity in the Whanganui region came despite the wishes of many Whanganui Māori and not in response to them.

The imposition of the court on Whanganui hapū breached Treaty principle embodied in article 2. The Crown undertook to protect Māori in the ownership of their land unless and until they wished to sell. Logically, this should have extended to Māori choosing when and how to transform its title.

(2) *Involvement in the court's process*

The timing of hearings, notice, location, and hearing length were all aspects of the court's process that profoundly affected Māori who needed to attend. They had very little influence over how the court went about its business in the Whanganui district.

If the system had been one in which Whanganui Māori had a significant say, it would have calibrated its process to respond to communities' imperatives. It would not have scheduled long hearings in winter, far from the land in question, and at short notice. Instead, it would have contrived shorter hearings involving fewer blocks, held them at more locations nearer the land concerned, and timed them to minimise inconvenience to local hapū.

As it was, Māori participants bore the brunt of inconvenience and hardship. The court's preference for hearings at Wanganui, where the accommodation was considered suitable for European judges and their retinue, almost always trumped any convenience to Māori of hearings at kāinga. Hearings during the coldest part of the year,

or during periods of planting or harvesting; protracted hearings that strained finances, social bonds, and health; and inadequate notice were factors so common that they were rarely considered grounds for a rehearing. The court acknowledged the problems caused by lengthy hearings and took steps to hear blocks in stages, but this produced only a partial solution.

The Crown's failure to ensure that the Native Land Court's operation was procedurally sound breached its duty of active protection, and the principle of good government.

(3) *Involvement in the court's deliberations*

The Crown contended that out-of-court settlements and the participation of assessors provided for a high level of Whanganui Māori input into the court's decision-making processes. We have scant evidence about how assessors affected court decisions, but even if they were more influential than the record suggests, theirs was not the influence of Whanganui Māori, because assessors had to come from outside the district in which they sat.

There is no doubt that out-of-court settlements were a feature of Whanganui cases. They usually involved arranging who was to be on the list of owners. This sometimes reduced the court's role to rubberstamping Māori decisions concerning who would be on lists. But it was judges who decided on the lists, in the sense of determining which ancestors had rights in the block, and therefore which groups of descendants should have their names on a list so as to entitle them to interests. This was in many respects the primary decision. In any event, it was plain that for Māori their level of input was insufficient, or was accomplished in a culturally unsatisfactory way, because they continued to demand the right to decide land titles through rūnanga or komiti.

(4) *How fair was the share of the costs that fell to Māori?*

While the evidence is not sufficiently extensive or detailed for us to be certain about the impact of the costs on Māori and their communities, the costs of the system could sometimes be a burden for Whanganui Māori.

Court costs were usually lower than survey costs. We have no doubt that survey charges were sometimes excessive. The Crown did not do enough to control, spread, or shift the cost of surveys. Had Māori been supported in community tenure of land, they would have been in a better position to manage debt incurred in the process of transforming title, and it would have figured less in decisions to sell land.

In the 1870s and early 1880s, there was a move to a variety of means of paying for survey costs, even though the legal obligation remained with Māori owners. The Crown appears to have paid for survey costs sometimes, though the extent of its payments is unclear. Any Crown payment would have been entirely more appropriate than Māori shouldering the entire burden of survey costs. It was especially onerous and unfair when non-sellers had to pay for subdivisional surveys as a result of Crown or private purchase activity.

There were other expenses that were usually unavoidable, including travel, food, accommodation, lawyers' and interpreters' fees, and the costs of manaaki (hospitality) to visitors. Māori were also obliged to use the proceeds of sale to host hākari (feasts) as a means of restoring cordial relations after the adversarial engagement of the court.

Social costs were also hefty. Evidence shows that Māori obliged to stay in Wanganui for protracted hearings suffered increased disease, deprivation, drunkenness, and even deaths. While the social costs were experienced variably, some people did suffer, and such human misery should not have been a corollary of reforming land title.

Most unfortunate of all is the fact that the titles that Māori obtained through the land court system usually did not afford them the benefits that they looked for, and which the Crown implicitly promised when it required them to pay most of the costs. The titles, and the rules that created them and determined their use, made it easy for Māori to sell their land, but much harder to use it, or to develop it as an asset for their own long-term prosperity.

The problem of the costs and their consequences was well known in the nineteenth century, and the Crown's failure to work with Māori to ameliorate the process, and

lessen both the costs and their adverse effects, breached the principles of active protection and good government.

(5) Availability of redress for the court's shortcomings

For those who found themselves excluded from titles as a result of the court's decisions, there was no automatic right of appeal prior to 1894. Rehearing was theoretically available before then, but in practice was rarely available. There were no guidelines as to the basis on which rehearings were granted; applicants were usually not told why their request was accepted or rejected; and the judge in the original decision advised on whether or not a rehearing should be granted. All of this was procedurally flawed. The Native Affairs Committee, overwhelmed with petitions from parties seeking to have their cases reopened, advised the Government of the need for an appeal process.

Although the Crown conceded that the lack of an appellate body reduced Māori options in the nineteenth century, it did not accept that this breached the Treaty principles. We do not agree. The Native Land Court's decisions affected Māori profoundly, and their inability to have those important decisions reconsidered breached their most fundamental rights as citizens under article 3. There remain questions about whether, even after the Native Appellate Court was established, it was too expensive to be an adequate means of seeking recourse.

(6) Extent of fractionation in the Whanganui district

Succession laws, which resulted in titles that were increasingly crowded with each passing generation, often made Māori land unmanageable and unusable, and diminished its value relative to other land. The signs that this was happening were evident early on, and the Crown should have worked with Māori to make the necessary changes to prevent it. The corporate title offered from 1894 onwards proved, for a number of reasons, not to be an adequate remedy for this situation. The Crown's failure to step in early to amend the succession regime it created was to the detriment of Māori land tenure right up to the present day. This breached the guarantee of te tino rangatiratanga, and the principle of good government.

28.14 CHAPTER 12: CROWN PURCHASING IN WHANGANUI, 1870–1900

28.14.1 What did this chapter cover?

In this chapter, we described and analysed:

- › the process by which the Crown purchased 1,279,299 acres of Whanganui land between 1870 and 1900, which was just over fifty per cent of the district;
- › how the Crown used monopoly purchasing powers to acquire land;
- › the various means by which Crown purchase officers acquired interests from Māori owners;
- › the prices the Crown paid;
- › the Crown's acquisition of private leasing interests in the Murimotu region, and its subsequent purchase of the land;
- › the effectiveness of land restrictions in preventing alienation and the creation of reserves; and
- › the reasons why Māori sold land.

28.14.2 Crown concessions

The Crown's concessions set out in relation to chapter 10 also applied to material covered in this chapter.

28.14.3 Findings

Discernible in the Crown's native land laws, and in its policy and practice for buying Māori land, was the consistent objective of buying as much land as possible for the lowest achievable price. Although policies and priorities fluctuated, this was a constant. Governments, convinced of the need to acquire land for economic development, introduced legislation that strengthened the Crown's arm as the sole purchasing power. Each time this occurred, there was a corresponding push to acquire the land remaining in Māori ownership, moving ever further into the interior of the Whanganui district.

(1) Destruction of collective agency

Traditionally, Māori in Whanganui and elsewhere occupied and used land on the basis of rights shared by the collective. Whānau might have particular rights in a particular area, but it all still belonged to the wider group: no

small groups or individuals could trade it, or give it away. In English law land titles could be in corporate ownership – a concept that could have been adapted to land ownership by hapū. But this would have facilitated the continuation of 'tribalism', which the Crown wanted to eradicate, so it chose instead to impose a system premised on the fiction that individual Māori owned a specific and defined portion of hapū land.

The payment of tāmāna (advance payments) to individuals created division within communities, damaged traditional leadership, and undermined collective decision-making. In Whanganui, during the 1870s, the Crown paid advances before land had been through the Native Land Court, to people whom the court might or might not ultimately recognise as owners. After 1880, the Crown tended to wait until the court had determined title, but it continued the practice of buying interests from individuals. This rendered impossible the communal management of land, because once a few people sold, the owners of the balance were drawn into uncertainty and expense. Piecemeal purchase from individuals made hapū and whānau prey to the whims of the weakest: land agents only had to approach those who had reasons of their own for selling to undermine instantly any well thought out communal arrangement for holding on to land.

When it created such a system, the Crown breached its duty to respect and to give effect to te tino rangatiratanga of Whanganui Māori. Article 2 guaranteed that Māori would be undisturbed in the possession of their land 'so long as it is their wish and desire to retain the same'. As a minimum, then, the Crown should have acceded to any Māori request for land to be reserved from sale. Instead, the thrust of the Native Land Court regime and allied Crown purchase programme was to promote a form of individualisation that undermined any form of hapū control.

(2) Limited choices

Whanganui Māori sold land for many reasons, but they rarely made the decision freely and collectively. Even those who genuinely wanted to sell land could not usually

do it on an open market. Legislation essentially banned private purchase of Māori land in 1894, but by then about three quarters of our inquiry district was already off limits to private purchasers. These restrictions also prevented Māori from using their land as security for borrowing, and from leasing to any party but the Crown – although in practice the Crown was willing to lease land only in Murimotu. Leasing could have been beneficial to tangata whenua there, but the Crown, intent upon furthering its own ends, purchased the land while the leases to pastoralists still had nearly two decades to run.

The nature of the title that the Native Land Court awarded also restricted choices: a person might own 50 acres of a particular block, but could not say which 50 acres they were; he or she could not fence them off and turn them to use, nor pledge them as security for a mortgage. Selling was relatively easy; developing it was almost impossible given the many barriers. The Crown thus designed and persisted with a form of title that benefited it and not Māori, because it primarily facilitated the purchase of individuals' land interests. This breached the principles of partnership and options.

Owners who did not want to sell were forced to pay to have the sellers' portions cut out of their block; often the only way to pay for this was to sell land, necessitating another survey, another partition, and more expense. In the worst cases, the costs of survey and title were such that they consumed the entire price of the land, and the former owners were left with nothing.

Nor could communities choose to opt out of the system. We found that the Crown's title and purchasing system undermined the collective agency of Māori communities, which were at the mercy of any member who needed money. Sometimes the land could be dragged into a sale by someone who lived outside the community, and was included on the title 'out of aroha'. If the scope for decision-making was limited on the personal level, it was practically impossible at the community level. This was fatal to a communal culture.

The Crown had a right to shut private parties out of the Whanganui Māori land market. Crown pre-emption was,

after all, specifically provided for in the Treaty of Waitangi, and the exclusion of speculators and land sharks was arguably in the interests of both Māori and the nation as a whole. However, because restrictions on private parties affected te tino rangatiratanga and Māori property rights, the Crown had a duty to engage with Māori before implementing these policies and practices and, as Crown counsel conceded in this inquiry, to ensure that the Crown did not use its privileged position against Māori interests.¹⁰ By and large, the Crown did not fulfil this obligation. With private competition partly or completely blocked, Māori still often needed to sell to defray the costs of going through the Native Land Court, but now had little scope to negotiate a better price or more reserves because the Crown was the only buyer.

We find that when the Crown deprived Whanganui Māori of real choices about their land, it negated te tino rangatiratanga, and breached the principles of active protection and good government.

(3) Breach of duty to act in good faith

The obligation to act in good faith is fundamental to any partnership. In its dealings with Whanganui Māori and their land, however, the Crown repeatedly breached it when it acted to undermine te tino rangatiratanga and the ability of communities to act collectively, and when it restricted the options available to Whanganui Māori to the point where they had to sell to the Crown. Good faith was lacking because the Crown abused its position as a monopoly purchaser, paying low prices and using restrictions on private dealing to prevent Māori from entering into arrangements like leases. It exempted itself from most restrictions, so did not limit the quantity of Māori land alienated in the period. Rather, it used money as an enticement to sell, both through tāmana, and through payments to rangatira to enlist their support for sales to the Crown. This subverted traditional leadership. The Crown also made too few reserves.

The costs of survey and partition were unfairly loaded onto Māori who wished to retain their land, rather than allocating them according to benefit. Survey costs should

have been borne by the whole of the community. Māori should have been required to contribute to the cost only where survey was required after communities exercised genuine choice to define and sell their interests in land. Instead, when part-owners sold their interests in a block, usually without reference to the wishes of the wider community of owners, those who elected not to sell bore the costs of the surveys and partitions that selling necessitated. Partition costs should have been borne by the party seeking to buy, sell, or lease. In particular, the Crown alone should have borne the cost of its piecemeal purchase of blocks, and the more frequent surveys and partitions that resulted.

We saw no evidence of a deliberate strategy to load landowners with debt to compel them to sell, but it must have been apparent at least from the time when the Crown sought liens to secure the debts of non-selling landowners, and then took land in lieu of cash, that their situation was inequitable and contrary to their wishes. Even if the Crown did not design the system as a means of forcing non-sellers to release land that they had decided not to sell, this was its effect, and that effect was unfair, unreasonable, and breached the Treaty.

In the Treaty, the Crown took on the obligation to act in the interests of Māori by providing in article 3 that they were British citizens. In Whanganui from 1870 to 1900, virtually every policy and practice concerning Māori land was designed to advance the interests of the Crown and Pākehā – Māori interests featured hardly at all. Waves of purchase activity flowed from changing economic policy. This was perhaps most vividly exemplified by the Stout–Vogel Government’s enthusiastic reactivation of Crown interest in acquiring land – for example, in the Murimotu district from 1884. Although earlier Crown ministries had entered into leasing arrangements that would have delivered rental income to Māori landowners in the Murimotu region for 21 years, these commitments were swept aside in favour of fulfilling the new Government’s policy objective of large-scale purchase for railway. The Crown was at best indifferent to the consequences of these measures for Whanganui Māori. Such actions, and

such an attitude, breached not only its duty to act with the utmost good faith, but also the principle of partnership.

(4) Good government

All of these – destruction of collective agency, the failure to provide options, and the failure to act in good faith – return us to fundamental questions about the Crown’s obligations to Māori in the process of transferring land to settlers.

Even on the most reductive view of the Crown’s obligations to Māori in the nineteenth century, there was a basic set of standards with which any observer would have agreed the Crown was obliged to comply. These standards were founded in the rule of law. This is the idea that the Crown is ‘subject to the law and has no power to act outside it.’¹¹ This was not simply a matter of compliance. Government also had to be just and fair – an idea that was imported to New Zealand in the language of the Treaty.

These basic standards applied particularly in the area of land transactions, which was to be the key point of engagement between Māori and the Crown in the early years of the colony, and indeed for so long as opening up land for settlement was the centrepiece of economic policy. A fair land deal has essential elements apparent to all: clear identification of the land to be sold; identification of all the persons to whom the ownership interests belong; willing buyer(s) and willing seller(s); and agreement on price and other essential terms.

While it can be said that the regime for dealing with Māori land provided for certain aspects of fair process, one obvious flaw was that transactions could be concluded without the full knowledge and consent of all the owners. The Crown created a system that enabled it to purchase ownership interests ahead of the court’s determining title, and to purchase individuals’ undivided interests before the court determined relative interests and partitioned them out. When Māori entered such transactions, they did not – and could not – know the size and location of the interests they were selling. The Crown conducted many of its land purchases in Whanganui in this way.

Alienation of land – no matter how much – in the

absence of basic elements of just and fair dealing, was in and of itself prejudicial to Māori. Breaching such basic standards renders property rights insecure, which in turn denies essential human rights and a basic level of respect owed to all. Denial of those rights and that respect inevitably causes damage.

In that this was a regime enabled by legislation, we cannot say that the Crown acted outside of the law. Usually, it did not. However, we can say that it was not good government, because it was neither just nor fair.

28.15 CHAPTER 13: THE WAIMARINO PURCHASE

28.15.1 What did this chapter cover?

In this chapter, we described and analysed:

- the process by which the Native Land Court determined title to the Waimarino block;
- the Crown's purchase of most of the block;
- the Crown's intentions behind purchasing;
- the process by which the application to determine title was submitted to and accepted by the court;
- how the court determined ownership interests at its hearing in March 1886;
- how Crown purchase officers went about acquiring the interests of 821 out of 921 Māori owners, between March 1886 and March 1887;
- how the court divided the land between the Crown and various groups of Māori owners ('sellers' and 'non-sellers') at a partition hearing in March and April 1887, and the later designation of reserves; and
- the avenues available to Māori who wished to protest against these events.

28.15.2 Crown concessions

The Crown conceded that its Waimarino purchase failed to comply with the high standards expected of it as a privileged purchaser of Māori land – particularly when it:

- discouraged the partition of the block;
- purchased ownership shares based on its own determination of relative interests;
- failed to provide full information about how it determined the price;

- failed to ensure that it paid a fair price for the land and its resources;
- failed to allocate the reserves contemplated in the purchase deed; and
- provided a system that, before 1894, lacked a body to hear appeals from Native Land Court decisions (see section 13.1).¹²

It conceded that its purchase of the Waimarino block failed to meet the standards of reasonableness and fair dealing that found expression in the Treaty of Waitangi and breached the Treaty of Waitangi and its principles.

28.15.3 Findings

The Waimarino purchase and the preceding business in the court were distinguished by the fact that so many of the potential shortcomings of the native land laws and the Crown's approach to purchasing came together in one place and time, and were writ large. The 'writ large' aspect arose from the extraordinary size of the block, the correspondingly numerous hapū affected, and from the degree to which the Crown conducted its part in a manner that was rushed, slipshod, and intent on advancing Crown interests at the expense of those of tangata whenua. The Crown's approach reflected the critical part that purchase of the Waimarino block played in the success of the Government's cornerstone economic stimulation policy, which aimed to construct the North Island main trunk railway, and to 'open up' the Rohe Pōtae to settlement and commerce. The Government set itself too many objectives to achieve too quickly. Proper process to determine and respect the land interests of tangata whenua of the expanse of territory comprised in the Waimarino block was a tragic casualty. Indeed, the title determination and partition stages of the court process for the Waimarino block exemplified some of the worst aspects of the court system.

(1) The application

In order for a proceeding to determine title to land to be fair, affected persons needed to know what land was comprised in the application and when the hearing would take place.

As regards what land was comprised in the application, the process for the Waimarino block failed because:

- the verbal description of the land in the application was insufficiently clear;
- the boundaries mistakenly included blocks already sold to the Crown and land justifiably believed to be within the Rohe Pōtae or Aotea block;
- the law did not require the land to have been surveyed nor boundaries marked on the ground, nor for visual images based on survey to be filed with the application, which would have facilitated interest-holders' grasp of what land was before the court; and
- key players (including the Crown's purchase agents and the court) seem not to have known about or understood the legal requirements for applications at the time, which led to a muddle that included statements in the application that the boundaries of the block had been marked out, and that a map of the block had been submitted, when the law required neither, and the statements were untrue.

As regards when the hearing would take place, notice of the hearing of the Waimarino title determination was inadequate and ineffective. Non-appearances at court and complaints afterwards indicated that many would have pursued claims in court, but either did not receive notice of the hearing, or the interval between the receipt of notice and the hearing left too little time for them to organise their affairs, prepare their case, travel to Wanganui, and attend.

There is no evidence of impropriety in the role that the Crown's purchase agents played in assisting the application. Nor is there evidence that the Crown interfered with the court's usual practice for arranging hearings to determine title, which was to accumulate applications until the number on hand justified a sitting of the court, and then to proceed to hear all claimants under the mantle of the application that seemed most comprehensive. But neither the court nor the Crown sufficiently prioritised or managed the potential problems of concurrent Native Land Court title hearings of large adjacent land blocks – even though they both recognised and understood the possible prejudice to affected Māori.

The Crown was responsible for these failures of process.

(2) *The determination of title*

Our task is to assess the acts and omissions of the Crown against Treaty principles; it is not our job to criticise the work of the Native Land Court, which was not the Crown. However, we do look into the work of the court to ascertain whether the Crown contributed to negative outcomes in ways that breached the principles of the Treaty.

We ascertained that the Native Land Court Act 1880, as amended in 1883, constituted law which, if judicial officers had exercised their powers conscientiously and in accordance with the letter, spirit and intent of the legislation, could have, and should have, gone a long way towards safeguarding the interests of the owners of customary rights in the land comprised in the Waimarino block.

However, in its determination of title to this land, the court conducted a proceeding that failed to protect many interest-holders' rights. This was to some extent due simply to the court's non-compliance with the provisions of the Acts, for which the only remedy was rehearing, review, or appeal.

The Crown was ultimately responsible, however, because the legislation was itself deficient. We find that, in circumstances like these, where

- the law specified that the parties were not to have legal representation;
 - the rights the court was determining comprised in many, if not most, cases the chief asset of the parties before the court, and their culturally defining connection with land; and
 - there was no appeal, no review, and effectively no rehearing,
- the legislation should have prescribed how the requirements for due process and proof were to be met.

It should have spelled out:

- a requirement for survey and survey-based maps before the hearing commenced, with a reasonable opportunity for affected parties to inspect them, object, and have their objections considered and amendments made where necessary;
- a process to ensure – or at least to require the court to

make a reasonable effort to ensure – that all relevant parties were present, with adjournment if they were not; and

- rigorous testing of the assertions of rights made in support of title, in a way that did not give the applicant primacy, but allowed the court to assess fairly all the evidence and all the claims.

This would have gone some way towards ensuring that the Native Land Court – whose decisions were, in effect, final decisions – did a better job. The process for determining title would inevitably have been longer and more exhaustive, as was entirely appropriate given the gravitas of the matters before the court.

(3) *The purchase*

The factors that made the quick sale of interests to the Crown almost inevitable were:

- Each Waimarino owner obtained by way of title an undivided and unquantified interest in a vast area of land. In order to find out the size and location of their share, and therefore to use it themselves, or even to ensure ongoing connection to places of cultural importance, they required a partition from the Native Land Court.
- The Crown blocked the process by which owners could apply to the court to subdivide their interests, fearing that it would delay purchase.
- The Crown's land purchase officers were relentlessly intent upon buying up every interest they could as quickly as possible, including the interests of minors.
- The officers concealed the true terms of the deal that was on offer, deliberately making it impossible for interest-holders to compare what the Crown was paying different owners, to assess the size or location of areas that would remain to them, or understand how it was unilaterally (and extra-legally) deciding on owners' relative interests.
- Many of the interest-holders in the Waimarino block were minors. The Crown rode roughshod over the legal requirements for the appointment of trustees for minors in order to be able to buy up their interests more quickly.

- The law allowed each individual owner to sell his or her interests without reference to traditional leaders or the community. Chiefs and hapū were disempowered as the Crown bought the land from under them before anyone really had a chance to realise what was happening.
- The Crown undermined the integrity of tribal responsibility and relationships by paying or otherwise rewarding rangatira to persuade interest-holders to sell.
- The court did not follow the steps that the legislation laid out for issuing a certificate of title after it determined the owners of the block. After the block was surveyed, it should have advertised the plan, allowed for inspection, heard objections, and amended the plan if necessary, before issuing a certificate of title. If it had been followed, this process would have provided a period of consolidation and clarification before interests were sold or partitioned.
- The legislation allowed the court too much discretion, denied parties legal representation, and provided no readily-available review or appeal mechanism.

We find that the Crown influenced or contrived these circumstances, or acted directly to bring them about, wrongfully subjugating the interests of owners in the Waimarino block to the Crown's policy objective of purchasing as many of the interests in the block as it could, at prices and on terms most advantageous to it.

(4) *The partition*

When the court moved to determine and partition out the Crown's interest in the Waimarino block, it had not attended first to the owners' inspection of and response to the survey plan. It heard the Crown's application despite the near total absence of those owners who had not sold their interests to the Crown, and in the face of active opposition of many of those who had sold their interests. Both reflected the high level of frustration and distress that resulted from the Crown's approach to purchasing Waimarino ownership interests.

Most of the sellers present wanted the court to adjourn while they held an out-of-court meeting with the Crown to establish which parts of the block the Crown could fairly claim. The Crown opposed this. The court supported

the Crown's stance, confirming that the Native Land Court regime was intended to advance the Crown's agenda, and not to protect or promote Māori interests. Here, the court took account of Māori disaffection only to the extent of characterising it as a conspiracy to frustrate the Crown's application, and declaring that absent non-sellers had only themselves to blame if they were left with the 'precipices and pinnacles'.

Taking this approach to determining the Crown's interests, the court once more overrode Māori owners' interests. The native land laws allowed the partition case to proceed without the participation of those whose interests the court was really determining by default. The effect of this was exacerbated when the court went beyond its powers to partition the interests of those who had not sold to the Crown and to determine their relative interests, although they did not ask the court to do this, and there was therefore no notice.

This irregular exercise of court power enabled the Crown to move directly to establish reserves for those who had sold their interests.

We find that the native land laws facilitated the court's support of the Crown's interests and the subjugation of the Waimarino owners' interests, and provided no means for affected owners to call the court to account to the extent that its disregard of the legislation went beyond the discretion that the law allowed.

(5) Reserves

The purchase deed stated that Māori who sold to the Crown would receive up to 50,000 acres of reserves, but when negotiating the purchase the Crown's purchase agents assured Māori that they would get 50,000 acres. The Crown reserved only 33,140 acres. It claimed that this lesser amount reflected the fact that fewer owners sold their interests than the Crown expected, but the Crown did not mention this element in negotiations. Even if it proportionally reduced reserves to take account of it, it would have reserved 44,580 acres.

The Crown's agent, Butler, determined the number, size and location of reserves without Māori agreement or even input. The allocation did not properly or sufficiently take

into account the needs of tangata whenua. Many were allocated fewer than 50 acres. On any view of it, 50 acres should have been an absolute minimum, because that was the standard that the Crown set for itself. In most places, allocation at this level would have been barely enough for subsistence. Waimarino Māori found their interests confined to seven non-seller blocks, and six seller reserves which, against their wishes, did not include a number of places of longstanding occupation and cultural importance.

What the Crown focused on instead was aggregating its own 378,360 acres in one largely contiguous area that rendered them as valuable and as useful as possible.

(6) Remedies

We find that the avenues available to Māori with interests in the Waimarino block to seek and obtain review and redress of the decisions and processes that illegitimately affected them were few, and ineffective.

Although affected Māori sent letters of protest and petitions to Wellington, and applied to the chief judge for rehearings, these approaches yielded almost nothing of what they asked for. The system's intransigence was in spite of the fact that, as these findings show, the performance of the court and Crown agents left much to be desired. Ironically, the only protest that could be regarded as at all successful was that of Te Kere Ngātaierua and Ngāti Tū, who acted largely outside the law to resist the decisions that deprived them of their property rights, but managed to extract from the Crown many years later two extra reserves.

We find that if the Crown had provided a court system that incorporated an automatic right of appeal when the court, at first instance the Native Land Court, erred either as to process or substance, many of the effects of the court's conduct – which materially facilitated the Crown's actions to the detriment of Māori – might have been averted.

(7) Breaches

It follows from these findings that the Crown acted inconsistently with the principle of good government when it legislated for a court process to comprehensively

determine Māori rights in land, but reposed in the court so much discretion that it could make decisions that were very poor both as to process and substance in the many ways found in this chapter, and with no right of appeal.

It also engaged in conduct inconsistent with the principle of active protection when it wrongfully subjugated the interests of owners in the Waimarino block to the Crown's policy objective of purchasing as many of the interests in the block as it could, at prices and on terms most advantageous to it. It instructed its agents accordingly, and they embarked on a wrongful exercise of purchasing individual interests at speed before the court determined their relative size, and blocked the process of partition that owners wanted to occur before interests were purchased.

Other particularly egregious aspects of Crown conduct need special focus.

(a) *Minors' interests*: We take a very dim view of the Crown's approach to purchasing minors' interests in the Waimarino block, which happened to have a larger than usual percentage of owners who were minors. One of the salient features of democracy introduced by the Magna Carta, 800 years old this year, was that the Crown too was subject to law. This became a fundamental element of the rule of law, brought to New Zealand along with the English colonists. But here, the Crown enacted, but did not comply with, a process for appointing minors' trustees. Instead, it purchased minors' interests from persons not formally trustees, and who therefore lacked legal capacity to sell on minors' behalf. The Crown knew that it had not followed the law, but specifically requested the Native Land Court to proceed to recognise its purchases from minors regardless. This was poor conduct indeed, and breached not only the law but every Treaty principle in the book.

(b) *Reserves*: The Crown accepted that it did not allocate the area of reserves anticipated in the Waimarino purchase deed. We go further. We find that the Crown's agents misled Waimarino owners when it told them that, following purchase, sellers would be left with 50,000 acres of

reserves, and that the choice of location would be theirs. The Crown's later justification of fewer reserves because it did not purchase the entire block was never prefigured to Māori owners. It was in any event disingenuous because the reserves allocated amounted to significantly fewer acres than would have resulted from calculating reserves based on the acreage of the Crown's actual purchase. Reserves for Māori are always important, but never more so than here, where so much land was alienated so quickly and by questionable means. The Crown's conduct, which reduced the already miserly acreage left to Waimarino Māori, and did not ensure that key significant areas were included in reserves, breached its duty of good faith, and failed to actively protect the interests of its Treaty partner.

(c) *Redress*: We have found that the Crown provided no effective means of redress for Māori adversely affected by the court's processes or the Crown's purchase practices. An automatic right of appeal from the capricious decisions of the court at first instance could alone have averted many of the worst outcomes here.

The Crown's failure to provide an effective, independent reconsideration of the decisions concerning the Waimarino block that adversely affected tangata whenua went to the fundamental guarantees of the Treaty. Article 2 guaranteed Māori ownership of their land, and their ability to choose whether or not to sell it; article 3 guaranteed them the rights of British citizens, which included due process of law. In the case of Waimarino, many Māori were effectively denied the ability to be recognised as owners of the land, to assert their rights as owners, or to decide freely and transparently whether or not to sell. In these circumstances, not providing to Māori effective means to have poor decisions reconsidered and redressed was an egregious breach of the Treaty and its principles.

28.16 CHAPTER 14: LAND ISSUES FOR WHANGANUI MĀORI, 1900–52

28.16.1 What did this chapter cover?

In this chapter, we described and analysed:

- the agreements made between Whanganui Māori and

the Crown at the end of the nineteenth century concerning future arrangements for land management;

- the 1900 legislation that set up Māori land councils;
- the changes that were made to the land councils regime in 1905;
- what the Stout–Ngata commission said about land in Whanganui; and
- Māori representation on the land boards in Whanganui.

28.16.2 Findings

The Maori Lands Administration Act 1900 could have gone a long way towards giving effect to the Treaty guarantee of te tino rangatiratanga of Whanganui Māori. There is no doubt that a trustee regime independent of the Crown and political vagaries had potential benefits for Māori landowners. Trustees had strict legal duties to their beneficiaries: they were obliged to abide by the terms of the trust, and to act always in beneficiaries' best interests.

Political vagaries ultimately triumphed, however, for it was in response to perceived pre-election imperatives in 1905 that the Government hurriedly introduced changes that robbed the system of the features that were, for Māori, most promising. Māori had no chance, in advance of the 1905 Act, to provide necessary input, much less consent. This was the more disappointing as the system of land councils was the outcome of a lengthy process of engagement. That engagement generated in Whanganui Māori particular confidence and hope, which they exhibited by vesting more land in the council than Māori of any other district. For the Crown to change the system suddenly without so much as a by-your-leave was inevitably disillusioning.

The 1905 changes were contrary to the broad understanding about Māori land administration forged between the Crown and Māori in 1900. By removing the Māori-elected representatives from Māori land boards and reducing Māori representation to just one of three members, the Crown breached the principle of active protection.

We reject the Crown's argument that it did not matter who was on the land board as long as it fulfilled its trustee functions properly, and there was no evidence that it did not.¹³ This argument took no account of the Treaty

guarantee to Whanganui Māori of te tino rangatiratanga, the inevitable loss of autonomy when they lost an effective voice in the management of their land, and the consequential loss of the opportunity and experience they would have gained if they had been permitted continued direct involvement in managing leases.¹⁴ There is every reason to think that Whanganui Māori wanted to retain influence in the district land board. Instead, the 1913 Act did away with Māori representation entirely. This change too lacked the necessary Māori input or consent, and breached the Crown's Treaty guarantee of te tino rangatiratanga of Whanganui hapū and iwi.

Māori land councils, land boards, and the Māori Trustee, when acting as trustees for Māori, were not agents of the Crown. However, the Crown was responsible for the design of the regime, and any negative outcomes that flowed from that. It was obliged to monitor the scheme to ensure that it fulfilled its statutory objectives and remained what Māori wanted and had agreed to. It should have been ready to respond if and when things went off course.

In some situations, particularly after the establishment of land boards that had no Māori representation and the introduction of compulsion in the vesting of land in boards, the Crown's Treaty obligations might have required it to intervene in the management of trust lands for the protection of Whanganui Māori interests. Decisions about any such intervention should have been made with the consent of Whanganui Māori.

28.17 CHAPTER 15: MĀORI LAND PURCHASING IN THE TWENTIETH CENTURY

28.17.1 What did this chapter cover?

In this chapter, we described and analysed:

- the process by which the Crown and private parties purchased 406,436 acres from Whanganui Māori owners during the twentieth century;
- Crown purchases that were completed during the 'taihoa' period between 1900 and 1905;
- how Crown purchasing resumed after 1905;
- Crown and private purchasing after 1909;

- developments in purchasing practice after 1930; and
- prices.

28.17.2 Findings

(1) *A promising start soon compromised*

At the opening of the twentieth century, the Crown acknowledged as a national concern the potential for Māori to become landless, engaged with Māori on land issues and how to address them, and passed legislation that they supported. Under the legislation passed in 1900, the Crown could complete purchases already underway, but otherwise placed a moratorium on purchasing Māori land that lasted for five years. We saw no clear evidence that the ‘completion’ process was misused in the Whanganui district.

In 1905, in response to settler pressure, the Government scrapped the moratorium and re-introduced Crown pre-emption. We acknowledge that the Crown had to address settlers’ needs as well as those of Māori, but when it resumed the purchase of Māori land so quickly, the Crown was prioritising the wishes of settlers – and seeking their votes in the forthcoming election. This was particularly disappointing for Māori in Whanganui, who entrusted more land to the district Māori land councils for leasing out to settlers than Māori of any other district.

(2) *The Crown’s prices for land too low*

For the first decade of the twentieth century, the Crown had a near total monopoly on purchasing Māori land, and there was no system of independent valuation. The Crown and its agents could really dictate price. ‘Absurdly low’ was Stout and Ngata’s 1907 evaluation of the prices paid for Whanganui land. In this respect we find that the Crown acted inconsistently with the principle of mutual benefit, and breached its duty of active protection of Māori interests.

The Crown’s self-conferred position of privilege in the market over the next few years carried with it an extra duty to ensure that, when purchasing Māori land, it complied with a high standard of care for Māori interests. It did not meet that standard. It was good that from 1905 the law required independent valuations of Māori land,

but evidence suggests that closing the market to competition kept prices low. Nor did prices, or later, valuations, have to take account of resources such as millable timber – another situation that attracted adverse comment from commissioners Stout and Ngata.

It was sometimes said that lower prices for Māori land were to be expected, because it was hedged around with restrictions and complications. This argument is fallacious because first, the Crown created the restrictions and complications when it designed the Māori land tenure system so poorly, and it had the power to change it. It should not have paid Māori less for their land on account of negative features it created. Secondly, where the Crown acquired freehold title without restrictions, that is what it should have paid for. If the Crown had a general duty to procure land as efficiently as possible for settlement and the benefit of the country as a whole, it surely cannot follow that Māori should have funded that objective.

We find that the Crown’s payment of lower-than-market prices for Māori land breached its fundamental duty to recognise Māori ownership of land, and to treat them properly when they decided to sell. That involved setting a price in an equitable way, so that there was a true meeting of minds on the bargain in every case. Any other arrangement breached the Crown’s duty to act in the utmost good faith.

(3) *Serial partitions detrimental*

The Crown’s piecemeal purchase of individual interests, and its failure then to manage the ensuing rounds of partitioning so as to minimise disruption, uncertainty, and cost for owners, was iniquitous. We accept that the Crown did not set out deliberately to disadvantage Māori by its actions, but disadvantage certainly resulted. Where the Crown took land in lieu of payment for surveys, it amounted to little more than expropriation, and breached article 2.

(4) *Stout and Ngata unheeded*

The appointment of Stout and Ngata to carry out an audit of Māori land was a resoundingly positive step – completely undermined by the fact that their report

was substantially ignored. The Crown carried on buying Māori land in our inquiry district – conduct which, in the Hauraki inquiry, the Crown acknowledged was ‘problematic in Treaty terms’.¹⁵ The Crown could helpfully have extended that acknowledgement to Whanganui.

(5) 1909 Act facilitated land loss

The Native Land Act 1909 and its amendments contributed to the whittling away of the landholdings still in Māori hands. This legislation looked as though it provided for collective decision-making, but in fact the quorum provisions made it possible for a tiny minority, sometimes voting only by proxy, to carry the day. These provisions, coupled with the lack of any avenue for dissenting owners to get decisions reviewed, were in breach of the Crown’s duty to actively protect the interests and authority of Māori over their land.

Some Crown agents, unchecked by the Crown, actively subverted collective decisions against selling by approaching individual owners to persuade them to sell. For the Crown to recognise collective decisions to *alienate* land but not to uphold those to *retain* it, was inconsistent and lacked integrity. Furthermore, the 1913 amending Act left the land boards without Māori representation, and at the same time provided them with mechanisms for selling land without the agreement of all its owners. These acts and omissions breached the Crown’s duty to act reasonably, honourably, and in good faith.

We welcome the Crown’s concession that the broad definition of ‘alienation’ under the 1909 Act prevented the productive use of land under proclamation. Proclamations put unreasonable pressure on owners to sell, and created a market that unreasonably favoured the Crown. The Crown argued that the provision was intended to protect itself and Māori owners from land speculators. However, where it bought at low prices and then on-sold at a significant profit, the Crown itself behaved like a speculator. Proclamations, and conduct that exploited them to the detriment of owners of Māori land, breached the Crown’s responsibility to act reasonably, honourably, and in good faith. This was particularly the case where proclamations were extended, sometimes repeatedly.

There was also the fact that many Whanganui Māori had entrusted land to Māori land councils (which became Māori land boards) for leasing out, to generate income for landowners. Under the 1909 Act, the board could sell that land in certain circumstances. It could also revoke the status of reserves in order that they might be sold. These changes undermined entirely the purpose for which the owners had requested the vesting or reservation of their land – namely, to protect them in the hands of their customary owners. This conduct of the Crown also breached its duty to act towards Māori in the utmost good faith.

(6) Ensuring Māori kept land they could ill afford to lose

In terms of ensuring that Māori retained sufficient land, the limited evidence we received on this issue suggests the Crown and its agents were generally careful to observe the strict letter of the law with regard to individuals’ ownership of a certain number of acres. What was lacking was any sense of the *overall* extent and effect of land loss on a hapū or iwi basis.

As we discussed in chapter 9, there are many aspects of the Crown’s Treaty duties to Māori that are similar to fiduciary duties at law, but we do not need to frame those duties in terms of trust law because, for us, the Treaty and its principles are a source of obligation. We can also agree – and this is an allied but different point – that, as Stout and Ngata observed, Māori saw themselves as having a fiduciary duty towards their descendants to hold on to ancestral land, and with those commentators’ belief that the State had a role in ensuring that Māori held on to the land that remained to them and their tribe.¹⁶

Advancing the position that the Crown was not a fiduciary for Māori, the Crown argued that the essence of the Treaty relationship is a ‘respect for the other party’s autonomy’.¹⁷ Treaty partners respecting each other’s autonomy is certainly a noble ideal, but actually the Crown consistently acted to undermine the authority of te iwi Māori in the nineteenth century, so that by the twentieth century their ability to act autonomously was negligible. When it came to selling their land, then, the conduct of Whanganui Māori did not usually look like that of a proud tribal people forging their own economic path into a prosperous

future. Sales were much more often a case of individuals forced into parting with ancestral land because they lacked personal and family resources to do anything else. Sometimes, individuals' interests were bought (or taken) without their knowledge. Selling land in situations like these was not an expression of autonomy.

We find that the Crown, in breach of its duty to actively protect Māori interests, failed to monitor the ongoing effects of its policies, and whether Māori retained sufficient land at a collective and cultural level as well as at an individual and economic level.

Given the widespread alienation of Māori land in the nineteenth century, and the warnings that Māori leaders and the Stout–Ngata commission sounded, we might have expected that, in the twentieth century, the Crown would take more care both when it purchased land in Whanganui itself, and when it allowed others to do so. It was not until the last quarter, though, that the purchase of Māori land in Whanganui fell away and almost ceased. And only upon enactment of Te Ture Whenua Maori/The Maori Land Act 1993 was there explicit recognition that it was desirable for the Crown to actively *promote* the retention of land 'in the hands of its owners, their whanau, and their hapū'.

28.18 MATAPIHI 3: THE INTERESTS IN MĀORI LAND OF MERE KŪAO

28.18.1 What did this matapihi cover?

In this matapihi we described and analysed:

- ▶ what happened to the landholdings of Mere Kūao;
- ▶ how portions of Murimotu 5B2A came to be sold in the early 1900s;
- ▶ how the Crown acquired portions of Murimotu 3B1A, for the purposes of extending the Karioi Forest; and
- ▶ how the land remaining in the ownership of the non-sellers of Murimotu 3B1A (Murimotu 3B1A2) came to be overrun by *Pinus contorta*, a plant that the Crown introduced for timber, but which was later recognised as a noxious weed.

28.18.2 Findings

(1) Murimotu 5B2A

The sale of Rangi and Hinurewa Whakapū's shares in Murimotu 5B2A in 1917 and 1918 to a local farmer, and the subsequent location of his partition Murimotu 5B2A1, caused longstanding problems for the owners of the balance block, and for Ngāti Rangi. The balance owners were left with the poorer land and no legal access, and both they and Ngāti Rangi lost to a farmer culturally important land near their maunga tapu.

This is an example of how private purchasers acquired land interests in undivided blocks, and then got the Native Land Court to partition out the proportion of the block that corresponded to the interests they had purchased in a way that advantaged them and disadvantaged the owners of the balance block. These sales and the subsequent partition illustrate the fundamental problems with the Native Land Court's individualised titles and partition process. Those with wider interests in the block – the balance owners, and also the hapū traditionally connected to it – should have been informed and involved. Their exclusion negated whakapapa and customary ownership.

This flawed system was at odds with the article 2 guarantee of te tino rangatiratanga. We recommend that this case should be taken into account in the Treaty settlement negotiations between Ngāti Rangi and the Crown.

(2) Murimotu 3B1A

Claimants told us that their kuia Mere Kūao did not want to sell her interests to the Crown. The Crown purchase officer's letter confirms that there were owners in the block who did not want to sell, that Mere Kūao was one of them, and that he was hoping to change her mind. He evidently did, and we do not know how. We think it most unlikely that Mere Kūao would have known what part of the block the Crown would seek to have partitioned out, and without that knowledge she could not secure Ngāti Rangi's access to the wāhi tapu on Wāhianoa Stream.

We consider that the Crown was obliged to consider carefully whether Māori owners had sufficient remaining

land; not pressure owners to sell land; and to make clear where it wanted to locate its partition before buying the interests. However, in the absence of detailed evidence before us as to the circumstances behind the sale of her interests, we cannot definitively state that it did not fulfil those obligations.

This case highlights once more the consequences of individualised titles and the absence of satisfactory mechanisms to enable collective management of land. We also censure the court's willingness to comply with the Crown's request to locate its share of the block where it did without first understanding what the vendors believed they were selling, and eliciting the views of the owners of the balance of the block.

We find that the legislative requirements for partitions were wanting as to process, and this breached the principles of the Treaty. The Crown's duty of active protection obliged it to enact legislation that ensured that, when interests were alienated, the alienor was represented or present in court when the alienee's partition was defined, and that the interests of the owners of the balance of the block were properly assessed and protected. This failure prejudiced the whānau of Mere Kūao and Ngāti Rangi.

We recommend that this breach of the Treaty is taken into account in the Treaty settlement negotiations between Ngāti Rangi and the Crown.

(3) *Murimotu 3B1A2*

The Crown did not breach the Treaty when it planted *Pinus contorta* for plantation forestry in the Karioi State Forest. There is no evidence to suggest that its trials of plantation species yielded results that should have put it on notice that *Pinus contorta* had characteristics that would enable it to infest land far beyond where it was planted. Those characteristics were, however, observed by the 1950s, and should have been acted on sooner. By then, though, *Pinus contorta* had already colonised Murimotu 3B1A2.

The enthusiastic importation of exotic plants to New Zealand had many disastrous consequences that were

understood too late. We can look back now on the introduction of *Pinus contorta*, and the failure to identify its disastrous potential and control it sooner, and wonder at the folly of our forebears. It is difficult, we think, to view these events in our past as breaches of the Treaty, because the plant introductions were usually motivated by the intention of adding to the beauty or utility of New Zealand's landscape. We find it impossible to distinguish the introduction of *Pinus contorta* from all the other introductions, good and bad.

On the other hand, in our view, for much of the twentieth century, New Zealand's noxious weeds regime prejudiced Māori landowners because it failed to acknowledge that Māori were already at a disadvantage in relation to their land. We have seen how the system designed for Māori land tenure left landowners with a legacy of title difficulties, including fragmentation of title and fractionation of ownership. (These phenomena are discussed in sections 10.6.4(6), 11.9, and 15.4.6.) These were tremendous obstacles to their developing their land to a standard where it would generate sufficient income to cover the cost of a weed control programme. This was the case at Murimotu 3B1A2, as Māori owners could earn nothing from the land, and struggled to arrange meetings of owners or even gain access to their land to address the problem of noxious weeds.

The Crown delegated the control of noxious weeds to the Manawatu-Wanganui Regional Council. The evidence showed that the officers of that authority knew about the very considerable problems that the Murimotu 3B1A2 owners faced, but did not regard themselves as having discretion to take those circumstances into account in administering the noxious weeds regime. The law they administered had no regard at all for the particular difficulties that Māori like the owners of Murimotu 3B1A2 faced, and they were accordingly granted no relief.

The failure of the regime for controlling noxious weeds to engage with, and take into account, the circumstances that were peculiar to the owners of Māori land like Murimotu 3B1A2 breached the Crown's duty of active

protection. The situation as regards Murimotu 3B1A2 was particularly egregious because the problem of wilding *Pinus contorta* was clearly of the Crown's and not the owners' making, and failing to make allowances for that in dealing with its owners was very unfair. It caused them expense, hardship, and stress that was unnecessary and wrong.

We are also alarmed that the current regional council regime for dealing with *Pinus contorta* appears to deprive Māori owners of non-rateable land of financial assistance for eradication. This situation compounds the problems of the owners of Māori land in this region, who are particularly ill-equipped to deal with the wilding pine problem because of the nature of their title and its inherent difficulties. The Crown is liable, as the Treaty partner, for this breach of Treaty principles by its delegate, Horizons Regional Council.

In relation to the noxious weeds regime at Karioi and its impact on the owners of Murimotu 3B1A2, the Crown has failed to fulfil its Treaty obligations to actively protect Whanganui Māori interests and has breached the principle of partnership.

The Crown's use of forest licence rentals, to which Māori become entitled as part of Treaty settlements, to meet its own responsibility to remedy the problem it created is also unfair and breaches the Crown's duty to act towards its Treaty partner with utmost good faith. The Crown should stop using rental reductions as a way of reimbursing licensees for *Pinus contorta* control.

28.18.3 Recommendations

We recommend that the Crown:

- develops a strategy, implemented by regional councils, for funding pest management on Māori land, including non-rateable Māori land, which recognises the problems and difficulties faced by Māori landowners in Whanganui as a result of the inherent weaknesses in the Māori land tenure system it enacted;
- takes steps forthwith to curtail the practice of reducing Crown forest rentals in return for licensees controlling *Pinus contorta*; and
- takes into account the amount of money that has been

taken out of Karioi forest rental income for *Pinus contorta* control when negotiating the Treaty settlement with Whanganui iwi.

28.19 CHAPTER 16: SCENIC RESERVES ALONG THE WHANGANUI RIVER

28.19.1 What did this chapter cover?

In this chapter, we described and analysed:

- the Crown's acquisition of about 6,675 acres of Māori land for scenic reserves;
- how the Crown went about acquiring this land; and
- the administration and management of the scenic reserves.

28.19.2 Findings

(1) *Compulsory acquisition of Māori land for scenery breached article 2*

The compulsory acquisition of 6,678 acres of Māori land for scenic reserves on the Whanganui River breached article 2 of the Treaty of Waitangi. None of the acquisitions met the test of being necessary in circumstances where the national interest was at stake and there were no other options. All of the Crown's actions on which we make findings here were part of that fundamental breach of the principal guarantee in the Treaty.

(2) *Takings advanced a national interest but no exigency*

Scenery preservation was a policy objective that advanced the national interest, but it was not an exigency of the kind that justifies compulsory acquisition of Māori land. Lives were not at risk, and nor was there a state of national emergency such as might arise from a nationwide power shortage.

The level of exigency must be very high where, as here, the riverside land was particularly valuable to tangata whenua for cultural and economic reasons, and where there were other options available for preserving the scenery on the land.

(3) *Taking not in the last resort: options were available*

First, the Crown could and should simply have taken less

Māori land, being careful to take only the land absolutely necessary to further its policy objectives. It should also have exercised a preference, wherever possible, for taking other land. Instead, and accepting that much of the remaining bush was on Māori land, it seems likely that the official view was that taking Māori land was easier and generally preferable to taking other land.

Rather than proceeding straight to compulsory acquisition of Māori land on the Whanganui River, the Crown could have:

- negotiated with the Māori owners to purchase scenic land (negotiation was standard when land was wanted from Pākehā owners), or negotiated other arrangements that would allow Māori to continue using the land while protecting its scenery;
- explored the possibility of exchanging the scenic Māori land for Crown land that was comparable in other ways;
- used section 232 of the Native Land Act 1909 to declare a 'Native Reservation' as a 'place of historical or scenic interest' for the common use of its owners, as this provision allowed the imposition of restrictions on its use;
- empowered Māori land councils to have a role in scenery preservation; and
- legislated to facilitate the compulsory acquisition of interests in the land that were less than the freehold interest (leases, licences, covenants).

(4) Taking wāhi tapu particularly reprehensible

We regard as particularly reprehensible the Crown's conduct in compulsorily acquiring urupā and wāhi tapu, especially in cases where the owners of the land in question had told the Whanganui River Reserves Commission why they needed to retain mana over this land. The sacred places of tangata whenua should never have been compulsorily acquired for scenery. Allowing Māori to access urupā does not retrieve the Crown's position.

The Crown's reluctance to acknowledge its breach in taking the urupā, and to recognise immediately the need to return them as soon as possible, exacerbates its hara (sin, blameworthiness).

We note that the Crown indicated in other submissions that it may be prepared to return urupā if land was lost in

breach of the Treaty. It says, however, that this will depend on the current status of the land.¹⁸ In the case of urupā on land taken for scenery preservation, we think it is unlikely that any will have fallen into private ownership since the whole point of the takings was that the land should come under, and remain under, the control of the Crown.

(5) The Crown's duty to ascertain whether tangata whenua could spare land

The Crown acknowledged that when acquiring Māori land for public works, it must consider whether affected landowners will retain sufficient land to cater for their foreseeable needs.

The Crown embarked upon its programme of land purchase for scenery protection in 1903, without consideration of whether Whanganui Māori had land to spare. Then, in 1907, the Stout–Ngata Royal Commission gave the Crown the best and most reliable information then obtainable on what land Māori could afford to give up. They told the Crown that while small areas of Whanganui Māori land might still be purchased and preserved, large scale land alienations along the Whanganui River were no longer appropriate. Rather than following this advice, the very next year the Crown authorised taking 19,000 acres of Māori land along the Whanganui River for scenery preservation, including most of the riverside land that remained to Māori. This conduct was a further breach of the Crown's duty of active protection.

For various reasons, the 6,678 acres of Māori land taken for scenic reserves along the Whanganui River was significantly less than the 19,000 acres originally authorised. Nevertheless, Whanganui Māori did not want to sell, had already sold the land that was less important to them, and could not afford to give up these 6,678 acres.

(6) Compulsory acquisition regime monocultural

The early twentieth century regime for taking scenic land was like taking land for other public works purposes under the public works regime, and was monocultural in the same ways.

In enacting it, the Crown did not take account of the special significance of land to Māori. It also gave no weight

to the important fact that, by the twentieth century, the land remaining in Māori hands was usually significant or strategic for both cultural and economic reasons. By facilitating the easy purchase of Māori land for scenery, the Crown failed to protect Māori from unnecessary cultural, spiritual, and economic loss.

Inherent in the idea that owners can be compensated for loss of land by payment of money is a conception of land as an asset rather than as a taonga. Moreover, the criteria for calculating the value of this riverside land did not recognise its special value to tangata whenua, nor its unique scenic beauty. It was valued only by reference to its potential as farmland, which delivered both cultural insult and a low price.

The Crown's monoculturalism in operating such a regime breached its duty of partnership.

(7) Valuation process

Māori objected to their land being valued by a Native Land Court judge, whereas general land went through an arbitration process. It is impossible now to ascertain whether the different systems actually produced results that were disadvantageous to Māori, but they certainly thought so at the time, and that view was upheld by an independent Royal Commission. Owners of Māori land who disagreed with a valuation had to contest it in the same forum that produced it, and this was inherently unsound procedurally.

We find that there was no proper basis for the Crown to operate a different valuation system for Māori land. It would have been fairer for Māori to have had available to them the system that was available to owners of general land.

The Crown's failure to allow this breached article 3 of the Treaty.

(8) Poor process

The Crown enacted procedural safeguards for owners of land to be compulsorily acquired for scenery, but these do not appear to have been applied to owners of Māori

land on the Whanganui River. Such failure breached the Crown's duty of active protection, and article 3.

(9) Cultural harm

We find that Whanganui Māori all along the river between Taumarunui and Raorikia suffered cultural harm, through the Crown trampling on their mana and presuming to take ownership and control of their taonga. This was a breach of the plain meaning of article 2 of the Treaty, and of the principles of partnership and active protection.

(10) Economic harm

Although it is not possible to quantify the extent of the economic harm to Whanganui Māori that resulted from the compulsory acquisition of those 6,678 acres that went into scenic reserves, we consider that there is sufficient evidence for us to infer that they suffered adverse economic effects from these factors:

- ▶ several groups already had too little land left, so that their remaining land played a critical economic role;
- ▶ areas suitable for, and previously used for, food cultivation were reduced;
- ▶ reduced acreages made remaining landholdings less viable for farming;
- ▶ because remaining on the land was more marginal economically, settlement patterns were affected;
- ▶ the prices paid for their land were low because of how the valuation criteria operated; and
- ▶ they were excluded from the economic opportunities arising from tourism (although factors other than land ownership were also involved here).

(11) Māori excluded from management and governance of reserves

Whanganui Māori were excluded from management of and decision-making concerning scenic reserves until 1958. From that time, the provision of one seat on various responsible boards was entirely inadequate. Its inadequacy is demonstrated by the Whanganui River Scenic Board seeking to acquire Māori land for scenery preservation

right up until comparatively recent times. Had a Māori voice been sufficiently strong, that culture would have changed much sooner.

Failure to provide for adequate Whanganui representation in the management and governance of scenic reserves breached the Crown's duty to interfere with tino rangatiratanga as little as possible when engaging in compulsory acquisition of Māori land, and also breached its duty of partnership.

The modern regime for reserve management has been in place since 1990. Since the role of Whanganui Māori in that regime is inextricably linked to their relationship with the Department of Conservation (DOC), we make those findings in our chapter on the department and its role in managing the Whanganui National Park.

28.19.3 Recommendations

We recommend, in addition to general redress that responds to the serious Treaty breaches identified, that the Crown returns to Whanganui Māori title in all urupā and other outstanding wāhi tapu located on land it compulsorily acquired from them for scenic reserves. We list particular sites in appendix VII.

We reserve our recommendations about increased and different involvement of tangata whenua in management and governance of the land they formerly owned for our chapter on the Whanganui National Park, since inclusion in the park was the ultimate fate of most of the land taken for scenery preservation.

28.20 CHAPTER 17: NATIVE TOWNSHIPS

28.20.1 What did this chapter cover?

In this chapter, we described and analysed:

- the development of legislation, from the early 1890s to 1910, for establishing and managing native townships;
- the establishment in 1895 and subsequent management of a native township at Pipiriki; and
- the establishment in 1903 and subsequent management of a native township at Taumarunui.

28.20.2 Findings

The Crown breached the Treaty and its principles both in creating the native townships legislation and applying it in Whanganui.

(1) Findings on the legislation

(a) *Consent to the native townships legislation*: Article 2 of the Treaty promised Māori that they could retain their land and exercise te tino rangatiratanga over it for as long as they wished. The first and second native townships regimes involved radical changes in the ownership and management of Māori land, but the Crown did not adequately or sufficiently discuss the legislation with Māori. Owners did not consent to important aspects of the regime contained in the Native Townships Acts of 1895 and 1910. The Crown acted inconsistently with its guarantee of te tino rangatiratanga and its duty of active protection, and did not fulfil the obligations of a good Treaty partner.

(b) *Compulsion*: Compulsory acquisition of Māori land for public works is justified only in exceptional circumstances and as a last resort in the national interest. Public works legislation has its own legislative history and rationale, but there are the same elements of compulsion in the legislation establishing the first and second native townships regimes, and we consider that the same test applies. There was no exigency such as to justify compulsion. Before acquiring land for townships, the Crown should have obtained all the owners' consent, but native townships legislation did not require it to do that. This breached the fundamental guarantee in article 2 of te tino rangatiratanga over Māori land until its owners wanted to sell.

(c) *Ownership and management*: Creating townships in and around Māori kāinga brought together often conflicting objectives of Pākehā settlers paying rent to Māori for the land they were occupying in a new town, and tangata whenua seeking to preserve their tūrangawaewae and traditional culture and also derive a decent income from

rent. The scheme for native townships was fundamentally disempowering for Māori, reposing ownership and management of their land in others. Inevitably, over time, the preferences of those in whom power and ownership was vested prevailed.

If the Crown takes over and manages Māori land on owners' behalf, as it did in native townships, it must include Māori in the development of policy about the administration of their land. The regime at no stage provided an avenue for Māori interests to be expressed and met, even when there was one Māori representative on the Māori land board before 1913 – although that was better than nothing. The Crown undermined the *tino rangatira*tanga, breached its duty of active protection, and acted inconsistently with the principle of partnership.

(d) *Survey costs*: For Māori to have shouldered the whole burden of township survey costs was disproportionate and unfair. Māori were not the only beneficiaries of native townships: the Crown declared their importance for all of New Zealand. The Crown's failure to share expenses in the development phase of townships sabotaged the likelihood of their ever delivering meaningful economic returns to Māori. The Crown should have put this objective to the fore from the outset, and not doing so breached its duty of active protection.

(e) *Rent distribution*: The main benefit of native townships for Māori was supposed to be the rental income. It would have been both practical and culturally appropriate for owners to have the option of rents going into a communal fund, but this was not possible until 1922. The Crown's failure to provide this option was inconsistent with its guarantee of the *tino rangatira*tanga.

(f) *Perpetual leases*: In 1910, the Crown empowered district Māori land boards to issue perpetually renewable leases, partly to address the demands of lessees. Māori had little opportunity to comment on the change before it happened. The failure to consult with beneficiaries about such a fundamental change to the administration of their estate was a serious omission. Both the change and the Crown's

failure to discuss it with Māori constituted a breach of the duty of active protection.

(g) *Land sales*: The Treaty obliged the Crown both to protect Māori ownership of their land for as long as they wished to retain it, and to ensure that they did not divest themselves and their *uri* (descendants) of too much land. This applied *perforce* to land they owned in townships, because a strong rationale for townships was facilitating the retention of Māori land in Māori hands.

The Crown acted in breach of its obligations when, in 1910, it introduced provisions allowing Māori owners to sell land in townships through meetings of assembled owners, or by giving their written consent to the Māori land board. This move flouted the recommendations of the Stout–Ngata commission of 1907, and undermined the ability of Māori to hold on to township land. At the very least, the Crown should have sought Māori consent before introducing the 1910 legislation.

We agree with claimants that the 1910 Act breached the Crown's duties to act in good faith, and to uphold the *tino rangatira*tanga.

(h) *Māori occupation of the towns*: In our view, the Crown did not provide adequately for Māori to continue to occupy land in townships, nor for them to hold on to the land they owned and occupied once the townships got underway. The Crown wrongly limited native allotments to 20 per cent of township land in the 1895 Act, and although the later Act removed the cap, this did not address the fundamental failure of the Crown to provide for meaningful expression of *mana Māori* when it designed the township concept. Not including Māori in the management of their *marae*, *papakāinga*, and *urupā* under the 1895 Act was a harsh and unnecessary aspect of that regime, as was their later transfer to Māori land boards.

The Crown should also have gained Māori consent before opening up native allotments to lease and sale in 1910. The law changes at that stage allowed individuals to sell interests in land that *tangata whenua* had previously identified as places of vital importance to *hapū*.

This indifference to the cultural integrity and mana of tangata whenua again found the Crown wanting as a Treaty partner, and breached its guarantee of te tino rangatiratanga.

(i) *Public works provisions*: When the Crown conferred on itself legislative authority to acquire Māori land compulsorily, it breached the Treaty guarantee of te tino rangatiratanga. Treaty jurisprudence leaves open to the Crown the possibility of acquiring land compulsorily consistently with the Treaty in the rare situation of national exigency.

Native townships legislation was even worse than public works legislation: it permitted the Crown to acquire Māori land compulsorily without notice or compensation, *even though* Māori had given over the ownership of their land to the Crown or a trustee body on the basis that *it would be leased and not sold*. These italics express the sense of outrage that this Tribunal feels about the egregious breach of the Treaty that these legislative provisions, and the Crown's implementation of them, entailed. None of the arguments that the Crown tendered in justification – for instance, that the value of Māori land in the town would increase as a result of the public works – is solidly based. If it was to the benefit of Māori for their land to be used for public works, it follows that they would probably have agreed to sell land for that purpose. They should in any event have been paid, because public works would benefit not only Māori but the whole community.

We see no basis whatsoever for using compulsion, much less compulsion without notice or compensation. This was a flagrant breach of article 2.

(2) Findings on Pipiriki

(a) *Setting up Pipiriki*: We consider that there was an element of compulsion in the negotiations for Pipiriki Native Township. Tangata whenua did want the town, but their consent was conditional. The site of the town was to be within certain boundaries; a particular urupā was to be reserved, with other reserves agreed later; and a Māori committee was to be set up, which the Government would deal with as representing the owners. There was no sign that tangata whenua favoured giving over to the Crown

legal ownership, management, and control of their land at Pipiriki. However, the 1895 legislation provided only one model for a native township, so it was that or nothing.

We saw no evidence of the Crown's forging a relationship with a Māori committee as leading Māori envisaged, so that tangata whenua would retain their mana in the township. The Crown also failed to follow its own legislation and reserve the urupā on Pukehinau. This exposed the urupā to inappropriate use while under the management of the Department of Conservation.

The Crown made no effort to ensure that public works were fairly compensated and offered back when no longer needed. Instead, it leased out land taken for public works, and kept the rents.

Taken together, the Crown's actions in setting up Pipiriki showed an unfortunate lack of regard for its Māori owners that amounted to a breach of the principle of partnership.

(b) *Economic benefits, and managing Pipiriki*: The Crown understood that tangata whenua gave up their control over Pipiriki lands in a manner not entirely of their choosing, in exchange for certain administrative and economic benefits. We find that this and the Treaty obligations inherent to the principle of partnership imposed a duty on the Crown to do its utmost to realise these benefits for Māori. It was in the nature of an exchange, and the Crown should have done everything in its power to deliver.

The Crown, however, largely withdrew from this responsibility. Tangata whenua were effectively excluded from the official administration of the town while it was under Crown management. Even when the township was transferred to the Aotea District Māori Land Board (without Māori consent), the Crown did not make sure that there was adequate Māori representation on the land board or that owners were consulted adequately.

Many economic benefits were never realised – an outcome brought about in no small part by the Crown's decision to make the township's development costs the responsibility of tangata whenua. We agree with the Crown that the wider economic situation played a significant role in the declining income from rents in Pipiriki, but it could

– and should – have limited the amount that owners were expected to pay for development and survey costs. This would have lessened the impact on tangata whenua of Pipiriki's financial collapse.

The way that the Crown implemented the regime at Pipiriki prejudiced tangata whenua. Owners received very little money individually, and until 1922 there was no capacity to manage rental income communally. Tangata whenua had no say in township management, so the Māori land board was able to issue perpetual leases without consultation or consent. Perpetual leases later delayed the return of land to its Māori owners.

The Crown therefore failed to fulfil its obligations as a Treaty partner, and undermined te tino rangatiratanga of Pipiriki Māori. The Crown could have ameliorated the very disappointing results of the townships scheme at Pipiriki – a concept that it promoted and pushed through without properly evaluating its real prospects – if it had helped the Pipiriki Incorporation financially when it took over the land in 1960. The Crown neither acknowledged accountability for any part of what happened, nor demonstrated a sense of responsibility towards tangata whenua, who paid the full price of the township's failure.

(3) Findings on Taumarunui

(a) *Setting up Taumarunui township*: When it set up the native township at Taumarunui, the Crown went against the express wishes of tangata whenua. It postponed partitioning the land in the township, and deliberately limited input from the Māori land council, simply to avoid delaying its self-imposed timetable. The Crown did not gain the full consent of owners to the town, did not negotiate with them in good faith, and breached its guarantee of te tino rangatiratanga.

Gazetting Taumarunui under the second native townships regime, the Crown identified native allotments under a system that, for the most part, benefited Māori owners. Native allotments were laid out in the original survey plan, and the Māori land council added more sections when tangata whenua applied for them. However, the regime should have obliged it to gain hapū consent for the size and location of native allotments. Nor did the

council have authority to adjust the boundaries after the Crown proclaimed the town, and this meant it could not exclude Mātāpuna land from the township as some owners wanted. There are also questions about whether owners' agreement was sought or given to including a large recreation reserve in the township; reducing the Mōrero marae native allotment; and altering several streets.

In short, the system did not sufficiently respect te tino rangatiratanga of tangata whenua to ensure that the Taumarunui native township was established in a manner that was fair to Māori, or to which they agreed. The Crown should have done more to fulfil its duty of active protection.

(b) *Local government in Taumarunui*: The Crown has a duty that stems from article 3, which conferred on Māori the rights of British citizens, to ensure that Māori were represented on bodies that made decisions affecting them. When it set up local government in Taumarunui on which Māori were not fairly represented, it failed to meet its Treaty obligations. Although the Crown provided for Māori representation on the first native town council, one temporary seat was as far as it would go. After that, tangata whenua had no effective voice in local government. The local authority harmed Māori interests by supporting lessees who lobbied to be able to purchase freehold title in land in the town, and by imposing rates on unoccupied and culturally significant Māori land.

(c) *Lease management and land sales in Taumarunui*: While it was a native township, Taumarunui was beset by problems that negated the financial benefits that Māori were expected to derive from leases, and ultimately made selling their land a financially prudent decision.

Financial management of the town was generally poor, and not in the interests of the beneficial owners of the land. The Crown set up a leasing regime that, in the end, not only allowed perpetual leasing and subletting but meant relatively low rentals due to infrequent rent reviews and a questionable valuation and arbitration system. The Crown refused to partition the township before setting up the town, which delayed the distribution of rent until

1910, and exposed Taumarunui owners to disproportionate rates and levels of land tax. It then expected owners to cover all the costs of town development, survey, and river protection works from rents. Inconsistently with its Treaty duty to actively protect the interests of Māori, the Crown passed the Acts that provided for native townships, taxation, rating, and public works, the compounding effect of which was to the detriment of the beneficial owners of land in the native township.

These factors made it extremely hard for owners to hold on to their land. The Crown argued that it could not be assumed that owners were unwilling sellers. Owners who moved away from Taumarunui might have been less motivated to keep land in the town, but otherwise we saw no evidence that owners who began selling land in the 1910s and 1920s were ‘willing sellers.’ The Crown was not worried about these sales, nor motivated to support retention of Māori land interests in the town – although it was aware of the problems of rent distribution and increasing costs. Its unconcern about whether or not Māori held on to their land extended in 1913 to facilitating their selling it, because from then individuals could sell their interests with no input from the collective.

The Crown did not ensure that hapū were empowered to make decisions about their land. By neither seeking nor finding remedies for the problems that beset the leases, facilitating the sale of township land, and ignoring the interests of hapū in land retention, the Crown breached its obligation to uphold te tino rangatiratanga of Taumarunui Māori, and to actively protect their interests.

(d) *Māori presence in Taumarunui*: It was reasonable to expect the Crown to protect places in townships that Māori occupied and wanted to keep. This duty resides in the plain meaning of article 2 of the Treaty. We consider that to fulfil its obligations, the Crown had to set up a system that provided for hapū to make decisions about leasing or selling land in native allotments.

The Crown plainly did not safeguard sites of importance to Māori in Taumarunui, and that is why they no longer own them. The Crown stood by when owners partitioned and sold land because of rates debts, as happened

on the native allotments Mōrero and Wharauroa. From the whole township regime, in which they had too little power, Māori derived too little financial benefit, and were left to cope alone with problems that were not of their making. This led first to disconnection from and then to sale of land, and a role for hapū that was ultimately only vestigial.

In the case of Mōrero marae, the Crown contributed to the alienation of land, targeting the marae land for public works takings. It later returned some of this land, but it required Taumarunui Māori to pay \$142,500 for what it would have cost the Crown to remove the buildings on site. We find that, in making this payment a precondition of the return, the Crown did not act fairly or in accordance with Treaty principles. The Crown should have taken into account the impact of the takings on the Mōrero community; the cultural and spiritual significance of the site; and the benefits that the Taumarunui community had gained from the public works. It should have allowed tangata whenua to keep the buildings at nil cost. The Crown was obliged to make provision for surplus public works land to be returned at the earliest possible opportunity and with the least cost and inconvenience to the former Māori owners. Its failure to do so in respect of Mōrero marae was inconsistent with its Treaty obligation under article 2 to actively protect Māori rangatiratanga over their ancestral land.

At Mātāpuna, the Crown took 25.5 acres of Māori land in the Ōhura South G block for railway purposes under the Public Works Acts 1894 and 1903. It took the land without compensation, and almost certainly against the wishes of its owners, who were using it at the time, and for whom it had obvious significance given the location of the wharepuni of the same name, and an urupā. There is a rigorous standard for Treaty-compliant public works takings: the circumstances must be exceptional, and the taking must be necessary after all alternatives have been exhausted, and the national interest requires it.¹⁹ A compulsorily acquisition of 25.5 acres of culturally-significant Māori land for a ballast reserve did not meet the test, and the acquisition breached the guarantee of te tino rangatiratanga. The Crown compounded its breach by failing to

offer the land back to its former owners when it was no longer needed for the purpose for which it was taken. It seems to have sold most of it to private purchasers. Even in the 1990s, in the era of Treaty claims and land banks, the Crown proposed to sell the land where the line depot was located when it became surplus. Why it was to be sold rather than land-banked, and why the claimants had to pay to get it back, was not explained.

28.20.3 Recommendations

We recommend that the prejudice flowing to Whanganui hapū from the Treaty breaches outlined in our findings should be taken into account when claimants negotiate a settlement with the Crown.

(1) *Land taken for public works and other Crown land*

We recommend that the Crown gives back to the relevant body or bodies the \$142,500 plus interest that it inappropriately exacted as a condition of its return to them of Mōrero marae land. Given the prejudice tangata whenua of Mōrero suffered as a result of the wrongful taking from them of land without notice or compensation, the Crown should have gifted the buildings located on Mōrero land to tangata whenua. We also recommend the Crown return the money paid for the Mātāpuna ballast pit land for the same reasons.

Claimants requested the return of other land taken over the years for public works in Taumarunui and Pipiriki. We recommend that the claimants and the Crown work together to identify and return other Crown land taken for public works as appropriate.

We recommend that the Crown continues the process of returning Crown land in native allotments as cultural redress to representative hapū bodies in Pipiriki and Taumarunui. The Crown should also take up any opportunities to work with local authorities to encourage them to do the same. Claimants specifically seek the return to a 'collective of interested claimants and co-managed between Maori, the Council and DOC' of the recreation reserve at Ngāhuihuinga that was formerly part of the Taumarunui papakāinga.²⁰ We recommend that the

Crown work with claimants to establish how that might best be achieved.

(2) *Perpetual leases*

We recommend that the Crown takes the necessary steps to ascertain whether there is native townships land in this inquiry district that was perpetually leased, but has not been the subject of compensation under the Maori Reserved Land Amendment Act 1997. If so, owners of that land should receive such compensation, irrespective of whether their land was Māori reserved land in 1997.

28.21 CHAPTER 18: THE 'VESTED LANDS' IN WHANGANUI

28.21.1 What did this chapter cover?

In this chapter, we described and analysed:

- ▶ the transfer of about 115,000 acres of Māori land to the Aotea District Māori Land Council between 1902 and 1912;
- ▶ how most of that land was leased out to Pākehā farmers;
- ▶ how the vested land was managed, including the sale of some land and compensation for improvements;
- ▶ the process of amalgamation and incorporation in the second half of the twentieth century; and
- ▶ the extent of Māori occupation on vested land.

28.21.2 Findings

The Crown initiated the vested lands scheme with good intentions, providing land for settlers while at the same time keeping Māori land in Māori ownership and generating income for its Māori owners. Because Māori land-owners in Whanganui vested more land than elsewhere, more of them stood to be affected by the success or failure of the scheme.

The scheme could have been better thought out and executed in a number of ways, but its Achilles heel was how it compensated lessees for improvements. This put in jeopardy almost immediately the Crown's commitment to Māori ultimately resuming the land.

When it proved difficult to lease the land, the Crown

favoured offering perpetual leases to attract lessees. The Government's commitment to the success of its vested lands scheme was such that Carroll tried hard to influence the land council to agree to perpetual leases. He pulled back once opposition from Māori was clear, but the land council seems to have been pressured into compensating lessees for *all* improvements instead. This was badly flawed. The Crown should have, but did not, impose rules to manage:

- for what improvements, and for what level of expenditure on improvements, owners were obliged to compensate lessees; or
- the implementation from the start of a sinking fund to cover the cost.

As the value of improvements soared, the problem escalated and threatened the ability of Whanganui Māori to hold on to their land. We disagree with the Crown that it had no obligation to provide finance to meet the improvements liability. The Crown was responsible for the inadequacy of policy, legislation, and administration that led to the improvements debacle. Although the 1954 Act reduced liability for compensation in percentage terms, and the Māori Trustee assisted with loans, Māori have not derived much financial benefit. A considerable proportion of the Ātihaui-Whanganui Incorporation's income each year was perforce set aside to finance resumption, and shareholders' dividends suffered accordingly. The Crown finally made grants to the Ātihaui-Whanganui Incorporation between 2006 and 2008 – more than a century after the inception of the vested lands scheme. The long delay in responding to the financial problems that the vested lands scheme generated meant that the grants could only address some of the prejudice that the lands' owners experienced over multiple generations. While we are not in a position to put a figure on the financial burden, the evidence we received was that by 2003 the incorporation had spent \$8.46 million to resume land. The opportunity cost would doubtless be greater. The Crown's creation, management, and resolution of the improvements liability situation exhibited, at every stage up to 2006, a startling failure to actively protect the interests of the Māori people affected.

The fall in unimproved land values, on which rents were based, stemmed in part from outside factors such as the Depression, which could not have been foreseen. However, the Crown could have done more to devise fairer methods of valuation. Instead, liability for improvements ballooned, and rents from which to pay for them dwindled. Even if the Crown had insisted on sinking funds from the start (as Māori suggested on multiple occasions), the chances of Māori receiving their land back debt-free and developed within even two lease terms were slim. Nevertheless, the Crown demonstrated a woeful lack of leadership in managing the issue. Letting things slide is not an option for a Crown obliged by its Treaty obligations to actively protect Māori interests and to practise good government.

As to other findings in this chapter, we said:

- We make no finding of Treaty breach in relation to the initial vesting of the Whanganui lands. Aspects of the process could have been better, but its introduction was not rushed, and owners had time to debate and negotiate.
- The vesting of land in the Tauakirā block did not breach the Treaty except in the case of Tauakirā 2M, where the vesting was against owners' wishes, and it took far too long for the Crown to return the land. It was a weakness of the regime that vested land could not be returned until the amendment Act of 1912 made it possible. Later, the Crown's purchase of vested lands in Tauakirā breached its duty to act in the utmost good faith, and the principle of active protection because owners signed deeds to vest their land on the understanding that they would not be sold.
- The Crown breached its duty of active protection when, at the outset, it prioritised haste over assisting with roading, when provision of basic roading and access was recognised as a necessary ingredient for the scheme's success.
- Provision for papakāinga in the 1900 Act and subsequent legislation was inadequate: they were not defined legally in a way that made them inviolate; and there was no scheme for occupation that was practical and

durable. This breached the tino rangatiratanga of tangata whenua, and the principle of active protection. Although urbanisation would inevitably have resulted in depopulation, if there had been permanent designation of the land as papakāinga, there would have been means for tangata whenua to revive those places today, when better transport and cultural regeneration have made returning to rural tribal roots practicable and desirable.

- The Crown breached its obligation to act towards its Treaty partner with the utmost good faith when, in this early period, it pressured owners to accept perpetually renewable leases, when most had specifically rejected them in their deeds of vesting, and the Crown had assured them that they would resume possession and ownership of the land.
- When roading and surveying finally did get underway, the Crown acted responsibly by setting loan repayment terms that were reasonable.
- We make no finding of Treaty breach in regard to timber reserves on the vested land. Legislation provided for reserves to be made and the Crown did not discourage the Aotea Māori land council or board from doing so. Nor do we hold the Crown responsible for the failure to derive significant income from milled timber on leased land.
- The Crown breached the principles of partnership and active protection when, after it brought in Māori land boards with greatly reduced Māori representation, it did not assume greater responsibility for monitoring outcomes for Māori on their vested lands to ensure that they were as good for them as they practically could be.
- We do not hold the Crown responsible for the land board's mistake in issuing a perpetually renewable lease for Ōtiranui. Its subsequent failure to investigate potential remedies, while disappointing, was not such as to breach the Treaty.
- It is not clear that there were compelling economic arguments against incorporation. However, after much careful consideration of their needs, Whanganui Māori requested a statutory land trust to manage their vested lands, as being both operationally efficient and

culturally appropriate. The Crown refused even to countenance the idea and instead legislated for incorporations. In doing so, it took too little account of the preferences of its Treaty partner. However, it is not clear that its failure in this regard was necessarily prejudicial to Whanganui Māori, because incorporation was not the only option available to owners of the vested lands. They – or at least, their leaders – chose it over a section 438 trust, even though the Māori Land Court judge urged them to consider that mechanism, and indeed it might well have been a better answer to their cultural preferences. We therefore find no Treaty breach on the part of the Crown.

At the heart of the Whanganui vested lands issue lies the ability of Whanganui Māori to retain and derive benefit from their land. The Crown's poor performance as regards compensation for improvements resulted in very extended leases and a huge financial burden. Because Whanganui Māori embraced the scheme and vested a lot of land, its failure to meet expectations affected many.

But of course the prejudice was not limited to financial loss. The way the vested lands scheme unravelled meant that the whānau of the original owners have had little access to their whenua for a very long time. The challenge for the incorporation of achieving its financial goals, but also meeting shareholders' cultural needs and aspirations as regards their ancestral land, is considerable. It might now be time for Whanganui Māori and the Crown to sit down together, re-examine models of land ownership and management, and see if it is possible to come up with something novel to enable a landholding entity to succeed in all the ways tangata whenua desire.

28.21.3 Recommendations

We recommend that the Crown takes into account in settlement negotiations with Whanganui Māori the Treaty breaches in, and the serious consequences that flowed from, the vested land debacle.

We recommend that, if the claimant community of Whanganui supports such a move, the Crown contributes resources to the development of alternative models to incorporation as a repository for Whanganui Māori

land interests. Although the incorporation model has succeeded in keeping Māori land in a corpus, and has become financially successful, its structure means that it does not necessarily meet the raft of spiritual and emotional needs that some have in relation to their whenua. It may be that aspirations for papakāinga could be more easily accommodated in a different kind of structure.

We can make no recommendations concerning papakāinga land now owned by the Āti hau–Whanganui Incorporation, because under our legislation that is privately owned land.

28.22 CHAPTER 19: MĀORI FARM DEVELOPMENT IN THE TWENTIETH CENTURY

28.22.1 What did this chapter cover?

In this chapter, we described and analysed:

- the economic development of Whanganui Māori in the nineteenth and early twentieth centuries;
- obstacles to land development in the Whanganui district;
- the Morikau development scheme, initiated in the early 1900s;
- other development schemes of the 1930s;
- post-war rehabilitation assistance; and
- other Crown assistance after 1945.

28.22.2 Findings

We agree with the Crown that there were considerable obstacles to Māori developing successful farms in this area. Compared with many other parts of New Zealand, the bulk of Whanganui land is unsuited to arable or pastoral farming: it is rugged land that is susceptible to erosion and reversion, and the type of soil copes poorly with the high rainfall. That said, the district is very large, and development possibilities varied across the region, and at various times there was clearly some scope for successful development.

At the beginning of the twentieth century the new ideas for Māori rural development had significant support. Māori leaders and Crown representatives were united in the view that developing Māori land for their future

benefit was a kaupapa that deserved effort, attention, and funding, and the Crown supplied all three to some extent. Certainly with the benefit of hindsight, it must be doubted whether the ideas that gained traction were the best ones. However, Whanganui land development schemes helped the retention and, in some cases, development of Māori land.

Barriers to the development of Māori land included problems associated with multiple ownership, the costs of partition and survey, and a form of title that made it difficult to use the land effectively. Poor title affected Māori access to credit, and this was something that the Crown could most easily have done something about. Certainly, the Crown had to balance its duty of active protection with the risk of foreclosure associated with mortgaging. But it also had to give effect to the guarantee of property in article 2, which included the right for Māori to develop their land. To do that, Māori needed access to loans. The Crown should have tried harder to enable lending for the development of Māori land, at the same time as protecting it from foreclosure.

One approach would have been to provide Māori with more and better access to low cost State lending. The Government Advances to Settlers fund was more or less unavailable to Māori landowners because of the plethora of rules that made almost all of them ineligible. Like other Tribunals before us, we find those rules unfair and unreasonable. The Crown should have directed officials to assess Māori applications on their merits, and could have actuated this approach by amending the Government Advances to Settlers Act 1894. We concur with the Central North Island Tribunal that:

By failing to provide state assistance equivalent to that being offered to other landowners of limited means to enter farming, the Crown was in breach of the Treaty principle of equity and in breach of its obligation to actively protect Māori in their Treaty development right to participate in farming.²¹

Creative solutions should also have been sought to the loss of land upon default: some land could have been made inalienable, ensuring the maintenance of tūrangawaewae

and cultural survival. The Crown could also have tried to make the title system less unwieldy, so that Māori land-owners might have been able to access private lending.

In an effort to solve the acute need for funding and other development assistance for Māori in Whanganui, the Crown turned to compulsory vesting. In Whanganui, not only did the Crown vest Māori land without consent, it also prevented owners from carrying out their own plans for development. Although these actions were unfair, and could be seen as a breach of article 2 of the Treaty, they need to be considered in the circumstances of the time and alongside the benefits of such schemes. In compulsorily vesting Whanganui land, the Crown intended to overcome some of the many problems afflicting Māori agricultural development in Whanganui and elsewhere. In particular, it sought to protect remaining landholdings from further alienation, develop Māori land into profitable farms, and train Māori to become effective farmers. These were all laudable aims, which Whanganui Māori largely shared.

Vesting enabled the Crown to lend on a relatively large scale, on land with multiple owners, and at reasonable rates, while also protecting owners from as much risk as possible. Morikau Station was one of the earliest large successful farming enterprises for Māori in New Zealand, and also provided benefits for communal causes, principally marae rebuilding and education. Morikau suggests what might have been if the Crown had not set about its purchasing programme with so much disregard for Māori development, and had instead fulfilled its obligation to act in partnership with Māori.

On the other hand, we criticise some aspects of both the Morikau and 1930s schemes – principally that the schemes were run in a manner that did not strive to allow owners to retain as much control as possible. The schemes did not employ owners and their whānau at either manager or worker level as much as they would have wanted. The triumvirate of the Māori land board, the farm owners' committees, and the farm manager could have worked to involve owners sufficiently, and in some places and for some periods it did work, and worked well. However, when key players moved on or changed their involvement,

the balance was lost, and the Crown did not set in place mechanisms to ensure that it was maintained.

Moreover, there was a lost opportunity at Morikau for Māori to benefit from more systematic farm training in the 1910s and 1920s. Māori looked to training as an important gain from the Crown's compulsory vesting of their land. The Crown should have, but did not, ensure that training was consistently given, and nor did it address the situation at Morikau that saw relationships deteriorate so that owners became alienated from the scheme in all kinds of ways for some years.

We also agree with claimants, and indeed with some former Crown officials, that the Crown was responsible at least in part for the poor financial state of the Rānana scheme, which by the end was woeful. We accept that the Aotea land board and the Crown made financial decisions in good faith, and that risk is an inherent part of farming and farm development, and that the isolated location and rampant noxious weeds made the land very expensive to develop. It was not possible for the Crown to shield Whanganui Māori from this reality.

The Crown's fault was in the way the debts from abandoned lands at Rānana were merged and spread across the sections in the station area without clarifying who was liable for the debt or its interest. This made it impossible for owners to know for what part of the debt they were responsible, and so they declined to pay. Then the Crown proposed further investment and borrowing in the mid-1960s, which wiped out some hard-won equity and led to ballooning debt. The Crown did not accept any responsibility, though, and its solution – leasing some of the land to the Morikaunui Incorporation – was in our view ungenerous. It removed the land from owners' control for a further 21 years, and prioritised repayment to the Crown. Similar action was undertaken in the Kōpuaruru scheme. Such unwillingness to take responsibility breached the Crown's duty of active protection and its obligations to assist Māori development.

In the latter part of the twentieth century, the Crown gave assistance in the form of development loans and practical advice, but we lack the detailed evidence necessary to make findings for this period.

28.22.3 Recommendations

We concur with the Wairarapa Tribunal's approach to twentieth-century land issues and here we set out recommendations for Whanganui that borrow from that report.

In addition to general redress for the breaches committed and the prejudice suffered, we recommend that:

- the Crown work with Whanganui Māori in light of the significant breaches of the Treaty relating to keeping and using Māori land, to design a means whereby the Crown either:
 - provides a workable system in which it lends money to owners of Māori land on the security of that land; or
 - guarantees lending to owners of Māori land by other institutions unwilling to accept Māori land as security;
- the Crown engage with Whanganui Māori in a Crown-funded project to assist Māori to engage (if they wish to) in the level of Māori Land Court activity that would be necessary in Whanganui to:
 - effect amalgamations and exchanges to ameliorate the effects of the poor partitioning of titles in the past; and
 - apply for the court to exercise its new jurisdiction to facilitate access to landlocked land;
 (this recommendation, if accepted, would involve the Crown paying for the costs of surveyors and lawyers); and
- the Crown engage with claimants with a view to facilitating the return to the successors of former owners of Rānana Development Scheme land still in the hands of the Māori Trustee. Claimants seek the land back in reasonable condition and free of encumbrances.

28.23 CHAPTER 20: WAIMARINO IN THE TWENTIETH CENTURY**28.23.1 What did this chapter cover?**

In this chapter, we described and analysed:

- the alienation of over 50,000 acres of land retained or set aside for ongoing Māori use from the Crown's purchase of the Waimarino block;

- the recommendations of the Stout–Ngata commission in respect of the land;
- Crown and private purchasing in the reserves after 1910; and
- the history of Whakapapa Island (Moutere).

28.23.2 Findings**(1) *Proposals for partnership, 1900–10***

The quantity, quality, and location of the blocks the Crown chose for, and the court awarded to, the sellers and non-sellers of Waimarino, meant that it was always going to be difficult for communities to sustain themselves on the land. Stout and Ngata counselled in their report that for Whanganui Māori to prosper on the land remaining to them in Waimarino, the Crown needed to engage with them in partnership, and owners who wished to farm their land would be supported to do so. The Ngāti Uenuku people of Manganui-a-te-ao called upon the Government to give them the same access as settlers to loans for land development from the Loans to Settlers fund, so that they could succeed 'as ordinary farmers', and take on the 'present day methods' of farming.

Rather than taking active steps to help the Māori land-owners of Waimarino to maintain and develop their land, the Crown chose the radically different option of presiding over its purchase. Over the next seven decades, it facilitated, and participated in, the alienation of between 51,510 and 53,046 acres of the remaining Māori land in Waimarino. This was around 70 per cent of the original area of the seller reserves and non-seller blocks. This conduct was inconsistent with the principle of partnership.

(2) *A failure of active protection, 1911–30*

Between 1911 and 1930 the Crown actively participated in or facilitated the alienation of 39,451 acres of Māori land within Waimarino. This constituted more than half of the entire original area of the sellers' reserves and non-sellers' blocks combined. Such a wholesale alienation of what was already a much-reduced resource was to have serious consequences for the viability of many Māori communities.

Particularly egregious in Treaty terms was that more than 2,000 acres were taken under public works legislation

for roading, railway, defence, and scenic purposes, mostly before 1920. More than half came from one subdivision: Waimarino 4B2. Even though the Crown never used it for the purpose for which it was taken, the land was never offered back to its original owners. The Crown took further land for a scenic reserve despite the written opposition of some of the owners.

The Crown's compulsory acquisitions did not meet the Treaty standard of exceptional circumstances, where there was no alternative, and the national interest was at stake.²² From a process point of view, the legislation authorised the Crown to act in breach of its Treaty obligations to Māori, taking their land without proper notice, discussion, or negotiation. When the Crown engaged with owners over its intended taking for a scenic reserve, it did so in a manner that was arrogant, insensitive, and contrary to Treaty principles. When it calculated compensation, the Crown made a narrow assessment of the monetary value of the land and its millable timber that took no account of the importance of the land to the livelihood, or cultural and spiritual wellbeing, of its Māori owners. Once it was apparent that the 1,051 acres it took for the territorial training ground were surplus to defence requirements, the Crown compounded the breach and prejudice that arose from the original compulsory acquisition by not returning the land to its former owners. Instead, and without discussion with them, it added 649 acres to the area of Tongariro National Park in 1922, and converted the balance to Crown land in 1940.

The prejudice occasioned by the Crown's compulsory acquisitions of Waimarino land was exacerbated by the fact that the acres came from a corpus of Māori land already very much reduced by the original Waimarino purchase. This was especially so in the case of Waimarino 4B2, a subdivision allocated to families who opposed the 1886–87 alienation of Waimarino. For these people, the Crown's compulsory taking of more than half of their land was especially painful, and a grievous Treaty breach.

As well as the more than 2,000 acres it acquired compulsorily between 1910 and 1930, the Crown also purchased by negotiation more than 8,000 acres of Māori

land in the Waimarino seller and non-seller blocks. Under the Native Land Act 1909, the Crown was able to acquire the vast majority of this land without first securing the consent of a majority of its owners. Particularly striking in this regard was its March 1914 purchase of Waimarino B3B2 (6,915 acres), which it bought with the agreement of just six of the block's 178 owners. It also purchased Waimarino F and 8 following meetings at which only a minority of owners were represented – and despite Stout and Ngata's recommending that both blocks be set aside as papakāinga land for the 'residence and cultivation' of their owners and their descendants.

In pursuing the purchase of the remaining Māori land in Waimarino, the Crown breached the principles of active protection and partnership. It placed the interests of settlement ahead of the needs of Treaty partners who had already seen most of their land alienated. In their drive to secure land for settlement, Crown officials sometimes acted unfairly and unscrupulously. This is certainly our finding with regard to the treatment of the descendants of Tūtemahurangi who, in order to obtain title to the land where their kāinga was located, were obliged to alienate all of their interests in Waimarino B3B2A before being forced to pay an inflated price for three acres at Kākahi. By deliberately narrowing the options available to the Tūtemahurangi people and then cynically exploiting their lack of options, we find that the Crown acted in bad faith and contrary to the Treaty principle of equal treatment.

Private buyers purchased most of the Māori land alienated from Waimarino between 1911 and 1930. Altogether, private interests acquired 28,200 acres of seller reserves and non-seller blocks during these years, comprising 38 per cent of the total area. We find that the Crown facilitated the large-scale private purchase of Māori land in the block by means of a statutory framework that systematically favoured the sale rather than the retention of Māori land. The Crown designated the Waimarino seller and non-seller blocks as Māori freehold land rather than land in trust or reserves with restrictions on alienation. Individual owners could consequently partition and alienate interests at will. Sale was further facilitated by the

system of meetings of assembled owners, instituted under the Native Land Act 1909, that allowed votes by only a very small quorum of owners present or represented, and regardless of the size of the land or the number of owners, to carry the day. Through this mechanism, small minorities of owners were able to alienate to private buyers almost all of Waimarino 2 as well as substantial portions of Waimarino A, CD, and 5.

Given the circumstances of its 1886–87 purchase, and the relatively small proportion of the original Waimarino block set aside for sellers and non-sellers alike, the Crown had a particular responsibility to ensure that Whanganui Māori were assisted in their retention of their remaining Waimarino land. In fact it did the opposite. By compulsorily acquiring more than 2,000 acres, including more than half of Waimarino 4B2; by purchasing a further 8,000 acres largely through meetings where only a minority of owners were represented; and by facilitating the purchase by private interests of a further 28,200 acres, the Crown between 1911 and 1930 failed in its Treaty duty to actively protect the lands and resources of Whanganui Māori in Waimarino.

The Crown also failed to ensure that Whanganui Māori in the area retained sufficient land even for their subsistence. By providing 1500 acres at Tawatā and 800 acres near Kaitieke to the whānau and followers of Te Kere Ngātaierua, the Crown did take a few, minor steps, to alleviate the problems of landlessness that some tangata whenua of Waimarino faced. The Crown's distribution of 2,300 acres largely to the immediate family of Te Kere, however, did little to mitigate the impact of large-scale alienation of Māori land in the block. Nor was the land granted to the 'landless' followers of Te Kere necessarily sufficient or appropriate for their needs. Rather than allowing them to stay on the flat, fertile riverside land where they had constructed their kāinga and planted their gardens, the Crown put the upper Rētāruke community near Kaitieke on two bush-covered hillside 'small-grazing runs'. The land the community had formerly occupied was leased or sold to European farmers. This was a signal failure of the Crown's duty of active protection.

(3) *Whakapapa Island*

The Crown also failed to properly recognise and provide for the interests of Ngāti Hikairo and Ngāti Manunui in Whakapapa Island, and then failed to heed their legitimate protests.

The Crown omitted the island from its official survey plan of the Waimarino Block, then its officials, once they became aware of the island's existence, initially refused to consider claims from tangata whenua that the land was not part of the land the Crown bought in the Waimarino purchase, and still belonged to them. When Īnia Ranganui asserted ownership rights over the island and cut timber there, he was threatened with prosecution and his wood was confiscated. When the Crown finally inquired into the circumstances of its acquisition of Whakapapa Island (in response to petitions to Parliament in 1919 and 1924) it limited itself to internal and informal investigations by the commissioner of Crown lands and Under-Secretary of the Native Department. Such investigations, apparently carried out without discussion with the interested Māori groups, were inadequate and partial.

We find that the Crown failed in its Treaty obligation to inform itself as to, and to recognise, te tino rangatiratanga of Ngāti Hikairo and Ngāti Manunui in Whakapapa Island. The Crown wrongly annexed the island to its purchase of the Waimarino block, when it was not mentioned in the gazetted boundaries of the block, nor depicted in the 1886 sketch map or 1887 survey plan. The Crown did not give proper weight to the protests and petitions of Ngāti Hikairo and Ngāti Manunui. Unwilling to accept the groups' claims to ownership of the island at face value, the Crown should have at least initiated an independent investigation of the sort carried out by the Royal Commission that in 1905 investigated 21 distinct claims against adjudications of the Native Land Court.

Finally, the Crown violated te tino rangatiratanga of Ngāti Hikairo and Ngāti Manunui, and failed to act in the spirit of Treaty partnership, when it declared Whakapapa Island to be a scenic reserve, without directly notifying or seeking the opinion of tangata whenua who had long asserted their rights and interest in the land. We were

alarmed and saddened by John Manunui's testimony that Ngāti Manunui only learned of the island's scenic reserve status when a sign was nailed to a tōtara tree in 1964 or 1965.

(4) Fewer purchases but other problems, 1931–50

After two decades of wholesale alienation, the period from 1931 to 1950 saw a relatively modest 1,113 acres bought in mainly private purchases. The lull was a result mainly of the Great Depression. Private purchasers were also discouraged by the difficulty of gaining access to much of the land still in Māori hands. Indeed, it could be argued cynically that the Crown's most important contribution to continuing Māori land ownership in Waimarino during these years was its decision in 1942 to abandon its upkeep of Mangatītī Road – the sole means of access to much of Waimarino 5.

If no road access helped protect remote Māori-owned subdivisions from purchase, it also made it very difficult for owners to develop this land, and for it to sustain more than a few occupants. This was the case for the rugged and remote areas of Waimarino A, 3, and 5. Problems of access also bedevilled Māori owners whose holdings had become 'landlocked' through the alienation of neighbouring pieces of land.

As a Treaty partner the Crown should have paid more attention to the need for Māori owners to have proper access to their lands, especially since it promoted the purchases and partitions that led to problems like landlocking and lack of access to a road.

(5) Sales by meetings of assembled owners, 1951–75

The relative hiatus of the 1930s and 1950s notwithstanding, Crown policy remained weighted in favour of alienation rather than retention of Māori land. The Māori Affairs Act 1953 perpetuated the mechanism of alienation through meetings of assembled owners, reducing the minimum number of owners necessary to take a decision to sell from five to three. In the years that followed, both the Crown and private buyers used this mechanism to secure the ownership of land through the consent of a minority of owners. The Crown, for example, purchased

Waimarino 4A1, 2, and 4 following the agreement of meetings attended by only four owners, even though the subdivisions were owned by 30, 15, and 10 owners respectively.

The vesting of land in lists of individual owners that proliferated from generation to generation, along with successive partitions, combined to make much of Waimarino's remaining Māori land increasingly unviable as economic units and vulnerable to alienation.

Until 1974, the Crown continued to legislate various versions of 'meeting of assembled owners' mechanisms that allowed a minority of owners to alienate Māori land. Both the Crown and private purchasers – although between 1951 and 1975, private purchases accounted for 89 per cent of the 9,395 acres bought – continued to purchase land from many Māori owners with the agreement of only a few. When the decision to sell a particular piece of land was taken, it could be (as was the case with Waimarino 6A3B) without the agreement or even the knowledge of many owners.

By creating mechanisms that allowed land to be sold by a minority, and by exploiting those mechanisms to secure ownership of Māori land, the Crown breached the guarantee in article 2 that Māori were protected in the ownership of their land until they chose to sell, and acted inconsistently with the principle of active protection.

(6) Generally

Of the 74,140 acres originally set aside in seller reserves and non-seller blocks in Waimarino, somewhere between 23,272 and 21,079 acres remain as Māori land. The Pēhi whānau retains a further 824 acres as general land. This amounts to between 28 and 31 per cent of the area of the original seller reserves and non-seller blocks, and just 5 per cent of the 1886 Waimarino block as a whole. Much of this land is remote, rugged, and inaccessible. Other portions, such as Waimarino 6C2B2 and 6F2C2, are too small, with too many fragmented interests, to provide economic benefit to their owners.

It is clear that over the course of the first three-quarters of the twentieth century, the Crown failed in its Treaty duty to actively protect the lands and resources of Whanganui Māori in Waimarino. Instead of fostering and

developing Māori ownership and use of their land, the Crown made the considered choice to facilitate its alienation. As a result, many Whanganui Māori were denied the option of living on and deriving a living from their lands, or even retaining a presence there for cultural purposes. Some became entirely or almost entirely landless. Spiritual and cultural and emotional harm has resulted, as whakapapa connections were lost and communities became disempowered and depopulated.

The magnitude of the Crown's Treaty breach is rendered all the more striking if one remembers that the six blocks reserved for sellers and the seven set aside for non-sellers were a relatively small remnant of the enormous Waimarino block, which the Crown acquired in highly questionable circumstances in 1886 and 1887.

Given this, and perhaps especially as regards those who explicitly stood apart from selling their land to the Crown in the Waimarino purchase, the Crown had a particular responsibility to ensure that Whanganui Māori could keep the land that remained to them until they explicitly and fairly resolved, as a group of owners, to sell it. The Crown's compulsory acquisition of land for public works and scenery preservation was therefore particularly reprehensible. We find that, by participating in and enabling the wholesale alienation of what was left of Māori land in Waimarino, the Crown acted irresponsibly, arbitrarily, and in bad faith.

28.23.3 Recommendations

In addition to general redress for the breaches and prejudice recorded in our findings above, we recommend as follows.

(1) Land taken for defence purposes from Waimarino 4B2

The National Park Tribunal has already recommended that the 401 acres of Waimarino 4B2 taken for defence purposes in 1911, and not incorporated into Tongariro National Park in 1922, should be returned to its beneficial owners. We make the same recommendation.

We also recommend that the Crown provides access for the Pēhi whānau to their property near National Park, which is currently 'landlocked' by Crown land.

(2) The five acres at Paitenehau

We recommend that the Crown now acts on the chief surveyor's 1986 recommendation that the five acres surveyed as 'Paitenehau Kāinga' should be designated as Māori freehold land. Its ownership and designation (as a reserve, for instance) should be the subject of discussion between the Crown and the descendants of the Rētāruke community displaced from Paitenehau when the five acres were incorrectly included in section 2, block 1X of the Kaitieke survey district and leased to a European settler.

(3) Whakapapa Island (Moutere)

We recommend that the Crown returns Whakapapa Island to the ownership of tangata whenua.

28.24 MATAPIHI 4: WAIKUNE PRISON

28.24.1 What did this matapihi cover?

In this matapihi, we described and analysed:

- the Crown's disposal of land upon the closure of Waikune Prison, which was established on 79 acres acquired in the purchase of the Waimarino 1 block in 1886–1887;
- negotiations around the closure, and the offer-back process between 1986 and 1988; and
- the agreement reached between Whanganui Māori and the Crown in 2002, under which the Office of Treaty Settlements purchased the entire prison site, and placed it in the Whanganui Claim Specific Landbank.

28.24.2 Findings

(1) The establishment and disestablishment of the prison

Waikune Prison was established on Waimarino 1, land purchased by the Crown in 1886 and 1887 in ways and by methods that breached the Treaty of Waitangi, and seriously prejudiced the Māori owners of the Waimarino block, whether or not they were included on the list of owners for the purposes of determining title.

Between 1960 and 1967, the Crown extended Waikune Prison to include Waimarino 4A1, 4A2, 4A3, and 4A4, the Crown's purchase of which we found was contrary to Treaty principles.

The Crown did not discuss with affected Māori its plans for either the establishment or the disestablishment of the prison. Both events affected tangata whenua negatively, not least because of the way the Crown went about them.

(2) The offer-back process

The Public Works Act 1981, and its 1982 amendment, gave the Crown excessive discretionary power over the offer-back process. There was no obligation to take into account the special circumstances of Māori land under the Treaty, nor to consult with former owners and their successors on whether or how land would be offered back.

The offer-back process for Waikune Prison was managed and conducted poorly, in effect drawn out over 17 years.

(3) The destruction of the prison

The decision to raze or remove the prison's buildings might have made sense in the narrow accounting terms of the Department of Justice, but there was no Crown-wide analysis to justify it. Nor did we find any good reason for the peremptory and unilateral manner in which officials made the decision to destroy parts of the prison, nor for how the demolition came to be carried out suddenly and without notice. When it deliberately excluded tangata whenua from playing any part (notwithstanding the earlier discussions, and their ongoing discussions with Māori Affairs), the Crown in the person of the Justice Department acted in a way that was disrespectful of their rights and interests, and violated the Treaty principles of active protection, good government, good faith, and the obligation to consult.

The removal or destruction of many of the prison's buildings and much of its infrastructure prejudiced the Wānanga Trust, other local Māori who had been working to establish a whare wānanga, and tangata whenua generally, who stood to benefit from the establishment of a centre for cultural education and enrichment at Waikune.

28.24.3 Recommendations

We have no means of properly assessing the viability of using what remains of the prison to fulfil the aspirations of

tangata whenua for the establishment of a whare wānanga in their rohe. We leave to the Crown and the claimants the task of exploring the possibilities there, in the light of our findings, and these recommendations:

- ▶ the Crown should include in its settlement package all the former prison land, excluding areas now part of the North Island main trunk railway, State Highway 4 or Tongariro National Park;
- ▶ because the Crown recently and flagrantly exacerbated its earlier serious breaches concerning the Waimarino Block by its mishandling of negotiations about the former prison site, it should – if the former owners of the areas where the Crown is legally bound to offer land back under Public Works legislation consent – return the land to tangata whenua as cultural redress;
- ▶ if tangata whenua still want it, and if an independent study funded by the Crown recommends that it is feasible on an ongoing basis, the Crown should work with tangata whenua to establish and help to fund an inclusive cultural and educational hub either at Waikune or at a preferred site locally; and
- ▶ in any event, the Crown should fund the necessary work to clear the prison site of debris, including the safe extraction of asbestos.

28.25 CHAPTER 21: SOCIO-ECONOMIC ISSUES

28.25.1 What did this chapter cover?

In this chapter, we described and analysed:

- ▶ the education that the State provided to Whanganui Māori from 1840 to the present;
- ▶ health services that the State provided to Whanganui Māori from 1840 to the present;
- ▶ other State assistance, such as housing and social welfare; and
- ▶ the extent to which the provision was appropriate and equitable.

28.25.2 Findings

(1) Education

(a) *Access to schooling*: The Crown's first attempt to provide education to Whanganui Māori was through support

for church schools, including the endowed school that became Wanganui Collegiate. Rather than step in to ensure that the institution fulfilled its founding principles, the Crown took a hands-off approach, and allowed it to transmute into a private school that played a negligible role in Māori education. Had there been other secondary schools in the region, this might have mattered less, but until the late nineteenth century, Wanganui Collegiate was the only provider of secondary education in the district.

The few Whanganui Māori who received a European education in the nineteenth century usually received it from mission schools that functioned independently of the Crown.

The Crown did open native schools in the 1870s, but then closed them because the rolls were unstable. We do not consider that the failure of Māori children to attend school regularly was because they or their communities did not seek Pākehā education. Rather, it was because communities were distracted by the demands of dealing with their land through the Native Land Court, and coping with the changing circumstances of their lives. Also, it seems likely that the pedagogical style of the teachers did not adapt sufficiently to the needs of Māori children. Given the importance of Māori children learning to read and write in order for them to participate in the new society – an importance that was appreciated at the time – the Crown should have done more to find other ways of making education work for them. We find that the Crown did not sufficiently focus on how it could provide effective education to the children of Whanganui pre-1890. We find that this was inequitable, because even though the State was then embryonic compared with the State of today, we are confident that if the education services provided to Pākehā children had been failing in the same way, the authorities would have taken measures to ensure that the problem was addressed. The Crown breached the Treaty principles of good government and active protection.

Māori communities increasingly wanted their children to receive a formal education as the nineteenth century neared its end, but there were sometimes many years between the first request for a school and the school's opening. Some communities did not get a school at all,

and some got one only very briefly. Secondary education was practically out of the reach of many Whanganui Māori children well into the twentieth century, and whānau moved to town partly to procure access to schooling. This should not have been necessary.

The Crown should have done considerably more to ensure that Whanganui Māori children had continuous access to good schooling. It should have built schools sooner, if not on its own initiative then as soon as Māori communities sought them. It should have taken steps to manage fluctuating rolls – including ensuring that teachers were equipped to respond to the pedagogical needs of their pupils by understanding and accommodating their language and culture. It should have ensured that children could actually access transport to attend primary and secondary school, prioritising funding for all purposes that ensured that Māori children of this district were reliably able to access education even if their communities were not close to town. It might sometimes have been necessary to improve the roads for this purpose. Where required, the Crown should also have offered better subsidies for attending boarding schools.

On the whole we consider that the Crown was insufficiently concerned about how difficult it was for rural Māori children to gain education at both primary and secondary levels for significant periods and in many parts of this district. In a significant number of instances, moving to town was the only way for them to guarantee ready access. We discern in the Crown's approach a different attitude to that which we think would have applied to a similarly low level of provision to Pākehā children in the same period. This observation applies to the tardy response to some Māori communities' requests for schools, and the low subsidies paid to children who had to attend boarding school to receive secondary school education. The Crown should consistently have regarded education for Māori children as a high priority, and on every occasion that it did not, it failed to provide for them as it should have under article 3, and acted inconsistently with the principle of active protection.

(b) *Te reo Māori*: It is difficult to know how much the

English-only policy in schools contributed to the decline of te reo Māori. The policy was certainly wrong-headed and regrettable in all sorts of ways, not least because of how it made Māori children feel about themselves and the experience of learning in school. However, the policy did not operate alone. It occurred in a context where the dominant society's messages to Māori consistently lacked respect for their language and culture. Parents imbibed these messages, and lost confidence themselves in the ability of mātauranga Māori (Māori knowledge) to enrich and advance their children's lives.

Certainly, the suppression of te reo Māori in schools was a factor in the decline of the language, and we reiterate the findings of the Te Reo Māori Tribunal, that 'the education system [was] being operated in breach of the Treaty'.²³

Even before the Te Reo Māori Tribunal issued its report in 1986, many changes occurred in the education system. There is now a network of early childhood centres and schools (kōhanga reo and kura kaupapa), and tertiary institutions too, that teach te reo Māori and teach in te reo Māori. The Crown and Te Puna Mātauranga o Whanganui entered into a formal relationship that has as its focus providing high quality and appropriate education to the Māori people of this region. All of these were moves in the right direction. However, there is still much work to be done. We support the findings of the Kōhanga Reo Tribunal that the funding of kōhanga reo was inequitable at the time of our hearings, and that kōhanga were not sufficiently autonomous. We did not have enough information to make findings about the relationships between the Crown and other organisations such as kura kaupapa and Te Puna. We did observe, though, that the claimants' complaints about the Crown's processes, attitudes, and structures were common to a range of organisations in both the education and health sectors. We think that in order for Māori education providers to maximise their success with Māori students, it will be important for the Crown to increase its efforts to create constructive and supportive partnerships in which there is a positive interchange about pedagogy and culture. Funding for Māori

organisations that enables them to plan properly will be an important aspect of this partnership. We strongly encourage the Crown to continue its progress in these directions.

Crown support for local dialect and mita is a complex matter in a period when the numbers of competent speakers of Māori continue to decline, and emphasis has understandably gone on creating fluency in standard Māori. At the same time, part of the vibrancy and mauri (essential life force) of te reo Māori is its diversity and tribal variation. In the context of the many years when the Crown failed to comply with its Treaty duty to foster Māori language and culture, and in light of its complicity in their decline, we recommend that the Crown takes positive steps to work with tangata whenua of this region to find and develop ways of building into education ways of maintaining and promoting te reo o Whanganui, iwi culture, and te tino rangatiratanga.

(2) Health

In all the periods we covered, access to health care was difficult for people living in rural parts of the inquiry district, and often in the small towns as well. Around the middle of the twentieth century, some communities had reasonable access to district nurse services, but we received no evidence that doctors were ever regularly available outside Wanganui and the larger towns. The lack of medical professionals in small towns and rural areas was exacerbated by poor and expensive transport links in many areas, especially before the mid-twentieth century.

We accept that people living in rural areas will never enjoy the same access to health care as city dwellers, particularly if they cannot afford to run a car. While this causes significant hardship for such people, the costs of providing medical services are such that it is not practical to provide hospitals or even clinics in every community. There can be legitimate disagreement over the level of service which the Crown should provide, but it is entitled to concentrate its health funding in large centres of population, where it will be most effective. However, Māori people have a right to live in their traditional tribal areas, and it should not be impossible to obtain good health services

in places where there is an otherwise viable and functioning community of reasonable size. Ways to improve access could include free or easily affordable ambulances and other medical transport, more and better trained district nurses and paramedics, and mobile medical clinics.

Another barrier between Whanganui Māori and effective health care, especially in the nineteenth and early twentieth centuries, was the monocultural nature of the health care system. We have seen that Māori ceased to use Wanganui Hospital by about the 1870s, from which we surmise that it did not meet their needs, and it is likely that cultural factors played a part. We saw no evidence that the Crown was concerned about this. It neither investigated nor ameliorated the situation. We accept that in some cases conformity with tikanga Māori would have been impractical, or incompatible with western concepts of clinical safety. However, we endorse the approach of the Napier Hospital Tribunal, which found that the Crown should have encouraged Wanganui Hospital to adapt its procedures to Māori tikanga where it was practical and safe to do so, and explain those procedures where it was not.²⁴ From the 1980s health professionals were trained in tikanga, which should have improved their ability to provide services in a way that was culturally appropriate and therefore more efficacious.

As we have noted, the causes of ill health and of health disparities are many and complex. Some, such as lack of immunity and genetic factors, were and are beyond the Crown's control, while others, such as personal decisions to smoke or to abuse alcohol, are difficult, though not impossible, for the State to influence. We also acknowledge that the Crown at times provided health services to Whanganui Māori that were not available to non-Māori, such as the native medical officers and the free medicines distributed by native school teachers. We do think, however, that the Crown had a duty over the whole period to provide for Māori citizens by doing what it reasonably could to ensure that their health was on par with that of non-Māori.²⁵ In the early colonial period, and taking into account the limited activities of the State at that time, its health initiatives were for the most part reasonable. Later,

though, it should have done more to increase the number and range of services that were accessible locally to people whose access to transport has consistently been limited. Overall, the Crown did not fulfil its duty of active protection. It remains a challenge but an imperative for the Crown to continue to work creatively and respectfully with Māori health providers to deploy their experience, knowledge, and connections to devise programmes that will, over time, close the gap between Māori and non-Māori health status in this region.

(3) Housing and social welfare

The evidence we heard on housing and social welfare was fragmentary, limited to the early twentieth century for welfare, and the mid-twentieth century and later for housing.

We heard that, under the pension system in operation between 1898 and 1935, pensions were often denied to elderly Māori who owned land, even if they did not get any income from it. We also heard that Māori were, as a matter of policy, given less money than non-Māori, even if circumstances were identical. Similarly, Māori on relief work were paid less than non-Māori doing the same work, and Māori were ineligible for maintenance payments. We find that these policies were in breach of the principle of equity.

With regard to housing, it is not clear to us that there is a general Treaty duty for the Crown to help improve Māori housing. There is, however, a clear duty to provide housing assistance to Māori at least equal to that provided to non-Māori. If (as was generally the case) Māori housing was worse than non-Māori housing, fairness would usually oblige the Crown to spend more assisting Māori. The twentieth century saw significant improvements in Māori housing, but not enough to fix a very serious problem, especially in rural areas.

In the latter half of the twentieth century, the Crown used policy incentives to motivate people to move from far-flung locations that Māori traditionally occupied to towns where they could more reliably access jobs and services. On balance, we find this approach difficult to

criticise. If Māori remained in out-of-the-way kāinga where they could not support themselves and had to rely on benefits, there would be a real danger of rural ghettos where children grew up without access to the services they needed. At the same time, though, Māori need to retain their presence in, and connections with, papakāinga, and that involves renewing the housing stock over time. We find that the network of rules around this has impeded Māori from building or living on their tūrangawaewae, and the Crown has breached its duty of active protection by allowing this to happen.

28.25.3 Recommendations

In addition to general redress for the breaches and prejudice reported in our findings, we recommend as follows:

- We encourage the Crown to ensure that its relationships with all Whanganui Māori organisations are fair and equitable, that these organisations have sufficient autonomy, and that funding is both adequate and equitable with comparable non-Māori organisations. This encouragement applies, but is not limited to, Te Puna Mātauranga o Whanganui and kura kaupapa. As regards kōhanga reo and Māori health organisations, it is a formal recommendation.
- We recommend that the Crown continues to work creatively and respectfully with Māori health providers to deploy their experience, knowledge, and connections to devise programmes that will, over time, close the gap between Māori and non-Māori health status in this region.
- We recommend that the Crown reviews the Resource Management Act and other planning legislation, policy, and practice, to ensure that Whanganui Māori are not unduly prevented from building houses on, or developing, their own land. It should work with local authorities to ensure that they have proper regard to the importance of Māori being able to maintain their papakāinga. It should also engage with iwi Māori on the kaupapa of regional development, with a view to creating opportunities for people to participate in economic

ventures that make it viable for them to occupy their ancestral kāinga.

28.26 CHAPTER 22: WHANGANUI NATIONAL PARK

28.26.1 What did this chapter cover?

In this chapter, we described and analysed:

- the creation of the Whanganui National Park, comprising 183,000 acres, in 1987;
- negotiations between Whanganui Māori and the Crown over the creation of the park; and
- park management, and the extent of Māori involvement.

28.26.2 Findings

We find that the Crown acquired the land in Whanganui National Park in breach of the Treaty of Waitangi.

Most of the park came from three blocks: Waimarino, Taumatamāhoe, and Whakaihuwaka. This report details how the Crown breached Treaty principles in the acquisition of land in these blocks. In the Waimarino block and its reserves, the Crown's purchase practices were among the worst in the country (see chapters 13, 20). The owners of the Taumatamāhoe block sought to have it set aside from sale, but their wishes were overridden. Crown purchases in the block aroused considerable protest in the nineteenth century. In both Taumatamāhoe and Whakaihuwaka, the Crown determinedly purchased land after 1905, flouting the Stout–Ngata commission's recommendation that the Crown should stop buying in those two blocks. Tens of thousands of acres that the Crown bought from Taumatamāhoe and Whakaihuwaka in this period ended up in the park.

The Crown also took almost 7,000 acres of Māori land for scenic reserves, and many of these also became part of the park. We found in chapter 13 that these takings breached the Treaty.

Whanganui Māori have struggled to accept the legitimacy of the park because of the unjust acquisition of the land. This means that here, just as in Te Urewera, the national park 'rests on a defective foundation.'²⁶ The

Crown breached articles 2 and 3 of the Treaty, and also breached the Treaty principles of good faith, active protection, partnership, equity, and equal treatment.

Although they lost ownership of the land, Whanganui Māori retain their customary associations with the land, and remain its kaitiaki.

In the 1980s, when the Crown conceived the park, Whanganui Māori clearly laid out their case for partnership. They did so at the same time that the courts and the Waitangi Tribunal were articulating why partnership was a principle of the Treaty of Waitangi. The Crown's enacting section 4 of the Conservation Act 1987 can be seen as an expression of that 'partnership' zeitgeist of the late 1980s. In the context of Whanganui National Park, however, the Crown was not prepared to embrace the concept of a Māori national park, nor to share management or governance with Whanganui Māori. Given the zeitgeist, the history of the land in the park, and the close relationship of the people with that land that continued into the 1980s and to this day, this was a genuine opportunity sadly missed. The dashed hopes of tangata whenua gave rise to anger and resentment that underpinned the fraught relationship between them and DOC that subsisted until recently.

The evidence before us does not support the claimants' contentions about a Minister of the Crown promising them a Māori national park. However, Minister of Lands and Māori Affairs Koro Wētere did undertake in writing that the creation of the national park would in no way prejudice the people's Treaty claims. The Crown is bound by the Minister's undertaking, and the claimants' access by way of settlement to the Crown land that went into the park should not be affected in any way by its status as a national park.

The relationship between DOC and tangata whenua has certainly improved. Whanganui Māori have a real role in planning park management, and are now preferentially employed in the park. There is an open-door consultation policy. These are good and important developments, but the role of tangata whenua in park governance and

management remains at a level that is below what our findings indicate is appropriate.

We find that the Treaty, the history of the park, and the strength of the traditional and ongoing relationship between Whanganui Māori and the land in the park, combine to dictate a full partnership between Whanganui Māori and the Crown in governing and managing the park. This has not occurred, the Crown has breached the Treaty, and Whanganui Māori have suffered prejudice as a result.

28.26.3 Recommendations

We recommend that:

- Title to the land in the Whanganui National Park is transferred to iwi for the purpose of a national park.
- A plan is developed under which Whanganui National Park transitions over a period of several years to joint governance and management by the Crown and Whanganui iwi, with tangata whenua as at least equal partners.
- Title to certain sites of special significance passes from the Crown to their traditional owners, with ancillary agreements and arrangements (including Crown funding) to secure environmental protection as necessary and appropriate. Particular sites of significance that fall into this category are: Waiora Spring,²⁷ Tieke Kāinga (kāinga and urupā),²⁸ Mangapāpapa (wāhi tapu and several urupā),²⁹ urupā on Ahuahu A and B,³⁰ Puketapu maunga (and urupā),³¹ and Kirikiriroa (kāinga and pā site).³² We do not consider this list to be comprehensive, and Whanganui iwi and the Crown should augment it as appropriate.
- Legislative change occurs as required to facilitate the new arrangements.

There are issues concerning iwi capacity at the present time to take on the kind of expanded governance and management role envisaged here.³³ We foresee the need for:

- tangata whenua to assess honestly their current capacity to manage the park;

- DOC to provide support and training;
 - tangata whenua to engage in acquiring training and qualifications;
 - DOC to be open to acquisition of Māori knowledge; and
 - funding to support the transfer of skills/mātauranga over time, employing pedagogy and tikanga from both Pākehā and Māori cultures.
- We recommend accordingly.
- We give the late Sir Archie Taiaroa the last word:

If the National Park can be jointly managed and this other land returned, and the earlier promises regarding work opportunities and development thereby fulfilled, it is my hope that opportunities will be created in tourism and other matters that will enable Maori communities up the River to be revitalised. These are the benefits that should properly be available to Whanganui iwi in return for the commitment of land to the National Park.³⁴

28.27 CHAPTER 23: INTRODUCTION TO LOCAL ISSUES

28.27.1 What did this chapter cover?

In this chapter, we provided an overview of the legislation that underpins our inquiry in the local issues chapters.

28.27.2 Findings

We made no findings or recommendations.

28.28 CHAPTER 24: NORTHERN WHANGANUI LOCAL ISSUES

28.28.1 What did this chapter cover?

In this chapter, we described and analysed:

- the compulsory acquisition of a marae block and another 20-acre block at Tūwhenua (Taumarunui Aerodrome);
- the alienation of land at Te Anapungapunga;
- landbanking issues concerning Taringamotu School;
- a hospital board's compulsory acquisition of land that became Taumarunui Hospital;
- the alienation of Te Peka marae land to pay rates;

- the compulsory acquisition of Ōhura South N2E3G3 for the King Country Electric Power Board depot;
- the compulsory acquisition of Ōhura South G4E2 for the main trunk railway;
- the compulsory acquisition of Rangaroa Domain and land in Ōhura South G4;
- the local council's sale of land gifted for a landing reserve at Taumarunui;
- the compulsory acquisition of Ōhura South M2A for river control purposes;
- the Crown's compulsory acquisition of land for railway purposes, which was later sold back to Māori and became the Piriaka Puna;
- the Crown's landbanking process for the Piriaka School site; and
- the environmental effects of the Pukehou Road Quarry.

28.28.2 Findings and recommendations

(1) Tūwhenua (Taumarunui Aerodrome)

(a) *Finding*: The compulsory acquisition of both the marae block and the 20-acre block breached the guarantee in article 2 of te tino rangatiratanga, and the principle of active protection. The Crown is responsible because it enacted legislation that allowed this to happen, and did not monitor the council's exercise of the authority delegated to it.

(b) *Recommendation*: We recommend that the Crown provides an alternative marae site and enables access to the Tūwhenua urupā, and compensates the owners of the 20-acre block for their loss.

(2) Te Anapungapunga

(a) *Finding*: The relevant legislation, and the relevant processes, failed when tangata whenua were left with an urupā at Te Anapungapunga to which they have no legal access. The Crown did not give effect to te tino rangatiratanga of Ngāti Urunumia, Ngāti Hari, and Ngāti Hira, and did not actively protect their interests, as the Treaty and its principles require.

(b) *Recommendation*: We recommend that the Crown

does what it can to ameliorate the claimants' situation as regards the urupā. This includes, if the claimants seek it, funding any application for orders implementing legal access to Te Anapungapunga urupā that the claimants make to the Māori Land Court, including both legal and survey costs and disbursements.

(3) *Taringamotu School*

(a) *Findings*: We considered that the Crown's handling of these claimants' expression of interest in Taringamotu School was overly bureaucratic, and lacked respect and sympathy for their position. It also lacked transparency. We find this inconsistent with the principle of partnership.

We do not know how the Crown manages the inputs of information in the process of determining whether there is the requisite degree of Māori interest in a site to justify its being land-banked. We consider that, in order for the system to work fairly:

- applicants should compile and submit all the information they have;
- applicants' statements about oral tradition should be accepted as valid until such time as there is an opportunity to test the evidence in a hearing or otherwise;
- the Crown should supplement applicants' information from its own resources to the extent reasonably possible; and
- the relatively low level of access that most applicants have to documentary sources should be implicit in any weighing of evidence in support of the proposition that a site is significant.

(b) *Recommendation*: If the practice described above is not current practice, then we recommend that the Crown amends it.

(4) *Taumarunui Hospital*

(a) *Finding* – '*in the national interest as a last resort* . . . ?' Like all such purchases, this acquisition for Taumarunui Hospital was justified in Treaty terms only if it was in the national interest, and was a last resort. Although land was needed to build a hospital at Taumarunui, the need was

not one that resonated at a national level, and requiring a site for a bigger, better hospital is not an exigency of a kind that justifies compulsory acquisition of Māori land. Thus, the compulsory purchase breached the fundamental Treaty guarantee of te tino rangatiratanga.

(b) *Finding* – *too much land*: It is plain, and the Crown has conceded, that 38 acres was far more than required as a site for a hospital in a provincial town. Even at a period in history when taking Māori land for public works was routine, various players in the process took the clear view that 38 acres was too much land – especially as the Māori owners objected to the sale. The 38-acre purchase proceeded nonetheless.

The excessive acreage taken exacerbates the Crown's Treaty breach in purchasing this land compulsorily.

(c) *Finding* – *why is it the Crown's Treaty breach when the hospital board took the land?* In cases where Māori rights are abrogated by a compulsory acquisition, it is a mere technicality whether a taking authority was the Crown or a local authority, particularly when the Crown and local authorities collaborated to effect the compulsory acquisition.

The Crown accepts responsibility for monitoring local authorities' exercise of powers of compulsory acquisition, but in this case the Public Works Department and others did not query the hospital board's decision to acquire this land compulsorily, and achieved no reduction of the amount of land taken, even though it plainly exceeded what was required.

The Crown is responsible for the prejudice to Māori that arises whenever takings by local authorities fail to meet the 'as a last resort in the national interest' test. This is such a case, and the Crown is responsible for negative consequences for Ngāti Hekeāwai.

(d) *Finding* – *important land*: The Crown breached its guarantee of te tino rangatiratanga in article 2 of the Treaty when it constructed a system that allowed local authorities to take Māori land unilaterally for public works without proper consideration of Māori wishes, concerns, and

needs. That breach is exacerbated here by the failure to find out about, and properly take into account, the special importance of this land to Ngāti Hekeāwai.

Moreover, even though the Crown correctly identified preserving access to the urupā as an important aspect of the compulsory acquisition, its means of securing Ngāti Hekeāwai's access failed. These many decades later, Ngāti Hekeāwai still lack satisfactory access to Titipa urupā.

(e) *Finding – valuation and compensation*: We find that:

- ▶ There was no proper basis for the Crown to operate a different valuation system for Māori land, and it would have been fairer for Māori to have had available to them the system that was available to owners of general land. This Crown failure breached article 3 of the Treaty.
- ▶ In enacting its regime for compensation for land taken for public works, the Crown took account of neither the special significance of land in Māori culture, nor the cultural significance of particular land.
- ▶ Valuation criteria had no regard to the fact that, by the twentieth century, land remaining in Māori hands was usually significant or strategic for both cultural and economic reasons.
- ▶ By facilitating the easy purchase of Māori land for public works, the Crown failed to protect Māori from unnecessary cultural, spiritual, and economic loss.
- ▶ Inherent in the idea that owners can be compensated for loss of land by payment of money is a conception of land as an asset rather than as a taonga.
- ▶ The Crown's monoculturalism in operating such a regime breached its duty of partnership.

Whether the compensation assessed for this land was fair in terms of orthodox valuation methodology of the time, we do not know.

(f) *Recommendations*: We recommend (because we are limited by the fact that the land taken for Taumarunui hospital is private land) that the Crown negotiate with Ngāti Hekeāwai an appropriate means of recognising the loss to them of the 38 acres that the hospital board wrongly compulsorily acquired, including compensation for the Treaty breaches identified here. We also recommend that

the Crown work with the Waikato District Health Board to create permanent and appropriate legal access to Titipa urupā.

(5) *Te Peka marae*

(a) *Findings*: The Crown allowed the local authority to impose rates on Te Peka marae, which led to the sale of the land.

The Crown particularly owed a duty to protect Māori in the ownership of land of special significance. Marae are places of significance. All marae should have Māori reservation status or something like it – a mechanism that puts them outside the ordinary category of land so that their maintenance in the hands of their traditional owners is assured. That status should not be able to be lifted without the acquiescence of the whole community whose marae it is or was. It should not be able to be lifted by an entity like a local authority, nor sold by absentee owners. As regards the Māori reservation status over Te Peka marae, the system failed to ensure that it was properly effected in 1951.

While the local authority's approach to the land, and its involvement in imposing and lifting reservation status, was inappropriate and unfortunate, our focus is on the responsibility of the Crown as Treaty partner. Its job was to ensure that there was a mechanism easily available to tangata whenua – perhaps even automatic – such that, once this land became a marae, it was protected from external threats like the vagaries of council policy and practice as regards levying rates, seeking to apply or lift reservation status, and buying 'unused' Māori land.

The reimposition of rates on the marae block led to its sale to the council, because in order for the owners to be able to pay the mounting rates debt, the land either had to produce an income, or be sold. Once the land was carrying debt, developing it was the only means of avoiding sale, and the owners tried their best. Incorporation was the best mechanism available, but obstacles defeated them. By creating a system that was so intractable and ineffective, the Crown breached its guarantee of te tino rangatiratanga. These were people who wanted to keep their marae land, but external forces – the council, and the Māori land tenure system – were too hard to combat.

We find that the Crown's Māori land tenure system did not secure protection for this land as a marae, affording it neither permanent reservation nor immunity from rates. Nor was there a viable option for these owners to develop their land, as there should have been. This was inconsistent with the principle of good government, and did not fulfil the guarantee of te tino rangatiratanga.

(b) *Recommendation*: We recommend that the particular prejudice to tangata whenua of Te Peka marae of losing their land, including their marae and wāhi tapu, is taken into consideration in settlement negotiations between the Crown and northern Whanganui iwi.

(6) The King Country Electric Power Board depot

(a) *Finding*: The principles outlined in relation to the taking of land for Taumarunui Hospital apply equally here. All of our comments and analysis are applicable, except that arguably the land taken for Taumarunui Hospital was more culturally significant because of its history as a pā, and its proximity to Titipa urupā. Nevertheless, this was land that was significant to its owners. At least some of them had specific other uses in mind for their land, and were as a result quite opposed to sale.

(b) *Finding* – ‘in the national interest as a last resort . . .’? In summary, then, the taking of land for the King Country Electric Power Board depot was another case where:

- the land was taken neither in the national interest, nor as a last resort;
- the Crown is liable for any prejudice suffered as a result of the taking, because in Treaty terms the delegation to the electric power board of authority to take land was improper because it was unilateral;
- no efforts were made to negotiate with the owners of the land, and their unwillingness to sell was disregarded; and
- the valuation and compensation regime was monocultural and discriminatory.

The taking therefore breached the guarantee of te tino rangatiratanga in article 2, and the Treaty principles of equity and active protection.

(c) *Finding – procedural fairness*: An aspect of procedural unfairness that was legal but not Treaty-compliant was the Crown's having its own expert valuer present at the court hearing, while the Māori landowners had no professional valuation to rely on, nor a valuer present to give evidence on their behalf. This put them at a disadvantage.

(d) *Finding – compensation*: We are satisfied that the process for setting compensation of Māori land was inadequate and breached the Treaty. However, as regards the fairness of this particular valuation exercise, we are as usual unable to make a definitive finding on the price arrived at, because of our imperfect knowledge of the background and surrounding circumstances.

The compensation assessment paid scant regard to these important factors: the owners' unwillingness to sell; their proposed use of the land themselves; and the spiritual and emotional value of the land. Also, we saw no sign of inquiry into whether the owners had interests in Māori land other than their interests in Ōhura South N2E3G3.

(e) *Recommendation*: We recommend that the wrongful acquisition of Ōhura South N2E3G3 is taken into account in future settlement negotiations.

(7) Ōhura South G4E2

(a) *Finding* – ‘in the national interest as a last resort . . .’? We found when we applied the ‘in the national interest as a last resort’ test that:

- The main trunk railway line was an important public work that was arguably in the national interest. We had no submissions on the point, but we accept at a level of principle that taking Māori land to enable completion of the main trunk might be justified.
- However, in order for the Crown to meet the standard in the test, it would also need to show that this land was only taken as a last resort. The Crown would have to show that:
 - this was the only land that would have served the purpose, because no other routes for the railway were suitable;
 - other forms of tenure (lease, licence, easement) were

considered, but would not have met the Crown's need;

- purchase by negotiation was tried, but failed, and it was only then that the Crown resorted to compulsory acquisition; and
- it was not possible to effect the taking in a way that made the balance of the block more useable such that the owners would not have felt driven to sell that too.

The Crown has furnished no evidence to show that its conduct met the 'last resort' aspects of the test, and our understanding based on evidence of how takings for railway were conducted leads us to the view that it is most unlikely that it did. The purchase therefore breached the Treaty, for the Crown did not fulfil its guarantee of *te tino rangatiratanga*.

(b) *Finding – offer-back*: The Crown has obligations to restore to its former owners land that was compulsorily taken for public works in circumstances that breached the Treaty of Waitangi.

We are satisfied that the price at which Ōhura South G4E2 was offered back made its re-purchase unfeasible for the descendants of the former owners. Market price was not appropriate here because:

- the number of successors to title in this land means that it would come back to multiple owners, bringing with it the usual problems of communal ownership;
- the utility of the land was decreased when its size was reduced by the railway taking, and it is now affected by a road, and a greater rates liability;
- it is unlikely to be a profitable asset; and
- the original taking breached the Treaty, and was conducted without regard for the owners' rights, and without trying to ensure that the balance of the block was useable.

We do not understand why the offer-back provisions in the New Zealand Railways Corporation Restructuring Act 1990 are still in force, especially as the equivalent sections contained in the Public Works Act 1981 were amended over 30 years ago.³⁵ Had Ōhura South G4E2 been taken for anything other than railway purposes, the land would have been offered back under the Public Works Act,

and the offer-back price could have been less than market value. This disparity is arbitrary and inequitable, and exacerbates the Treaty breach for those Māori whose land was taken for railway purposes.

(c) *Recommendations*: We recommend that the Crown:

- Amends the New Zealand Railways Corporation Restructuring Act 1990 at least to the extent of removing the offer-back provisions that constrain the ability to return land to its former Māori owners at less than market price. In fact, we endorse the recommendations in chapter 8 of *The Wairarapa ki Tararua Report*, which call for immediate and wholesale amendment of the public works regime.
- Offers Ōhura South G4E2 back to the successors of Ringi Tānoa and Tānga Taitua at no cost.

(8) *Rangaroa Domain and Ōhura South G4 land*

(a) *Crown concession*: In this inquiry, the Crown conceded that it did not meet the Treaty standards of good faith and fair dealing when it took Whanganui land for the railway without compensating owners.³⁶

(b) *Findings*: There is no evidence that the Public Works Department spoke with the Māori owners of Ōhura South G4C and G4D before taking several acres of their land for railway purposes in 1907 and 1915. Indeed, the owners probably had no notice at all of the compulsory acquisition before it happened. Nor is there evidence to suggest that the owners of the Ōhura South G4 sections were offered any alternatives to their land being compulsorily acquired, or that other sites or forms of tenure were considered.

The Crown apparently did not compensate the owners of Ōhura South G4 for the five acres taken in 1907. Cleaver told us that this suggested that the land was taken under the five per cent rule, the legislative mechanism that allowed the Crown to take five per cent of Māori land for road and railway purposes without paying compensation.³⁷ In 1916, however, £25 compensation was paid for just over an acre that the Crown took from Ōhura South G4C in 1915.³⁸ The Native Land Court minute books do not

record payment for the one rood taken from Ōhura South G4D the same year.

Beyond the Crown's concession about railway purchases, we add that failure to provide notice before the taking was another serious defect. But these are failures of procedural fairness. In fact, the Crown's *hara* (fault, sin) here is more fundamental. The taking itself was completely unjustified. It has none of the hallmarks required to meet the standards of the 'national interest as a last resort' test, and accordingly breached article 2 of the Treaty.

This land served no vital railway purpose, because the main trunk remains, and this land is no longer required. Then, when the Crown determined in 1970 that the land was not required for the purpose for which it was taken, it did not allow its former owners the opportunity to regain ownership of it. Instead, it kept the land, and then decided to put it into a recreation reserve.

At the time when the land became surplus to the Crown's requirements, the Crown was not under a legal obligation to offer the land back to its former owners. Before 1981, public works legislation allowed the Crown to apply land acquired for one purpose to another purpose. However, although this practice was legal, it was not right. It was unpardonable in cases where land was taken under the five per cent rule, and no compensation was paid – as here, where the Crown did not pay the owners for the five acres it took from Ōhura South G4C and G4D in 1907, nor for the one rood it took from G4D in 1915. That land should have gone back to its former owners simply on fairness grounds. When the Treaty is brought into the equation, the Crown's breach of duty is stark.

(c) *Recommendation*: We recommend that the Crown transfers to the successors of the former owners the title to the land now in Rangaroa Reserve that it compulsorily acquired for railway purposes from Ōhura South G4C and G4D. This is an area of just over 6 acres, only one of which the Crown paid for. There will now be many successors to the former owners of the land, and we consider it appropriate for the land to remain in the reserve after the Crown transfers title to the relevant area. We recommend that the Crown negotiates with the new

title-holders an appropriate way forward for joint governance of the reserve. Claimants talked to us about creation of walkways and sightseeing facilities for the hapū and for the Taumarunui community, and also about developing an area where the hapū could grow and source herbal remedies.³⁹

(9) Taumarunui landing reserve

(a) *Findings*: The Crown no longer owns the land Te Waihānea gave for the landing reserve land; it vested it in the Taumarunui Borough Council in 1932, and at some time after 1937, when the site became a reserve for municipal purposes, the local authority sold it. A local power company, The Lines Company Limited, is now the owner. It is private land, and we have no jurisdiction to recommend its return.

However, we are satisfied that the Crown's conduct here was not that of a good Treaty partner. It should have made provision for the land to return to the donor if at any point it was no longer required for the purpose for which it was given, and in not doing so it breached its Treaty duty to act towards its Treaty partner with utmost good faith.

(b) *Recommendation*: We recommend that the Crown compensate Te Waihānea's successors for the value of the land at the time when it ceased to be used as a landing reserve, plus interest. It seems that the relevant year was 1937, when the reserve's purpose changed to 'municipal'.

(10) River control takings

(a) *Findings*: The compulsory purchase of Ōhura South M2A did not meet the criteria for a compulsory purchase that is justified in terms of the Treaty of Waitangi. Its purchase therefore breached the Treaty. The owners were prejudicially affected because the land comprised a significant proportion of the block. The balance block was sufficiently reduced in size to make farming there a less viable option for the whānau.

Alternative sites for the river diversion were probably not considered, and the Crown dismissed alternative means of preventing erosion that would have obviated the need to take this Māori land. Once the land was no longer

required for the purpose for which it was taken, it should have gone back to its former owners.

We find that the takings in Ōhura South M2A for the diversion of the Whanganui River did not meet Treaty standards for public works; the diversion was not in the national interest; there were alternatives to compulsory acquisition; taking this land was not the only available means of preventing erosion; and the owners were not consulted about the taking. As such, the takings breached the plain meaning of article 2 of the Treaty.

(b) *Recommendation*: We recommend that the Crown takes these findings into account and negotiates with the regional council and those Māori who have an interest in the site about its future management, with the aim of involving the descendants of the original owners in decisions about the site.

(11) *The Piriaka Puna*

(a) *Crown concession*: The Crown conceded that it did not meet the Treaty standards of good faith and fair dealing when it took Whanganui land for the railway without compensating the owners.⁴⁰

(b) *Findings*: As with other railway takings in our inquiry district, it is unlikely that Māori were consulted before the taking of the land containing the puna in 1905. The land is of significance to the claimants' whānau and hapū, and as Michael Le Gros, on behalf of the uri of Tānoa and Te Whiutahi, told us: 'I can't see that Maori would agree to give up this land, when that is where they used to bathe their sick.'⁴¹

We support the Crown's steps to offer back to the claimants the land where the puna is located. We do not know whether claimants were ultimately obliged to pay \$500 plus GST or not, but if they were we consider that requiring payment of even a modest sum breaches the Treaty. The Crown had the use of the land for many, many years, and did not pay the owners for the land in the first place. As the *Wairarapa ki Tararua Report* stated, the 'purchase back at a market price' model used by Crown agencies in

returning land is not appropriate for Māori land taken for public works,⁴² especially where the land was taken without compensation or agreement.

(c) *Recommendation*: We recommend that the Crown returns to the successors of Taitua Te Uhi, Tānoa Te Uhi, and Tūao any payment they made, plus interest.

(12) *The Piriaka School site*

(a) *Findings*: This is a case that calls into question the robustness of the Crown's process for holding surplus Crown land in advance of Treaty settlements. In this case, the criticism is not only of the holding process, but also of the decision-making that lay behind choosing to transfer Piriaka School land and buildings to the Hinengākau Development Trust before all claims and interests in the property were fully ventilated and assessed.

The Crown's process for holding surplus land is complex, and has changed over time. The claimants in this particular case told us that they felt uninformed and bypassed. They knew nothing about the 'Whanganui claim specific land bank', and did not understand its implications for their application to have Piriaka School land-banked for their claim. The Office of Treaty Settlements did not communicate effectively with the claimants about their application to land-bank the school.

The Tānoa whānau, however, did communicate to the Office of Treaty Settlements their clear view that neither the Whanganui River Māori Trust Board nor the Hinengākau Development Trust represented them.⁴³ The Office of Treaty Settlements took no steps to address that situation, even though one of its policy analysts advised that it would be inappropriate to vest the land in the Hinengākau Development Trust while the interests of the claimants from the uri of Tānoa Te Uhi and Te Whiutahi were yet to be determined. She recommended that discussions with both parties take place to consider vesting the site in a wider iwi grouping or eponymous ancestor.⁴⁴ The Crown did nothing to facilitate such discussions. Officials basically left it to Mr Tānoa: a letter to Cedric Tānoa in July 1998 acknowledged his concerns about the

Whanganui River Māori Trust Board representing his interests, but said that the Crown accepted the validity of the board's rohe and mandate to represent Whanganui Māori. The letter advised Mr Tānoa to contact the trust board.⁴⁵

Many claimants have well-founded claims concerning land in the Waimarino purchase – including Piriaka township land. We approve the Crown's intentions in returning the Piriaka School site to Whanganui Māori. However, we are concerned that:

- the community of Whanganui Māori claimants neither understood nor approved the Crown's process for holding land pending Treaty settlements;
- the Crown did not manage its process in a way that was flexible and responsive to situations as they arose;
- it was not appropriate for the Whanganui River Māori Trust Board to be the sole conduit for putting land in the land bank;
- the Crown did not ensure that it understood the tribal history of the area sufficiently to adjudicate whose interests were strongest, and whose Treaty rights were most infringed, in the area where Piriaka School was situated;
- the Crown did not, but should have, convened a hui at which it would have been possible to ventilate the representation issues raised by Mr Tānoa and Mrs Le Gros, facilitate community understanding about the whole situation, and assist the interested parties to agree on a way forward;
- before transferring the property to the Hinengākau Development Trust, the Crown did not ensure that it would operate in a way that reflected the various interests in the land and buildings of Piriaka School, and that the interest-holders were happy with the arrangements; and
- the Crown did not properly evaluate the risk of choosing to return Piriaka School – a place with both rich and complex tribal history, and strong community ties – before full inquiry into all the claims.

It is very important that the Crown does not economise on process in settling Treaty claims. Conspicuous

fairness is a vital attribute, without which the Crown runs a serious risk of creating a situation where – as here – the return of the school has not allayed the sense of grievance in part of the claimant community.

We consider that the Crown's dealings with Piriaka School were flawed in Treaty terms, and in ways that invoke its duty to uphold te tino rangatiratanga and the related value of whanaungatanga (kinship).

Because the Crown did not take the time to ensure good communication about what it was doing, and to engage fully with the genuine interests of those who opposed the transfer of the school to the Hinengākau Development Trust, there are members of the Whanganui claimant community for whom the return of Piriaka School made matters worse rather than better. Furthermore, their relationships with whanaunga (kin) were made more difficult. We think these outcomes were avoidable, and in failing to take the necessary steps to avoid them the Crown breached the Treaty principle of active protection.

(b) *Recommendation*: In order to effect settlement in the true sense, we recommend that the Crown ensures that all its processes are transparent, well communicated, and fair. The Crown has already amended its processes for returning Crown assets to entitled claimants, but we recommend that it spare no effort to ensure that good communication, and conspicuous fairness and openness, attend any such exercises in the future.

(13) Ōhura South B2B2C2 and the Pukehou Road quarry

(a) *Findings*: Pukehou quarry should never have been permitted, given the dynamic river environment with pre-existing flooding issues for landowners, plus an engineer's report that clearly highlighted the risks the quarry would bring to the river environment, and to Ōhura South B2B2C2. Perhaps the risks could have been mitigated if the council had managed and monitored the conditions it imposed on the consent. It did not. Over the years, the level of the quarry land has gradually lowered with the extraction of thousands of tons of metal. The result is acceleration of the river flow when it is in flood;

accompanying vortex effects and scouring of Ōhura South B2B2C2; and much slower drainage of floodwater than when floods occurred in the days before the quarry.

Raising the level of the quarry land to where it was previously is not feasible, so other remedial measures have been explored. Horizons has accepted responsibility for improving the situation, but not at any cost. Its first attempt to seek resource consent to ameliorate the erosion and flooding problems failed because there was no consensus among those with an interest in the matter. Horizons withdrew its application. It has since tried again to initiate a resource consent process, but this time wants parties to sign a memorandum of agreement before making the application. It does not want the process derailed by disagreement after it is initiated, because that would be too expensive. Some of the relevant parties have yet to sign, for a plethora of personal and political reasons. Meanwhile, the flooding and erosion continue, and farming efforts on Ōhura South B2B2C2, and its ancestral burial mounds, remain in jeopardy.

The claimants are in an invidious position, deriving little economic benefit from their land, and unable to exercise kaitiakitanga as they would wish.

The Crown meanwhile, with its Treaty duty of active protection of the land and interests of tangata whenua, is nowhere to be seen. It delegated environmental management to local authorities, and did not monitor their performance in protecting Māori landowners' interests. If the Crown had fulfilled its Treaty duty, and ensured that Māori interests were protected, the quarry would not have happened. At the very least, the conditions would have been enforced. The Whanganui River would today be taking its natural course, and the owners of Ōhura South B2B2C2 would have had to put up with floods and changes in the river's course as they always had. They would, though, have been spared the exacerbating effects of the new land levels that increase water speed and encourage erosion and flooding.

As regards the part the Māori Trustee played in managing Ōhura South B2B2C2 for more than a decade, we acknowledge the claimants' genuine sense of grievance

about his poor oversight. Unfortunately, though, the case against the Māori Trustee here is too sketchy to enable us to make findings about precisely what happened, and where fault lay.

(b) *Recommendation:* We recommend that the Crown work with Horizons and the other interested parties, and helps to fund both the process for bringing about the remedial works, and the remedial works themselves.

28.29 CHAPTER 25: CENTRAL WHANGANUI LOCAL ISSUES

28.29.1 What did this chapter cover?

In this chapter, we described and analysed:

- ▶ a series of compulsory takings for public works from land of the Pāuro Marino whānau, at Ōhākune;
- ▶ the Crown's scoria takings from Raetihi 4B and subsequent compulsory taking of the same land;
- ▶ the changing of te reo Māori place names in the Ōhākune area;
- ▶ the Crown's management of the Rangataua lakes;
- ▶ the compulsory taking of land at Mangamingi Marae;
- ▶ the Crown's attempt to return the former Parinui Native School site to its former Māori owners;
- ▶ the Crown's return of land at the Pipiriki School site;
- ▶ the compulsory taking of land from Waimarino 3;
- ▶ the taking of land from Waimarino 3L1 for the Mākākahi Road School;
- ▶ the Waimarino 3M5 gravel pit;
- ▶ the compulsory taking of land for the Tūrangerere Railway Reserve; and
- ▶ the environmental management of the Whangaehu River and its tributaries.

28.29.2 Findings and recommendations

(1) Pāuro Marino whānau lands

(a) *Findings:* Statutes authorising compulsory acquisition for public works allowed Māori land blocks conveniently located near towns to be targeted for unsavoury public amenities.⁴⁶ The takings from the Pāuro Marino whānau

land at Ōhākune are a prime example. Whether the targeting was intentional or not, the facts here are undeniable. Quite simply, the local authority and the Crown used land in Raetihi 3B2A2B far too much, compulsorily acquiring sites for three major municipal projects, and six other public works. This whānau gave up more land than was at all fair and reasonable, and the balance of their landholdings has been adversely affected in multiple ways.

Little thought or consideration for the interests of the Māori landowners attended the various acquisitions, even though the evidence shows that the owners talked about the impacts at meetings of owners, and brought them to the attention of the borough council in the 1970s.⁴⁷ Crown officials knew about the takings, because routinely, the borough council went to the Māori Affairs Department first about potential public works takings, establishing contact details for owners, or inquiring whether the department would act on the owners' behalf. The district officer for the Māori Affairs Department regularly represented landowners in compensation claims against the Ōhākune Borough Council. On one occasion, the district officer saw the owners' plight, and brought it forcibly to the borough council's attention, but he was a lone voice in the wilderness. Such officers had no institutional support to protect the Treaty interests of tangata whenua, and were powerless to effect any change of direction in either local or central government that might have helped the descendants of Pāuro Marino to keep and enjoy their ancestral land.

Consequently, we find that the Crown facilitated its own and the local authority's compulsory acquisition of the Pāuro Marino land both legislatively and administratively. It failed to protect the Pāuro Marino whānau and the Maungārongo Marae community from unnecessary cultural, spiritual, and financial loss, and breached the article 2 guarantee of te tino rangatiratanga o ō rātou whenua (the full chieftainship over their lands). Significant prejudice to the whānau of Pāuro Marino and of Maungārongo Marae resulted.

Because the local authority now owns this land, the land is private land for the purposes of our legislation. We

may not make recommendations about what the current owner of that land should do.

(b) *Recommendations*: As far as the Crown is concerned, we recommend that it takes into account the prejudice suffered by the Pāuro Marino whānau and the Maungārongo Marae community in settlement negotiations with Ngāti Rangi.

On the issue of asbestos, we note that the chief executive of the Ruapehu District Council indicated to claimants after the Whanganui inquiry hearings that the council would welcome further information on asbestos dumping in the Tohunga Road landfill.⁴⁸ Given the proximity of the landfill site to the Maungārongo Marae and its kōhanga reo, and our finding of the site's significance to the Marino whānau, we recommend that the Crown work with the Ruapehu District Council to ensure that any asbestos or other hazardous materials have been handled correctly.⁴⁹

(2) *Ōhākune scoria pit*

(a) *Findings*: The story of the Ōhākune scoria pit is a good illustration of how Māori landowners end up getting nothing out of their land, even when that land has resources on it for which there is a market – in this case, scoria. Instead, the Crown repeatedly took scoria from Raetihi 4B without consultation or compensation.

Raetihi 4B is one of those blocks where the owners run into many hundreds, and many of the shareholdings have not been succeeded to. Such blocks are very difficult to run. No one has a sufficiently large interest to make it worthwhile for anyone to invest time and effort in managing the land, and the problem of bringing the list of owners up to date becomes insuperable. The Māori Trustee's longstanding involvement is a common response to such difficulties, but seldom provides a solution.

As we have discussed earlier in this report, the Crown enacted a Māori land tenure system that was designed to operate for its own, rather than for Māori landowners', convenience. It has many unfortunate characteristics, of which the fragmentation of title is but one. Highly fragmented titles are especially unworkable, though, and what

happened on Raetihi 4B is typical. Many owners with few shares become distanced from the land, and are therefore vulnerable to exploitation. The Māori Trustee was supposed to be a mechanism for ensuring the protection of landowners' interests, but in practice the office was often inefficient, overly bureaucratic, and easily overridden. All those characteristics are evident in this case.

Once the Crown became directly involved with the Raetihi 4B block and began deriving benefit from it, it was incumbent upon it to ensure that the owners also derived benefit. The Crown, in the guise of the Ministry of Works, did not regard itself as being under such a duty, and it instead in:

- ▶ 1963: used section 17 of the Public Works Act 1928 to gain access to the land, and to the scoria, without arranging payment;
- ▶ 1968: compulsorily acquired the land for the scoria pit as a means of circumnavigating any necessity to deal with the owners or the Māori Trustee over royalties – and again, made no payment;
- ▶ 1968 to the late 1980s: continued to use the land and its resources without payment, then once it had no further use for the land, sought to quit the situation in a way that minimised cost and effort;
- ▶ 1998: finally exited the situation by using section 54 of the Public Works Act 1981 to revoke its earlier compulsory acquisition and re-vest the land in the Māori Trustee; and by gaining the agreement of the Māori Trustee to an all-up payment of \$1,500 (plus owners' solicitors' costs) for the use of the land and its resources since 1963.

In the 1990s, when the Crown was finally sorting out a resolution to this fiasco, one might have expected to see a different attitude from the one that prevailed in the earlier period – in particular, an acceptance of responsibility for the unwieldy nature of Māori land tenure, rather than shifting the problem elsewhere. Returning title and paying compensation to the Māori Trustee did not resolve the problem – the owners of Raetihi 4B cannot benefit until they are defined. In this present era, the Crown should be prepared to help sort out the problem of actually delivering benefits to those entitled, by materially

assisting in the huge task of updating the owners' list. The Crown should try to alleviate the problems with the Māori land tenure system where it can – and especially in situations like this one, where the Crown's own conduct was poor over many years, and where it derived benefit from land and the owners did not. For the Crown to approach the matter otherwise is to engage in a particularly reprehensible kind of Treaty breach: creating a tenure system that makes it difficult for Māori landowners to protect their interests; exploiting that vulnerability to use their resources and take their land; then fix the situation by taking the necessary legal steps, but doing nothing to ensure that those entitled actually derive benefit from the use the Crown has had of their land.

As regards the role of the Māori Trustee in this case, we agree with the Tauranga Moana Tribunal. It found that in establishing the Māori Trustee, the Crown was obliged to ensure that it carried out its role in the best interests of Māori landowners.⁵⁰ Here, the Māori Trustee allowed itself to be bureaucratically bullied, did not insist on royalties, and then, after more than three decades of non-payment, accepted meagre compensation.

Before closing on this topic, we should briefly say what is so obvious as almost to go without saying: the Crown's compulsory acquisition of Raetihi 4B was not one that was in the national interest as a last resort. It therefore breached the Treaty – the more so as in fact it was probably a purchase in bad faith: the Ministry of Works saw buying the land as a cheaper and more convenient option than paying the owners royalties for the scoria extracted from their land.

The Crown also breached the Treaty by bureaucratically bungling the task of paying the owners proper compensation and royalties over a period of more than three decades. This was a flagrant failure to actively protect the interests of the scoria pit's Māori owners.

(b) *Recommendations:* We recommend that the Crown:

- ▶ Assist with the rehabilitation of the land used for the former scoria pit.
- ▶ Review the compensation paid to the owners of Raetihi 4B, including inquiry into:

- whether there was payment for injurious affection arising from the scoria pit; and
 - where interest was, or should have been, accounted for.
- Make further payment to those entitled if the compensation was as inadequate as it appears to have been.
- Embark on, and fund, a project of working with the owners, claimants, and hapū to update the list of owners of Raetihi 4B so that those entitled can receive benefit from the use that the Crown derived from their land from 1963 to 1998.

(3) *The Crown and te reo Māori place names*

If anyone ever wondered whether names are potent, the Wanganui/Whanganui debate should have put the matter beyond doubt.

We agree with these observations of the Wairarapa ki Tararua Tribunal:

When settlers came to this country, they soon began renaming the landscape. It is an aspect of the assumption of power inherent in colonisation. . . . Somehow, settlers felt able to approach the places they were newly occupying as though nothing and no one had gone before: they were the people who counted, and their language and their names were more important. Misspelling and mispronouncing Māori names is simply another manifestation of this attitude.⁵¹

It is not hard to see why streets named after British rivers and important Europeans had resonance for Pākehā settlers. More difficult is understanding why those Pākehā did not understand, and respect, that places in Ōhākune already had names – names that Ōhākune Māori had known for a long time, and were meaningful to them because they evoked their whakapapa and history.

In our view it was not acceptable for the authorities to allow Pākehā nomenclature to override pre-existing Māori choices. It certainly is not acceptable now. The Crown and local authorities today routinely discuss with Māori any proposed changes to Māori place names. Recognition of te reo Māori as an important aspect of our national identity has also grown over time. As the Tribunal for the Wai

262 claim reported, New Zealanders now see te reo Māori as shaping our collective identity at the same time as it sustains Māori cultural identity.⁵²

The correction of place names in the Ōhākune area has been slow in coming, but it has occurred in some areas, as evidenced by the restoration of the rightful names of Maungārongo Marae and Rotokura Lake. We hope that this will continue, including consideration of returning street names in Ōhākune to their pre-1914 names. More broadly, we trust that these days, the role of tangata whenua in Ōhākune is sufficiently understood and respected that they can work together with the Crown and local authorities responsible for the management of significant places, to explore how tangata whenua history can be better represented in the place names of Ōhākune.

The evidence about the name changes and how they came about is insufficiently detailed for us to make findings about Crown Treaty breach. However, we concur with the Wai 262 Tribunal's view that the promotion of te reo Māori in New Zealand is the responsibility of both the Crown and te iwi Māori.⁵³ We consider that it would enhance Treaty relationships if the Crown were to formally require local and regional authorities to advance this aspect of partnership when naming new places, and in restoring the correct Māori names for places that have Māori names already, or had them previously.

(4) *The Department of Conservation and Environmental Management*

(a) *Findings:* The Rangataua lakes are wāhi tapu of significance to Ngāti Rangi and Te Uri o Tamakana, and possibly also to other iwi groups in the Ōhākune area. In the decades since the land went into a reserve under the control of first local authorities and then the Crown, tangata whenua have been unable to exercise their cultural norms for wāhi tapu.

Ōhākune Lakes Reserve is Crown land, but before it came into public ownership, iwi of this district lived there, gathered there, hunted there, fought there, and died there, mai rā anō (from time immemorial). It became wāhi tapu because of events now two centuries ago. That past was not obliterated when the land came into Crown hands.

Recognising and respecting Māori history and culture is an integral part of the concept of partnership between the Crown and Māori. When the Crown owns land like this, it must honour the special nature of what happened there. That involves working closely and respectfully with those whose forebears owned it, and were its kaitiaki. They remain its kaitiaki, despite its Crown title. The Crown must be creative and open in order to construct a partnership that allows that kaitiaki role to be fully and meaningfully expressed.

The lack of partnership in its dealings with the Ōhākune Lakes Reserve in the past leads us to a finding that the Crown breached this Treaty principle in its management of this land and the two lakes.

We make no findings on the display panels at the ranger station. We regard the incident as a hurdle DOC faced in its journey to better relationships with tangata whenua of the region. We considered its approach to resolving the issue was generally sound, and we encourage it to continue to work with the different iwi groups to find solutions that honour the mana of them all.

(b) *Recommendation*: We understand that DOC has, since our inquiry ended, made structural changes that involve new policy, practice, and personnel. We cannot comment on the Treaty compliance or otherwise of the new regime, but as regards Ōhākune Lakes Reserve, we recommend that our findings about partnership, history, and culture are factored into arrangements for management of the reserve arrived at through discussion between DOC and tangata whenua.

(5) *Mangamingi marae lands*

(a) *Findings*: A dearth of evidence limits our ability to make findings on some aspects of the Mangamingi claims.

Here is a brief summary of what we know about land taken from the marae block (Raetihi 2B2B) for the railway:

- ▶ the Mangamingi community objected to the railway branch line going through their land;
- ▶ their objection was not heeded;
- ▶ their land was compulsorily acquired for the Raetihi–Ōhākune branch line in 1914 and 1918;

- ▶ the railway track ran a stone's throw from the whare tūpuna;
- ▶ in December 1922, the owners of the Raetihi 2B2B3 blocks were awarded compensation of just over £25, which was supposed to have been deducted from a lump sum of just over £624 which the Native Land Court ordered the Native Trustee to pay to the Aotea District Māori Land Board for distribution;
- ▶ the Aotea District Māori Land Board may or may not have received the funds from the Native Trustee, may or may not have distributed the funds in the amounts determined by the court, and may or may not have deducted commission for distributing the money;
- ▶ the railway closed in 1968, the tracks were lifted, and the former railway land was returned to its former Māori owners; and
- ▶ the marae subsequently paid to fill in the cutting so that it could use the land.

On the basis of these facts, we find that:

- ▶ This was not a compulsory purchase where the national interest was at stake, and where the land in Raetihi 2B2B3 was taken as a last resort.
- ▶ The railway branch line did benefit the local Māori community by improving transport for people and goods, and supporting local industry. However, the loss of amenity to the Mangamingi whānau arising from the line passing through the pā could have been avoided if the route had been changed even slightly – so that it ran on the other side of the road, for instance.
- ▶ In general – and the more so in circumstances like this, where the Māori community objected, and went so far as to take their protest to Wellington – the Crown was under an obligation to take all possible steps to minimise the negative impacts of compulsory purchases on the owners of the land. There is no evidence to suggest that the Crown did anything to mitigate the loss of amenity at Mangamingi pā arising from the railway track running through the marae land. Having visited the site, we consider that relocating the line so that it was further distant from the marae would not have been difficult or expensive. Even 50 metres further away would have made a difference. The Crown's decision

to lay the track where it did was culturally insensitive and unnecessary, and showed disregard for any duty of partnership.

- The Crown acquired four acres and 14.25 perches from Raetihi 2B2B3. Whether or not the owners actually received the compensation of £25 that they were awarded, the award was low. Using the Reserve Bank inflation calculator, the buying power of one New Zealand dollar in 2014 is equivalent to £0.01 in 1922. On that basis, £25 had a similar buying power in 1922 to about \$2,500 in today's money.
- No account was taken of the special value to the owners of land that was effectively part of the pā. The Native Land Court awarded the compensation as a lump sum, so clearly did not attribute value to the unique characteristics of individual blocks.
- Other poor aspects of the compensation process were that:
 - it took too long (the compensation award did not come through until nearly five years after the purchase);
 - the owners' solicitors' costs were deducted from the compensation, whereas the Crown should have borne the costs of the process – which included legal representation for those whose land it compulsorily acquired against their wishes; and
 - the Aotea District Māori Land Board was allowed to claim commission for distributing the compensation, which potentially reduced the compensation further.
- Once the railway was closed, and the former owners got their land back, the Crown should have ensured that it was restored to its original condition. At least, it should have made sure that that land was in a usable state.

Thus, the Crown did not honour its guarantee of *te tino rangatiratanga* in article 2 of the Treaty, and breached its duty of active protection.

On the claim about Pākihi Road, we make no findings. The parties did not present evidence on the formation or realignment of the road, and our additional research shed no light. As a result, we cannot say when the road was realigned, how much land was taken for the realignment, which legislation was (or was not) used, or any

other material details that would enable us to analyse what happened.

(b) *Recommendation*: We recommend that the Crown takes into account the findings and breaches reported here in its settlement negotiations with the claimants.

(6) **Parinui Native School site**

(a) *Findings*: We find that, in this case, the Crown attempted to return the former Parinui Native School site to its former Māori owners. We do not know why it took over 13 years to apply for the re-vesting order, but it is likely that the Second World War gave rise to administrative delays.

There appears to have been a failure of process where staff did not implement the Māori Land Court's order to re-vest the land. While the fault seems to have lain principally with the bureaucratic processes of the Māori Land Court, we also consider that, as a first step, the Crown should have notified the owners that the future of the Parinui Native School site was being determined. This communication failure resulted in the descendants of the former owners believing for more than half a century that the Crown still owned the land. In fact, the formal position concerning the school site's ownership remains unclear, because of the state of the title documents to which we have referred.

Not monitoring the process of re-vesting, and not telling the successors of the land's former owners about what was happening, constituted Crown failure to actively protect these Māori interests.

(b) *Recommendation*: We recommend that the Crown supports and funds the owners of Taumatamāhoe 2B2B15A2 and 2B2B15A3 to apply to the Māori Land Court for an investigation into the 1954 re-vesting of the Parinui School site, and to effect whatever rectification is required.

(7) **Pipiriki School site**

(a) *Findings*: At the heart of Ms Whitu, Mr Cribb, and the Tamahaki claimants' complaint about the return of the Pipiriki School site to the Pipiriki Incorporation lies a simple proposition: the land should have gone back to

successors of the former owners of the gifted land, but it did not. That is because, they say, their tupuna was one of the donors, and at least some of her successors – for example, Ms Whitu and Mr Cribb – are not beneficiaries of the Pipiriki Incorporation.

Determining whether, and to what extent, the Crown's process for return of the land fell short involves (1) tracing the interests of Uenuku Tūwharetoa, Taurerewa Tūwharetoa, and Mokopuna Tirakoroheke in land gifted for the school in 1953; and (2) determining whether those entitled to succeed to those interests derive benefits from the Pipiriki Incorporation, to which the Crown transferred the land. We do not have the expert and detailed evidence that would enable us to make that determination.

We are in no doubt that this matter is important to Ms Whitu, Mr Cribb, and the Tamahaki claimants, but the Crown did not engage with their claims with respect to the school land in any meaningful way. For example, it did not provide copies of the stage 2 DTZ report that might reveal the extent to which the Crown explored the questions posed in the previous paragraph, or uncovered answers to them.

We are satisfied both that the successors of the donors of the school land are entitled to derive benefit from the interests in the land that the Crown has returned, and that the Crown did not manage its re-vesting process with any intention to exclude any of those successors from benefiting from the return of the school site. However, it seems on the evidence before us that it may unwittingly have done so.

We find that the Crown's failure to fully explore the succession rights to the site of Pipiriki School, or to engage sufficiently with the contentions of Ms Whitu and Mr Cribb, constitutes a failure to actively protect the rights of Māori in their land.

(b) *Recommendations*: We recommend that the Crown work with Ms Whitu, Mr Cribb, and Tamahaki claimants (that is, claimants in Wai 555, Wai 1224, and Wai 2204) to commission research that will enable an informed view to be reached on:

- the interests of Uenuku Tūwharetoa, Taurerewa Tūwharetoa, and Mokopuna Tirakoroheke in land gifted for the school in 1953; and
- whether those entitled to succeed to those interests derive benefits from the Pipiriki Incorporation.

If, as a result of the investigation, it appears that successors to interests of donors of the land are excluded from benefiting from the return of the land to the Pipiriki Incorporation, the Crown will have breached both:

- the agreement with the donors on the basis of which the school land was gifted to the Crown; and
- the principles of the Treaty, in failing to actively protect the interests of those who are entitled to derive benefit from the return of the school land, but in fact do not.

If this is the situation, the Crown should negotiate with those entitled an alternative means for them to derive benefit.

(8) *Waimarino 3 roads*

(a) *Finding – compensation for private road lines on Waimarino 3 that became public roads*: Māori actively sought the advantages that would come with roads, and needed road access to newly created partitions. When the Native Land Court created road lines on Waimarino 3 as part of the partition process, it was setting up the potential for owners of Māori land to create roads to access their land. The road lines were on land that continued in Māori title. But what happened on the ground was that when roads were formed on Waimarino 3, they began to be used – and maintained by the local authority – as if they were public roads.

When this situation was brought to the attention of the Māori Land Court in 1966, it referred to section 422(2) of the Maori Affairs Act 1953, which was drafted for this very situation. It empowered the Māori Land Court to recommend to the Minister of Works and Development that land used as a road 'be declared to be a road'. It left it to the judge to decide whether or not to make the recommendation subject to the payment of compensation to those whose land interests were affected.

As regards these roads on Waimarino 3, the Māori

Land Court seems to have regarded the task as a kind of administrative clean up, since everyone had proceeded previously on the basis that the roads were already public roads – including the owners of the Māori land on which they had been formed. As a result, it did not see the transfer of the road, and the land, out of private and into public hands as a moment when compensation was owed to those who owned the land.

The court also had a practical reason for not awarding compensation. Without specifying how much compensation was likely to be payable, it considered that it was likely to be too little to justify the effort and expense of finding the possibly many hundreds of beneficial owners.

It falls outside our jurisdiction to comment on the conduct of the Māori Land Court judge in this case. The Waitangi Tribunal's job is to assess the conduct of the Crown against the standards implied in the Treaty of Waitangi. Constitutionally, the conduct of the judiciary is not the conduct of the Crown.

However, the legislation was at fault here: the Crown constructed the legal context within which the judge was operating. It should not have been possible for the Māori Land Court to recommend that the land be declared a road without giving all whose land interests were affected the right to be heard on the matter, and especially on whether compensation was payable.

Section 422(2) of the Maori Affairs Act 1953 gave the Māori Land Court discretion whether to recommend that land used as a road should be declared to be a road, and whether compensation should be paid to those whose land interests were affected. In this arrangement, there is no agency at all for the owners of the Māori land in question – not even a requirement that they be notified after the fact. This creates the possibility that the fate of Māori owners' land is determined as between the court and the Minister of Works and Development, without those owners being informed that it might happen, is happening, or has happened.

As to payment, the provision creates no expectation that landowners whose land has been used for a road will be paid; simply, the Māori Land Court's recommendation

that the road is declared a road 'may' be subject to compensation. Although the five per cent rule, discussed in chapter 23, created a legal environment in this country where using Māori land for a road without paying owners was commonplace for some decades, that era was long gone by the mid-twentieth century. As the *Ngati Rangiteaorere Claim Report* found, the taking of land without compensation amounts to confiscation: 'Whatever the merits of compulsory acquisition, as a last resort, there can be no justification of the failure to pay compensation.'⁵⁴ For a provision like section 422(2), redolent of colonial high-handedness, to be entering the statute books in 1953 was surely an anachronism.

This provision, which authorised expropriation without notice or compensation, breached the guarantee in article 2 of *te tino rangatiratanga*.

(b) *Finding – the return of land in Waimarino 3 no longer required for roads*: Treatment of land no longer required for roads has been inconsistent. While the unused road lines attached to Waimarino 3G and 3H were returned to the owners of the surrounding Māori land, other road lines were not.

All owners of land in the Waimarino 3 block should have been treated the same as owners of land in Waimarino 3G and 3H. There is no reason that we can see for unused road lines to remain in limbo – that is, as Māori freehold land, but not vested in any particular owners. We encourage the Crown and council to work with those landowners who wish to have road lines on their partitions removed to take the necessary steps to restore the land to their ownership.

(c) *Finding – the road line bisecting the kāinga*: The only good thing to be said about the road line bisecting Waitahupārae Marae and kāinga, for which the Crown, on behalf of Waimarino County Council, compulsorily acquired land, is that the road was never constructed. It was intended for an approach to a bridge that was never built.

Compensation seems to have been awarded in the Waitahupārae Marae case (£30), but every other aspect of

this acquisition was flawed, and breached the guarantee of te tino rangatiratanga:

- ▶ It was a minor, local public work for which any compulsory acquisition was unjustified, but to take land for a planned road through a marae was a flagrant disregard of te tino rangatiratanga.
- ▶ The Manganui-a-te-ao runs through a long river valley. It is hard to imagine that there were no other places to locate a bridge and an access road. If the Crown or council had considered alternatives, or taken into account at all the cultural implications of running a road through a marae, or tried to negotiate the matter with tangata whenua, their culpability might have been less. There is no evidence that any such steps were taken here.
- ▶ It must have been apparent a long time ago that the bridge was not going to be built, and that the land taken for the road would not be needed for that purpose. The land should have gone back to its former owners, or their successors. The Ruapehu District Council's lack of action once the issue was brought to its attention in about 1990 was particularly negligent.

(d) *Recommendations:* We recommend that the Crown work with the Ruapehu District Council to investigate all unused road lines across Māori land in the Waimarino 3 block taken under the provisions of the Public Works Act, and determine whether they are able to be returned to their parent blocks under the relevant legislative provisions. We recommend that the Crown fund any necessary applications to the Māori Land Court.

(9) Mākākahi Road School

(a) *Findings:* Mr Pike donated the land for Mākākahi Road School, but because the partitioning of the Waimarino 3L1 block was not done properly, the school site came out of the whole block rather than out of Mr Pike's portion of the block. The Māori Land Court's error made the school site effectively a gift from Mr Pike as to half its area, and an expropriation from the Māori owners of Waimarino 3L1 as to the other half – which amounted to just over an acre.

Having decided to use compulsory acquisition as

the best means of effecting Mr Pike's gift of land for the school, it was incumbent on the Crown to make sure that the process was undertaken properly. There are two respects in which the Crown failed: officials working in the Māori Land Court failed to give effect to the court's order by subtracting the land for the school site only from Mr Pike's partition (Waimarino 3L1B) rather than from the parent block (Waimarino 3L1); and officials working in the Public Works Department failed to ensure that the school land came only from the donor's land rather than from all the owners' land. Officials were slipshod, not attending to the job of getting sound title for the school until 1953, 20 years after the land was gifted.

We find that the Crown's failure to ensure that the land transferred matched the terms of the gift prejudiced the Māori owners of Waimarino 3L1: they unwittingly gave up more than an acre of their land to the school site. There was both an error of Māori Land Court staff in subtracting land from both 3L1A and 3L1B rather than from 3L1B only; and failure by officials in either the Public Works Department or the Education Department to ensure that title for the school site reflected the land interests that Mr Pike gifted.

(b) *Recommendation:* As the school site is now in private ownership, we cannot recommend its return. However, we can and do recommend that the Crown compensates the successors of the Māori owners of Waimarino 3L1 in 1934 for the expropriation from them of one acre one rood 13.02 perches, including interest.

(10) Waimarino 3M5 gravel pit

We made no findings or recommendations.

(11) Tūranganui railway reserve land

(a) *Findings:* The Tūranganui Railway Reserve was taken under section 167 of the Public Works Act 1894. This legislative regime and actions taken under it prejudiced the Pohe whānau: Ropoama Pohe was not properly notified of the taking, and as a result believed he continued to own the section where he lived.

The Crown discovered its failure to notify and pay

compensation to the Pohe whānau in 1935 as a result of Whatarangi Pohe's meeting with the Prime Minister. In our view the peppercorn lease arrangement entered into was an inadequate response. The Crown should have done its utmost to return to the whānau at least the three acres where Ropoama Pohe lived in 1935: by then, the Crown had already had 30 years' ownership of the Pohe land without payment. A small amount of administrative cost and inconvenience was a small price to pay for setting matters to rights. Acceding to Whatarangi Pohe's request might have set a precedent, as officials feared – but, in situations of this kind, a good one. Returning small areas of land important to whānau Māori was precisely the kind of step a good Treaty partner should have been taking. It is apparent that these three acres are not vital to the railway. No doubt having land that acts as a buffer around the railway is optimal for operational reasons, but in particular circumstances like this, those operational reasons should prevail only where the railway absolutely cannot do without them. The longstanding lease of this land, interrupted it appears by only one operational requirement in about 1993, is a strong indication that such circumstances do not apply here. If it were considered imperative to retain the ability to access the land for such eventualities as the work that occurred in 1993, retention of an easement over the subject land would probably suffice. We saw no evidence of the Crown's at any time looking into alternatives to owning the freehold of this land.

At the time of the taking, Raketāpāuma 2B1 was not in the sole ownership of the Pohe whānau. However, it is apparent that Ropoama Pohe, and Whatarangi Pohe after him, occupied and cultivated the land in question in the belief that they owned it. Then, once they learned that ownership had passed to the Crown, Whatarangi Pohe and his uri (descendants) after him, sought the return of the land on behalf of this whānau who have leased the land on a peppercorn rental for the best part of a century. We thus have evidence of this whānau occupying the land for about 150 years. Although the Pohe whānau had no partition of these three acres, the evidence is strong that their interests in that small area predominated.

We find that the failure to notify Ropoama Pohe about

the compulsory acquisition, the failure to pay compensation, and the failure to give back the land in the 1930s when Whatarangi Pohe travelled to Wellington to resolve the matter, meant that the Crown breached the principles of the Treaty of Waitangi. We find the Pohe whānau claim to be well founded.

(b) *Recommendation*: We recommend that the Crown returns to the Pohe whānau the land that, as far as we are aware, remains the subject of a peppercorn lease arrangement between the New Zealand Railways Corporation and the Pohe whānau (whether or not that peppercorn lease arrangement has remained in place).

(12) *Whangaehu River*

(a) *Findings*: The Whangaehu River and its tributaries are taonga of Ngāti Rangi, and vital to their way of life. The waterways have always sustained them economically, socially, spiritually, and culturally. This awa tupuna has a unique adaptive ecosystem, and characterising it as 'dead' (due to acidity from periodic volcanic discharges) demeaned and devalued Ngāti Rangi mātauranga and mana, and disrespected the ancestral relationship between the people and the river. To them, polluting the water is polluting the people.⁵⁵ Agriculture, market gardening, water diversion for hydroelectricity, and wood processing have all harmed the environment, and in so doing have harmed them.

As a Treaty partner, the Crown must have regard to Māori spiritual values.⁵⁶ In the past, Ngāti Rangi's spiritual relationship with the Whangaehu River seems not to have influenced local authorities' resource management decisions. For instance, we are unaware of Ngāti Rangi's playing any part at all in decision-making processes about the pulp mill's rights to take and discharge waste into the river, or the water rights allocated to vegetable growers. Witnesses from Horizons Regional Council appeared before us, but we heard little about its current process for allocating water rights, or how it engages with Ngāti Rangi. However, we do know that Ngāti Rangi has made progress on its resource management plans, and this will foster early and appropriate engagement between the iwi

and those charged with making environmental decisions. We gained the impression that the relationship between the mill, Horizons, and Ngāti Rangi has improved over time.

We agree with the National Park Tribunal's finding that the Tongariro Power Development adversely affected the Whangaehu River and its tributaries. Although the Whangaehu River was not part of the scheme, the tributaries that diluted its acidic waters were diverted, affecting the migration of tuna and changing the way Ngāti Rangi use the river.⁵⁷ We note that the resource consent process for the Tongariro Power Development gave scope for changes that are in Ngāti Rangi's interests.

More broadly, we find that the Crown did not ensure Ngāti Rangi's and other Māori interests were taken into account in the care, use, and management of the Whangaehu River, and did not actively protect their interests in their taonga, contrary to the principles of the Treaty.

(b) *Recommendation*: We recommend that the Crown takes these findings into account in settlement negotiations, and ensures that the management regime for the river provides for decision-making that better recognises Māori interests, and supports the restoration of the river to its natural state.

28.30 CHAPTER 26: SOUTHERN WHANGANUI LOCAL ISSUES

28.30.1 What did this chapter cover?

In this chapter, we described and analysed:

- the compulsory taking of land for the Parapara Road;
- the management of the Ōtoko Scenic Reserve;
- the management of Taukoro Bush;
- the cause of flooding at Ōhotu 6F2;
- the Crown's sale of land that Māori gifted for Koriniti Native School;
- the Crown's planning for the Ātene dam;
- the Crown's disposal of land from Parikino School sites;
- the compulsory taking of land from Puketarata 4G1;
- the Wanganui Harbour Board's compulsory acquisition of land at Kaiwhaiki;

- the management of taonga tūturu;
- the management of Kaitoke Lake and Lake Wiritōa;
- the designation of Taipakē as a public reserve; and
- the taking of land at Kai Iwi for the Wanganui water supply.

28.30.2 Findings and recommendations

(1) Parapara Road

(a) *Findings*: The Central North Island Tribunal found that the 'five per cent rule' was in breach of the Treaty because it treated Māori land differently from general land, to the disadvantage of Māori.⁵⁸ We concur, and we consider that the Parapara Road takings constitute acts of the Crown inconsistent with the principles of the Treaty. While the land for the first and second routes was returned quickly in 1913, the taking for what is now State Highway 4 clearly prejudiced the claimants and no compensation was paid. A road was driven through their papakāinga, threatened the stability of significant wāhi tapu, and led to the relocation of kōiwi from the urupā in Kākātahi.

(b) *Recommendation*: We recommend that the Crown compensate the claimants for the taking of their land and for damage to their papakāinga and urupā.

(2) Ōtoko Scenic Reserve

(a) *Findings*: In our consideration of the conservation estate in this report, we have found that Māori retain a kaitiakitanga interest in taonga in the conservation estate, even if the land was purchased – as in the case of Ōtoko Scenic Reserve. We concluded that the extent of Māori involvement in any part of the conservation estate must be decided on a case-by-case basis, by reference to three factors (see section 22.6.5).

In Ōtoko's case, we do not know the environmental status of the reserve. We do know, however, that Māori have a strong relationship with it: Ōtoko Marae is nearby; Māori have expressed interest in regaining ownership of the land since at least the early 1940s; and most of the other blocks in the area are Māori land administered by the Ngāpukewhakaipū Trust. The public cannot access the reserve, and few probably even know that it exists. It is

safe to say that the public interest in Ōtoko Scenic Reserve is low.

Māori influence in the management of scenic reserves was usually small or non-existent. We have no evidence that tangata whenua were involved in the management of this reserve, and consider it probable that they were not.

(b) *Recommendation*: We were encouraged that the Crown offered, as part of the discrete remedies process, to transfer the management of the reserve to an entity established by the claimants. We agree with the claimants, however, that the circumstances here are such that it would probably be more appropriate for the Crown to return ownership of Ōtoko Scenic Reserve to them. Depending on the significance of the reserve from an environmental point of view – about which we have no information – it may be necessary for covenants to be entered into to maintain a conservation management regime. We recommend that this issue is addressed during settlement negotiations.

(3) *Taukoro Bush*

Because of insufficient evidence, we made no findings of Treaty breach and therefore no recommendations. We were unable to draw any conclusions about the history of Taukoro Bush before 1987. It seems odd that over 100 years passed before the claimants were aware that the bush was in Crown ownership, but we know too little to understand why or how that came about.

On the other hand, we concluded that the modern access issues that prevent Ngāti Rūwai, Ngāti Hine-o-te-rā, and Ngāti Waikārapu from undertaking customary harvesting and hunting in Taukoro Bush are the result of the decision to grant a lease over the Taukoro Conservation Area in 1959. DOC wants the lessee to surrender part of the lease, and is negotiating to that end. We hope that this will solve the access problem.

The principle and practice of partnership is important in balancing Crown and Māori interests in the management of conservation land. In Taukoro Bush, the scales are not adequately weighted in favour of Māori interests. It is telling that DOC could identify only one occasion when Ōtoko Māori were invited to participate in the

management of Taukoro, while the claimants spoke vividly of their frustration at DOC's continued disregard for their rangatiratanga and kaitiakitanga. Taukoro Bush is important to the Ōtoko community as the last significant stand of forest in their rohe.

The Crown should actively engage with the claimants in the day-to-day management of Taukoro Bush. During our hearings, DOC officials indicated willingness to work with Ōtoko people in the future management of Taukoro. We trust that this is already underway, and that, before too much longer, tangata whenua and DOC manage Taukoro Bush in true partnership.⁵⁹

We note that there is at least one other iwi with interests in these conservation areas whom we did not hear from.⁶⁰ DOC needs to make necessary inquiries to ensure that all those with legitimate interests are included in their processes.

(4) *Ōhotu 6F1*

Because of insufficient evidence, we made no findings of Treaty breach and therefore no recommendations. We were able to conclude that those owners who voted to sell Ōhotu 6F2 held only a small minority of the shares. On the other hand, there was considerable discussion among owners as to what to do with the land, with prominent local men taking an active part in the decision. It seems likely that they consulted with other owners. We do not know why, in the end, they agreed to sell, although we can say with some certainty that they were not in a position to farm it themselves. The lump-sum purchase price was presumably simply more desirable to most than drip-fed rent on a long-term lease.⁶¹

The remnant partitioned out as Ōhotu 6F1 is bisected by Parapara Road, but Rāhera Tiweta no doubt had her own reasons for choosing these particular six acres. However, proximity to the road has brought problems over the years. Water piped away from the road and onto Ōhotu 6F1 has led to flooding, and now land is sought to re-route the road.

Parapara Road is a state highway, so its management is in the hands of Crown agencies. Those responsible for the road must have laid the pipes that have damaged Ōhotu

6F1 and caused flooding. It appears that this occurred without permission or compensation for the adverse effects. There are also pipes directing run-off from other farmland onto Ōhotu 6F1. They may be on private land, although it is not clear from the evidence presented who owns them.⁶²

The lack of definitive evidence about past or present processes concerning the land and the maintenance of the road precludes our making findings of Treaty breach or recommendations. However, we do encourage the Crown to facilitate meetings between the claimants and agencies working in Ōhotu to discuss rehabilitation of the damage to the block. It is also critical that any purchase of Ōhotu 6F1 land to re-route Parapara Road occurs only if the owners are willing, and suitable land is made available by way of exchange.

(5) Koriniti Native School

(a) *Findings*: The means that the Crown deployed to transfer from Māori to the Crown the land in the Tauakirā block identified as the school site masked its nature as gifted land. It would have been preferable, and tidier, had the school site land been separately transferred in a manner that marked it out for what it was: a gift. Probably, though, officials in the 1890s were not sufficiently prescient to foresee a day when the school would close and the school site would need to be returned to its donors.

Even though the transfer was not labelled as a 'gift', it is arguable that such labels were not necessary when the legislation of the day required Māori communities to donate land for native schools. This made it obvious that native school land was donated land, and the Crown should have known when it came to dispose of the school site that it was *extremely* likely that a Māori community would have donated the land for a rural native school set up in the 1890s.

In this case, though, the Crown officials concerned apparently did not know the legislative history of native schools, and did not inquire into the matter in any depth.

But then we have evidence that the Crown was *told* on two separate occasions before transferring the land

to private purchasers that it had been gifted. This should have triggered an in-depth inquiry into the situation. We agree that some records suggest the possibility of a purchase, but further steps, including inspection of Native Land Court minutes, could and should have been undertaken to establish what actually happened.

The mistake was discovered after the land had been sold to a private buyer, and the Crown tried to remedy the situation, seeking but failing to repurchase the land, and offering the proceeds of the sale to Ngāti Pāmoana, which they refused. Things stalled in 1983, and have not progressed since.

Almost five decades since Koriniti Native School closed, Ngāti Pāmoana remain in the situation where the Crown sold the land they gifted for the school. They have received neither compensation nor land in lieu of the land sold.

The Crown failed in its duty to actively protect the interests of Ngāti Pāmoana by:

- ▶ poorly documenting the transfer of the gift of the school land to the Crown;
- ▶ inadequately investigating the history of the land when the school closed, and selling it on the false premise that it purchased the land for the school; and
- ▶ letting the matter languish since 1983, rather than continuing to work with Ngāti Pāmoana to resolve their legitimate grievance.

(b) *Recommendation*: Redress is now well overdue, and we recommend that the Crown promptly enters into discussions with the successors of the donors of the school land with a view to resolving this regrettable situation.

(6) The proposed Ātene Dam

(a) *Findings*: The proposed Ātene Dam and its exploratory works caused *mamae* (hurt) that endures to this day. The only reason that Māori did not lose their homes, marae, and ancestral lands was the instability of the land. Crown concern for tangata whenua interests did not come into it at all.

The Crown's authority for the works at Ātene was the order in council of 1958, of which the National Park

Tribunal (considering the document in the context of the Tongariro Power Development Scheme) said:

The issuing of the OIC was done without consultation or consideration to the adherence of the Crown's Treaty obligations. It was as if the Treaty did not exist. The policies of consent and cooperation from the Crown's side were either ignored or set aside. The Crown exercised its *kāwanatanga* rights without regard for Māori *rangatiratanga*: the project was in the national interest, the lands and waters it would need were important for Māori but there was no attempt at consultation.⁶³

In considering what the Crown's duty was in this situation, we think it appropriate to apply the Treaty standards for compulsory land acquisitions for public works.

The Tribunal has acknowledged that there are public works purposes of such importance to the whole nation that the Crown may be justified in infringing the guarantee of *te tino rangatiratanga* in article 2. The need to generate hydroelectricity for the country in a time of electricity shortage might be just such an exigency. But in such circumstances the Crown must nevertheless undertake the exercise so as to minimise the adverse effects on its Treaty partner. Engagement with Whanganui Māori about what was going on and why, both before and during the Ātene project, was a necessary starting point. The Crown should, for example, have discussed the whole situation with Whanganui Māori before it issued the order in council that empowered it to undertake the exploratory work at Ātene. It did not do so, and thereby breached the Treaty principle of active protection.

We were told that the dam project and potential flooding caused people to leave the area, but we had too little evidence to make a finding to this effect. Other factors were influencing urban migration in the 1960s – and, in fact, had the dam gone ahead it would have provided local employment that might have made it possible for *tangata whenua* to remain living on the Whanganui.

It remains unclear whether drilling carried out as part of exploratory investigations increased the risk

of subsidence, or contaminated water bores and the Whanganui River by drawing sulphuric artesian water to the surface, but we note the claimants' concern about these issues and Aqualinc Research's call for further investigation into the impacts of the exploratory work.

(b) *Recommendations*: We recommend that the Crown apologises to claimants for its failure to actively protect their *tino rangatiratanga* in the investigative phase of the proposed Ātene dam; and that it assists claimants to ascertain whether there is in fact cause for concern about environmental damage, and if there is, undertakes remedial work.

(7) Parikino Native School site

(a) *Findings – the first Parikino School*: Because of insufficient evidence we made no findings of Treaty breach and therefore no recommendations. When Māori communities gifted their land to the Crown for the establishment of a native school, and later the land was no longer required for educational purposes, the Crown was then obliged both in terms of the Treaty and fairness to return it to the donors or their successors. In the case of the land that Hōri Pukehika donated for the first Parikino Native School, we do not know whether the Crown offered it to his descendants before selling it.

(b) *Findings – the second Parikino School*: The second Parikino School site was general land at the time that it was compulsorily acquired, and the Crown was obliged to follow the requirements of the Public Works Act in offering it back to the successors of the original owners. It did so. As far as the second Parikino School is concerned, therefore, the claim was not well-founded.

(8) The Puketarata 4G1 taking

(a) *Findings*: Taking 10 acres of Māori land for a worker's dwelling is not a valid infringement of the guarantee of *te tino rangatiratanga* in article 2 of the Treaty. This was a trivial public work that does not even begin to meet the standard required: the land was not required in the

national interest or as a last resort, and there were no exceptional circumstances. Moreover, even if it was thought necessary to provide horse-grazing, 10 acres is a huge amount of land for a worker's dwelling.

Unusually, the owners were represented at the compensation hearing. The process appears to have been as fair as it ever was in these situations, and Hōtene Hōkena apparently agreed on behalf of the owners to accept £90 for their land. It is not entirely clear why the lessee received so much more, but presumably he had improved the property at his own cost. The valuation methodology was always monocultural, and had no regard to the spiritual or cultural value of Māori land.

The compulsory acquisition has ultimately caused access problems at Puketarata, which the 1997 roadway order has apparently not resolved.

Not only should this Māori land not have been compulsorily acquired for a worker's dwelling, the taking of 10 acres for this purpose was excessive. The purchase breached the Treaty and its principles – irrespective of the adequacy of the compensation which, without expert evidence on values of the day, we find difficult to assess.

(b) *Recommendations:* We recommend that the Crown work with the claimants and the relevant agencies to ascertain exactly why there are still problems of access to Māori land at Puketarata. If such issues do still remain, we recommend that the Crown assists the claimants to take whatever steps may be required to ameliorate the situation.

(9) *Kaiwhaiki Quarry*

(a) *Findings:* The Wanganui Harbour Board's compulsory acquisition of land at Kaiwhaiki for a quarry is an example of how public works legislation could be wielded for commercial ends rather than for public purposes. The Māori owners at Kaiwhaiki controlled a resource that the harbour board wanted and needed – stone. Initially, the harbour board was prepared to pay for it, but when the owners sought a higher price, the harbour board thwarted

market forces by compulsorily acquiring the land where the resource was located. This was not how compulsory powers of acquisition are supposed to work, and if the owners of Kaiwhaiki had been citizens with more political power, no public authority would have moved against them in this way.

This is one of the many problems with the Crown's delegation to local authorities of power to take land for public works. This is a clear case where the Crown should have supervised the harbour board's exercise of the power to ensure (1) that the compulsory acquisition was necessary for a legitimate public purpose; and (2) that the compulsory acquisition did not breach the guarantee of *te tino rangatiratanga* in article 2. The early involvement of a Government Minister in promoting the arrangements between the harbour board and the Kaiwhaiki landowners emphasised an obligation to ensure that the arrangements were proper ones, entered into in good faith. If such monitoring had been in place, this acquisition would not have proceeded. It was apparent from the arrangements that preceded the land purchase that the harbour board could have continued to purchase the stone without owning the land.

We identify these egregious features of this case:

- ▶ negotiations about the royalties for the stone were carried out under threat of the land being taken compulsorily;
- ▶ when the landowners sought a higher royalty, the land was taken compulsorily;
- ▶ the land was not required for a public purpose, but was bought to circumvent the need for a public authority to engage in the market for a resource;
- ▶ the taking fulfilled none of the criteria for a legitimate compulsory acquisition of Māori land (that is, that it was a last resort in the national interest where there were no alternatives);
- ▶ although the Crown was involved at the outset, it did not monitor the delegated power of compulsory acquisition to ensure that it was used properly and in accordance with the Treaty;

- at no stage in the process of taking or compensating for the land were wāhi tapu taken into account; and
- the compensation methodology does not appear to have taken into account the owners' lost future income from royalties for the stone.

Happily, the land was later returned, but the owners did not have the use and benefit of their land for 50 years.

We find that in this case, the Crown did not fulfil its Treaty duties. It breached the guarantee of te tino rangatiratanga in article 2 by delegating and failing to monitor the power of compulsory acquisition, in so doing failing to actively protect Māori interests in this land.

(b) *Recommendation:* We recommend that the Crown compensate the owners of the land taken at Kaiwhaiki for the quarry by paying them the royalties for the stone (plus interest) that they forwent as a result of the wrongful compulsory acquisition of their land.

(10) *Taonga Tūturu*

Because of insufficient evidence we made no findings of Treaty breach and therefore no recommendations. However, several Tribunals have considered the place of taonga tūturu in the Treaty relationship.⁶⁴ In *The Hauraki Report*, the Tribunal found that the Crown was obliged to provide 'robust protection' for taonga tūturu, primarily because of the guarantees made in article 2 and article 3 of the Treaty:

Article 2 explicitly promised, in the Maori version, 'te tino rangatiratanga o ratou wenua o o ratou kainga me o ratou taonga katoa', that is, in the English version 'the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties'. Clearly, wahi tapu and taonga are covered by article 2. Article 3 promises to Maori the rights and privileges of all British citizens. A basic tenet of citizenship is the right to protect property and chattels, including items of great personal or cultural significance.⁶⁵

The Wai 262 Tribunal opined most fully on this topic.

It said there is a clear, ongoing Treaty interest in taonga as the products of mātauranga Māori, and the embodiment of mana, tapu, and mauri. How taonga were removed from Māori possession determines the type of Treaty interest in particular taonga. In cases where taonga were taken without the consent of iwi, their ongoing interest is in the nature of rangatiratanga. Where Te Papa Tongarewa holds taonga in which iwi have a rangatiratanga interest, those taonga should be returned to iwi in a way that ensures their preservation.⁶⁶ In cases where objects passed from Māori hands by gift or sale, iwi have a kaitiakitanga interest, and this should afford them continued association with those taonga.⁶⁷ Whether iwi retain an interest in the nature of rangatiratanga or kaitiakitanga can be ascertained by assessing (1) whether those who, according to tikanga, had an interest in the taonga consented to the transfer; and (2) whether the recipients of the gift or transfer have honoured any conditions that the donor or transferor stipulated.⁶⁸

We think this is a helpful approach, and adopt it.

With respect to the taonga tūturu raised in this district inquiry, it is yet to be determined whether the interests that tangata whenua retain are in the nature of rangatiratanga interests or kaitiakitanga interests.

None of the taonga tūturu was removed from Māori possession without the active participation of at least one interest-holder. Ema Hipango presented *Teremoe* and *Te Mata o Hoturoa* to the Whanganui Museum, and Te Keepa Te Rangihwinui transferred *Te Koanga o Rehua* from Māori ownership to Sir Walter Buller. Similarly, *Te Wehi o Te Rangi* was placed in the care of the Alexander Museum (known afterwards as the Whanganui Regional Museum) following discussion with Ngāti Pāmoana and their ultimate agreement.

Questions remain as to whether all those with interests under tikanga Māori were properly involved or consented, and answers to those questions will have a bearing on whether the ongoing interests are in the nature of rangatiratanga or kaitiakitanga. Should it emerge that any of the taonga tūturu were wrongfully acquired then the right

course might well be for them to be offered back to their traditional kaitiaki or owners. These matters should be the subject of either hui or wānanga (or both) involving relevant museums and iwi.

We are satisfied that Te Papa Tongarewa and the Whanganui Regional Museum have consultation processes in place. We therefore encourage claimants who wish to pursue these kaupapa to approach the relevant museum.

In particular, we acknowledge claimants' concerns about the display of *Te Koanga o Rehua* in Tokyo without their consent, although we have insufficient evidence to make findings of Treaty breach. Perhaps, in this instance, Te Papa Tongarewa's processes did not accurately gauge the feelings of the local community. The Crown and Te Papa Tongarewa must recognise that the claimants' distress about this is a vivid reminder that bicultural policies must be constantly attended to and upheld.

(11) *Kaitoke Lake and Lake Wairitoa*

Waterways and fisheries are taonga over which Māori have te tino rangatiratanga, guaranteed in article 2 of the Treaty.⁶⁹ This obliges the Crown to actively protect the customary rights of the hapū of the lower Whanganui River in their waters and fisheries.

The circumstances of these two lakes are different, and we set out below our findings for each.

(a) *Findings – Lake Wairitoa*: Ownership of the bed of this lake passed out of Māori ownership at the time of the Whanganui Purchase in 1848. But at that time, the Crown reserved for Māori all the tuna and inanga cuts in many bodies of water, including Lake Wairitoa. There was mention in a report to Parliament in 1862 that the eel fishing rights in this lake (among others) had been sold, but we have seen no other documents that give substance to this. We saw no sign that tangata whenua of Lake Wairitoa relinquished te tino rangatiratanga over their taonga there.

Because their rights in Lake Wairitoa were not absolute, tangata whenua could expect that others would also seek to exercise rights there. There was nothing wrong in principle with the development of the lake and adjacent

land as a recreation area, but the Crown should have been careful to ensure that any such development was compatible with the exercise of tangata whenua rights. In fact, though, hapū of the lower Whanganui River have had little say in decisions about Lake Wairitoa, and their continued exercise of fishing and eeling rights has been in spite of, rather than because of, the various authorities that were in charge over time. This breached the Crown's guarantee of te tino rangatiratanga in article 2, and the Crown's duties of active protection and partnership.

(b) *Findings – Lake Kaitoke*: Tangata whenua maintained their legal title to Lake Kaitoke, and should have been able to exercise the full panoply of their rangatiratanga. But in 1914, the Crown declared Kaitoke Lake a sanctuary under the Animals Protection Act 1908 without communicating with the owners. The Department of Internal Affairs accepted the assurance of the secretary of the Wanganui Acclimatisation Society that all the owners agreed. This assurance was either mistaken or false. Māori disagreement was evident immediately after the sanctuary was declared.

While the Treaty allows the Crown to exercise its kāwanatanga to conserve, control, and manage the environment, the Treaty guarantee of te tino rangatiratanga must be weighed in the balance, and the conservation interest should prevail only when natural resources are so endangered that they require protection.⁷⁰ It was not the depletion of an important species that inspired the decision to make Kaitoke Lake a wildlife sanctuary, but rather the desire to produce better recreational hunting in the Whanganui region. This is not an interest that the Treaty protects, and the Crown had no proper basis for infringing the full exercise of te tino rangatiratanga of the traditional owners of Kaitoke Lake. We saw neither word nor action signifying that tangata whenua relinquished any part of that rangatiratanga.

The Māori owners have been allowed far too little influence in the use and management of their lake, and have suffered prejudice as a result. They ought to have been able to develop it in accordance with their preferences, whether for customary purposes, or as a commercial

fishery, or both. The Crown's actions breached the principle of partnership and the duty of active protection.

(c) *Recommendation*: We recommend that the governance of these lakes changes in order to recognise fully the rights and interests of Whanganui hapū and iwi, while maintaining any necessary protection of the lakes for conservation purposes.

(12) *Boat landing reserve at Taipakē*

(a) *Findings*: The Crown did recognise that it was important to ensure that Ngāti Tamareheroto and other Māori could continue to use Taipakē as a base for their fishing activities even after the land passed into Crown ownership. The steps it took did give tangata whenua a foothold beside the ocean that afforded them access to fishing grounds, and a place where they could stay, and process their kaimoana.

Unfortunately, though:

- The Crown did not take the definite and permanent step of making Taipakē a Māori reserve when it bought the land.
- Although the Department of Lands and Survey later recognised the importance of properly designating Taipakē as a reserve for Māori fishing and occupation, after consideration it was unwilling to risk the displeasure of the European population at Mōwhānau and so backed off its original intention. The actual designation instead made it a public reservation for the landing and storage of boats.
- In the 1950s officials in the Department of Māori Affairs took the view that because Taipakē was no longer much used for the annual Māori kaimoana harvest, the purpose of the reserve could be changed.
- At this point the views of the local Māori population were not sought, and the long historical and cultural ties of tangata whenua to Taipakē were not taken into consideration. Officials did not recall assurances made previously to Ngāti Tamareheroto that this place would be permanently reserved for them. Section 71 was reclassified as a recreation reserve.

This is a situation where the Crown did engage with

Māori interests and concerns, and did provide for them to some extent. But ultimately it did not rank them highly enough, or understand them sufficiently, to act to preserve this important site of Māori occupation and cultural endeavour. This failure breached the principles of active protection and partnership.

(b) *Recommendation*: As the Crown no longer owns the land we cannot make recommendations for its return. We recommend that the Crown now works with claimants and the local authority to find appropriate ways to recognise the traditional importance of this site, and to take into account in settlement negotiations the failure to reserve it permanently for Māori purposes. We also note that traditional interests in Taipakē may involve other southern Whanganui hapū.⁷¹

(13) *Kai Iwi water supply takings*

(a) *Findings*: Concerning the taking of Kai Iwi land for the Wanganui water supply during the twentieth century, we find that:

- The compulsory acquisitions were not as a last resort in the national interest, and therefore do not meet the Treaty standard.
- Although the Crown was in a monitoring role, it does not appear to have taken any steps that ameliorated the approach of the local authority.
- It does appear that Wanganui City Council, before taking the land or having any formal basis for being there, entered Kai Iwi 5E2, sank a well, and built a shed. In the event that the owners did not give permission for the council to enter their land and undertake activities there, it violated the owners' property rights, and the Crown took no steps to intervene.
- The Crown did not pay compensation to the owners of Kai Iwi 5C and 5E, even though it compulsorily acquired ownership of their land and laid pipes under it. The argument that the owners could continue to use the land does not provide a fair basis for not compensating them at all: they lost the freehold title to their land, and the control over it that ownership connotes.

These failings constitute breaches of the Crown's duties

of active protection and partnership, and prejudicially affected the claimants.

(b) *Recommendation*: We recommend that the findings and breaches recorded here are taken into account in future settlement negotiations with Ngāti Tamareheroto and with other Whanganui groups with interests in Kai Iwi lands.

28.31 CHAPTER 27: PREJUDICE, CAUSATION, AND CULPABILITY

28.31.1 What did this chapter cover?

In this chapter, we described our analytical approach in this report to prejudice, causation, and liability in light of our jurisdiction.

28.31.2 Findings

It is our finding that, applying a common sense analysis to the totality of the evidence about the Crown's many acts and omissions over time and their prejudicial effects, and weighing also the factors over which the Crown exercised relatively little control, we can infer that more likely than not – or probably, rather than possibly – the Crown caused an accumulation of negative effects that led ultimately to the relative deprivation of present-day Whanganui Māori.

28.31.3 Recommendation

We recommend that the Crown takes into account this significant finding when it works with claimants in settlement negotiations to craft appropriate redress, including generous compensation.

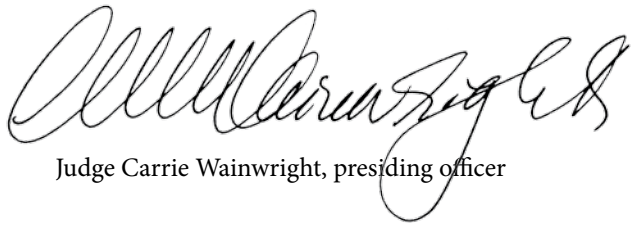
Notes

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2. Submission 3.3.118, p 1
3. Submission 3.3.130, pp 17–18
4. Ibid, p 19
5. Submission, 3.3.127, p 2
6. Submission 3.3.130, pp 2–3, 15–16
7. Ibid, p 3

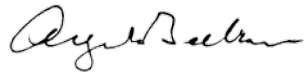
8. Ibid, pp 2–3, 13–16
9. Ibid, p 5
10. Ibid, p 3
11. Waitangi Tribunal, *Turanga Tangata Turanga Whenua: The Report on the Turanganui a Kiwa Claims*, 2 vols (Wellington: Legislation Direct, 2004), vol 2, p 736
12. Submission 3.3.43, p 5; submission 3.3.122, pp 1–2
13. Submission 3.3.117, pp 27–28
14. Submission 3.3.53, p 17
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17. Submission 3.3.125, p 3
18. Submission 3.3.120, pp 32–33
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24. Waitangi Tribunal, *The Napier Hospital and Health Services Report* (Wellington: Legislation Direct, 2001), p 57
25. Waitangi Tribunal, *The Mohaka ki Ahuriri Report*, 2 vols (Wellington: Legislation Direct, 2004), vol 2, p 680
26. Waitangi Tribunal, *Te Urewera Pre-Publication Part III: From Self-Governing Native Reserve to National Park* (Wellington: Waitangi Tribunal, 2012), p 560
27. Document E16 (Pucher), pp 9–10
28. Document E1 (Dixon), pp 9–10; doc E4 (Cribb), p 10; doc E6 (Haitana), pp 3–4; doc E7 (Bristol), pp 5–7; doc E8 (Ponga), pp 5–11; submission 3.3.85, p 19
29. Submission 3.3.85 p 19; doc B14 (Tangaroa), pp 5–6; doc E6 (Haitana), p 4; doc E9 (Haitana and Haitana), pp 4–5
30. Submission 3.3.75, p 25
31. Document C21 (Site Visit Booklet), p [34]; doc E6 (Haitana), pp 2–3; submission 3.3.111, p 11
32. Document E6 (Haitana), p 4; submission 3.3.85, p 19
33. Document E12 (Southen), p 15
34. Document C17 (Taiaroa), p 29
35. Russell Davies, *History of Public Works Acts in New Zealand, Including Compensation and Offer-Back Provisions* (Wellington: Land Information New Zealand, 2000), p 58; Public Works Amendment Act 1982
36. Submission 3.3.126, p 5
37. Document A57 (Cleaver), p 193. The railway component was enacted through section 106 of the Native Land Act 1873.

38. Document A57 (Cleaver), p 193
39. Document N18 (Bell), paras 27, 40–43
40. Submission 3.3.126, p 5
41. Document 11 (Le Gros), p 21
42. Waitangi Tribunal, *The Wairarapa ki Tararua Report*, vol 2, p 798
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44. *Ibid*, pp [66], [77]
45. *Ibid*, p [55]
46. See, for example, Waitangi Tribunal, *The Wairarapa ki Tararua Report*, vol 2, pp 780–781.
47. Document A54(w) (Innes), pp [31] – [33]
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60. See Ngāti Apa (North Island) Claims Settlement Act 2010, ss 38(1)(b), 40; doc B13 (Maihi), p 12; doc B55 (Ngāti Apa agreement in principle), p 15; doc B56(a) (Ngāti Apa negotiations status report attachments).
61. List of owners; minutes of meeting of assembled owners, 19 December 1910, Ohotu 6F no 2 file, 1909–1911, AC1H 16036 MA1/1010, 1910/4058, Archives New Zealand, Wellington
62. Document N3 (Pōtaka), p 4
63. Waitangi Tribunal, *Te Kāhui Maunga*, vol 3, pp 1090–1091
64. See Waitangi Tribunal, *The Te Roroa Report 1992* (Wellington: Brooker and Friend Ltd, 1992), pp 209–261; Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, vol 2, pp 587–607; Waitangi Tribunal, *Tauranga Moana, 1886–2006*, vol 2, pp 627–701; Waitangi Tribunal, *The Hauraki Report*, vol 3, pp 933–965; Waitangi Tribunal, *Ko Aotearoa Tēnei*, vol 2, pp 493–512.
65. Waitangi Tribunal, *The Hauraki Report*, vol 3, pp 953, 964
66. Waitangi Tribunal, *Ko Aotearoa Tēnei*, vol 2, pp 507, 508
67. *Ibid*, pp 504–505
68. *Ibid*, p 508
69. Waitangi Tribunal, *Te Kāhui Maunga*, vol 3, pp 1015–1016; Waitangi Tribunal, *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim*, 2nd ed (Wellington: Government Printing Office, 1989), pp 180–181; Waitangi Tribunal, *The Whanganui River Report* (Wellington: Legislation Direct, 1999), pp 262–263
70. Waitangi Tribunal, *He Maunga Rongo*, vol 4, pp 1238–1239
71. See claim 1.2.38(a), p 3; claim 1.2.10, p 7; and submission 3.3.2, p 3, which mention Kai Iwi interests.

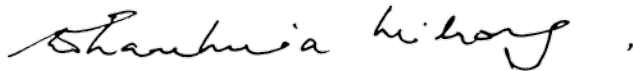
Dated at *Wellington* this *25th* day of *September* 20*15*



Judge Carrie Wainwright, presiding officer



Dr Angela Ballara, member



Professor Wharehuia Milroy, member



Emeritus Professor Ranginui Walker DCNZM, member



Judge CM Wainwright



Dr A Ballara



Professor JW Milroy



Emeritus Professor RJI Walker



APPENDIX I

RECORD OF CLAIMANT GROUPS AND HEARINGS

This appendix is in four sections. They are as follows:

- ▶ A schedule of the claims filed in the Whanganui (Wai 903) district inquiry.
- ▶ A description of the claimants' groupings, and the claims and claimants that fell under them.
- ▶ A schedule setting out when and where the Tribunal held hearings and site visits in this inquiry district.
- ▶ A schedule setting out who gave evidence on behalf of whom, and where and when they presented their evidence.

Accompanying the text is a series of photographs taken by Tribunal staff during the hearings.

1.1 THE 66 CLAIMS FILED IN THE WHANGANUI DISTRICT INQUIRY

Claims filed and aggregated or consolidated into the Whanganui district inquiry prior to the 1 September 2008 claims deadline

1.1.1 Southern cluster claimants

Te Iwi o Whanganui (Wai 167)

Claimants: Hikaia Amohia,* Archie Taiaroa,* Rūmātiki Linda Henry, Kevin Amohia, Joan Akapita,* Julie Te Turi Ranginui, Brendon Puketapu, Michael Pōtaka, John Maihi, and Rangipō Mete-Kīngi*

Ngāti Pāmoana (Wai 180)

Claimants: Howard Brooks, Phil Repia, John Maihi, and Lois Gilbert

Ngāti Hinearo and Ngāti Tuera (Wai 214)

Claimants: Te Kenehi Mair

Ngāti Hinearo and Ngāti Tuera (Wai 584)

Claimants: Te Kenehi Mair

Ngāti Hinearo and Ngāti Tuera (Wai 1143)

Claimants: Te Kenehi Mair

Appi

HE WHIRITAUNOKA: THE WHANGANUI LAND REPORT

Ngāti Tamareheroto (Wai 634)

Claimants: Te Aroha Ann Waitai and Raukura Waitai

Ngā Wairiki (Wai 655)

Claimants: Pōtonga Neilson, Tūrama Hāwira, Pou Pātea, Ani Waitai, Desmond Canterbury Te Ngaruru, and Ngāhina Matthews

Tūpoho hapū (Wai 671)

Claimants: Te Kenehi Mair

Tūpoho hapū (Wai 978)

Claimants: Te Kenehi Mair

Ngāti Hau (Wai 979)

Claimants: Rangihakateka Hough and Michael Bell

Hapū of the lower reaches of the Whanganui River and the Te Poho o Matapihi Trust (Wai 999)

Claimants: Manukāwhaki Taitoko Metekingi,* John Tauri,* James Takarangi,* Mariana Waitai, and Huia Kirk

Ngāti Hineoneone (Wai 1028)

Claimants: Bill Ranginui, Timothy Waitōkia, and Tracey Waitōkia

Ngā Paerangi (Wai 1051)

Claimants: Kenneth Clarke and Frances Huwyler

Ngāti Kauika (Wai 1105)

Claimants: Rangimārie Kauika-Moses, Trevor Kauika, and Desmond Canterbury Te Ngaruru

Ngāti Rūwai, Ngāti Hine, and Ngāti Waikarapū (Wai 1107)

Claimants: Tawhitopou Pātea, Maemae Ashford, Bernadine Pātea, Gloria Ashford, Gayle McRitchie, Tanea Tangaroa, Ērena Mohi, and James Kumeroa*

Ngā Poutama-nui-a-Awa (Wai 1254)

Claimants: Haimona Te Iki Frank Rzoska

1.1.2 Central cluster claimants

Pēhi whānau, owners in Waimarino 4B2 (Wai 73)

Claimants: Te Mataara Pēhi, Sharon Pēhi, and Tira Pēhi-Leed

Uri of Tamaūpoko and Waikaramihi (Wai 221)

Claimant: Don Robinson

Ngāti Kurawhatia (Pipiriki Incorporation) (Wai 428)

Claimant: Te Whetūre (Bobby) Gray

Tamahaki Council of Hapū Incorporation (Wai 555)

Claimants: Mark Cribb,* Larry Ponga,* Robert Cribb, and Rangi Bristol

Āti hau-Whanganui Māori Land Incorporation (Wai 759)

Claimant: Dana Blackburn

Te Puāwaitanga Mokopuna Trust, Elenore Anaru Whānau Trust, and Te Tira Taurerewa (Wai 836)

Claimants: Patricia Hēnare and Vivienne Kōpua

Ngāti Ātamira, Ngāti Kahukurapango, Ngāti Maringi, and Ngāti Ruakōpiri (Wai 843)

Claimants: Barbara Lloyd

Tamakana Council of Hapū (Wai 954)

Claimants: Rangi Bristol and Raymond Rāpana

Ngāti Hinewai and Ngāti Hotu (Wai 1029)

Claimant: Monica Mātāmua

Te Uri o Tamakana (Wai 1072)

Claimant: Matiu Haitana

Te Uri o Tamakana (Wai 1073)

Claimants: Chris Ngātaiērua and Petuere Kīwara

Te Uri o Tamakana (Wai 1189)

Claimant: Kahukura Taiaaroa

Te Uri o Tamakana (Wai 1197)

Claimants: Adam Haitana, Matiu Haitana, and Henry Haitana

Te Iwi o Uenuku (Wai 1084)

Claimants: Matiu Haitana, Don Robinson, Rangi Bristol, and Raymond Rāpana

Te Iwi o Uenuku (Wai 1170)

Claimants: Rangi Bristol, Raymond Rāpana, and Matiu Haitana

Te Iwi o Uenuku (Wai 1202)

Claimants: Rangi Bristol, Raymond Rāpana, Dean Hiroti, Geraldine Taurerewa, Ngaire Tairei Williams, SK Taiaroa, Rufus Bristol, Marilyn Mako, Rosita Dixon, and Matiu Haitana

Te Iwi o Uenuku (Wai 1229)

Claimants: Selwyn Brown, Tāhiwi Peni, Karina Williams, Thomas and Margaret Waara, Rex Peni, Gloria King, Rangi Bristol, Wayne Waara, Michael Marumaru, Paul Marumaru, Lance Ruke, Brian Ruke, and David Wīari

Te Iwi o Uenuku (Wai 1261)

Claimant: Aiden Gilbert

Ngāti Hinewai (Wai 1191)

Claimants: Eleanor Taiaroa, Margaret Edwards, and Matt Te Huia

Ngāti Maringi (Wai 1192)

Claimants: Dean Hiroti, Aiden Gilbert, Patrick Te Oro, and Garth Hiroti

Uenuku Tūwharetoa (Wai 1224)

Claimants: Robert Cribb, Marina Williams,* and Roberta Williams

Ngāti Whākiterangi (Wai 458)

Claimants: Richard Marumaru,* Ngaire Williams, and Karina Williams

Te Whare Ponga Taumatamāhoe Incorporated Society and the Te Whare Ponga Whānau Trust (Wai 1393)

Claimants: Geraldine Taurerewa, Rosita Dixon, Sharlene Winiata, and Phillip Ponga

1.1.3 Northern cluster claimants*Ngāti Hāua (Wai 48)*

Claimants: Kevin Amohia

Ngāti Hāua (Wai 81)

Claimants: Kevin Amohia

Ngāti Hāua (Wai 146)

Claimants: Kevin Amohia

Uri of Tānoa Te Uhi and Te Whiutahi (Wai 764)

Claimants: Cedric Tānoa, Irene Harvey, Michael Le Gros, and Grace Le Gros

Uri of Tānoa Te Uhi and Te Whiutahi (Wai 1147)

Claimants: Michael Le Gros, Grace Le Gros, Cedric Tānoa, and Tahuri Te Ruruku

Ngāti Urunumia (Wai 987)

Claimants: Tāme Tūwhāngai and Pauline Kay Stafford

Ngāti Urunumia (Wai 1255)

Claimants: John Wī, Pauline Kay Stafford, and Thomas Te Nuinga Tūwhāngai

Ngāti Rangatahi (Wai 1064)

Claimants: Robert Herbert,* Robert Jonathan

Ngāti Hira and Ngāti Hari (Wai 1097)

Claimants: Terry Turu and Ngaku Rangitonga

Uri of Tūtemahurangi and Waikura and the descendants of Te Tarapounamu (Wai 1203)

Claimants: Lois Tūtemahurangi, Ihāia Te Ākau, and Piripi Tūtemahurangi

Appi

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Ngāti Hekeāwai (Wai 1299)

Claimants: Inuhaere (Lance) Rupe,* Te Poumā Rupe, and Albion Para Bell

Tāhana Tūroa whānau (Wai 1394)

Claimants: Kura Te Wanikau

1.1.4 Ngāti Rangī cluster

Ngāti Rangī (Wai 151)

Claimants: Matiu Māreikura,* James Akapita,* Mark Gray, Robert Gray, and Toni Waho

Ngāti Rangī (Wai 277)

Claimants: Matiu Māreikura,* Thomas Māreikura, and Lulu Brider

Ngāti Rangī (Wai 554)

Claimants: Hune Rāpana, Colin Richards, and Richard Pīrere

Ngāti Rangī (Wai 569)

Claimants: Pita Reo,* Sarah Reo

Ngāti Rangī (Wai 1250)

Claimant: Toni Waho

1.1.5 Unclustered claimants

Ngā Hapū o Ngāti Tūwharetoa (Wai 575)

Claimant: Te Ariki Tumu Te Heuheu

Ngāti Hikairo (Wai 37)

Claimants: Margaret Poinga,* Terrill Campbell, and Alec Phillips

Ngāti Hikairo (Wai 933)

Claimants: Margaret Poinga,* Terrill Campbell, and Alec Phillips

Ngāti Hikairo (Wai 1196)

Claimants: Merle Ormsby, Tiaho Pillot, Daniel Ormsby, and Rāuaiteangi Mary Pātena

Ngāti Pouroto and Ngāti Te Ika of Ngāti Hikairo (Wai 833)

Claimants: Carmen Kapea-Sutcliffe Te Maioro Kōnui, Rawinia-Gail Kōnui-Paul, James Pākau, Lyndon Pākau Bowring, and Daryn Pākau

Ngāti Pouroto and Ngāti Te Ika of Ngāti Hikairo (Wai 965)

Claimants: Carmen Kapea-Sutcliffe Te Maioro Kōnui, Rawinia-Gail Kōnui-Paul, James Pākau, Lyndon Pākau Bowring, and Daryn Pākau

Ngāti Pouroto and Ngāti Te Ika of Ngāti Hikairo (Wai 1044)

Claimants: Carmen Kapea-Sutcliffe Te Maioro Kōnui, Rawinia-Gail Kōnui-Paul, James Pākau, Lyndon Pākau Bowring and Daryn Pākau

Ngāti Hikairo ki Tongariro (Wai 1262)

Claimants: Tyrone Smith, Te Ngaehe Wanikau, Ngaiterangi Smallman, Brenda Pākau, and Hinemanu Gardiner

Ngāti Manunui (Wai 998)

Claimants: John Manunui

Ngāti Waewae (Wai 1260)

Claimants: William Kane, John Rēweti, and Louis Chase

1.1.6 Watching brief claimants

Ngāti Apa (Wai 265)

Claimants: Chris Shenton

Ngāti Maniapoto (Wai 800)

Claimants: Harold Maniapoto, Roy Haar, Tāme Tūwhāngai, Dr Tui Adams,* Tiaki Ormsby-Van Selm, and Valerie Ingley

1.2 CLAIMANT GROUPINGS, CLAIMANTS, CLAIMS

Claimant hearings were planned around the four Crown Forestry Rental Trust-funded Whanganui claimant clusters: Southern cluster, Central cluster, and the Northern cluster. In addition, there were several ‘unclustered’

groups, some of whom have links, or openly affiliate to Ngāti Tūwharetoa iwi and hapū. The claims below are identified within the cluster they appeared during the hearings.

During the interlocutory phase of the Whanganui district inquiry, the Tribunal required the claimants to file a large comprehensive statement of claim, referred to as the ‘main document’. These generic pleadings were supplemented by final specific statements of claim filed for each Wai number, or group of Wai numbers participating in the inquiry which outlined pleadings on specific issues for each claim.

1.2.1 Southern cluster

The following claims were presented during the first hearing block from August to October 2007, in the Southern reaches of the Whanganui district inquiry.

Te Iwi o Whanganui (Wai 167)

Whanganui River claim

Claimants: Hikaia Amohia,* Archie Taiaroa, Rūmātiki Linda Henry, Kevin Amohia, Joan Akapita,* Julie Te Turi Ranginui, Brendon Puketapu, Michael Pōtaka, John Maihi, and Rangipō Mete-kīngi*

Claimant counsel: Jaime Ferguson

This claim is endorsed by the Whanganui River Māori Trust Board and was the principle claim in the Whanganui River Report (Wai 167). The Trust Board provides representation for three ancestral divisions of the river: Uri of Hinengākau (upper), Tamaūpoko (middle), and Tūpoho (lower); these ancestral divisions are represented by named claimants for this claim. The claim was brought on behalf of the people of the river, Te Āti hau-nui-ā-Pāpārangi and alleges breaches by the Crown relating to the alienation of the lands, forests, waters, and resources of Te Iwi o Whanganui. The claimants also adopt the generic pleadings in the main document including pleadings regarding the Battle of Moutoa and the failure to ensure that ‘Whanganui’, rather than ‘Wanganui’, is used as the name of the city.

Ngāti Pāmoana (Wai 180)

Koriniti School site claim

Claimants: Howard Brooks, Phil Repia, John Maihi, and Lois Gilbert

Claimant counsel: Jaime Ferguson

This is a hapū claim that, while adopting the generic pleadings, focuses on the Koriniti School site in the Tauakirā 2C block. This claim alleges the Crown failed to recognise the rights and interests of Ngāti Pāmoana in the Tauakirā 2C block and, in particular, that the Crown failed to ensure the block was returned to the ownership of Ngāti Pāmoana.

Ngāti Hinearo and Ngāti Tuera (Wai 214, Wai 584, Wai 1143)

Ngāti Hinearo and Ngāti Tuera alienation claim

Claimant: Te Kenehi Mair

Claimant counsel: Spencer Webster

This claim concerns the Crown’s acquisition of ancestral lands and resources of Ngāti Hinearo and Ngāti Tuera and subsequent Crown acts and omissions that prejudicially affected them. The claim relates to lands in the Whanganui block.

Tūpoho hapū (Wai 671, Wai 978)

Wai 671 Whanganui groundwater claim and Wai 978 Te Tūpoho Whanganui land purchase 1848 claim

Claimant: Te Kenehi Mair.

Claimant counsel: Spencer Webster

This is also a hapū claim which, in addition to adopting the generic pleadings, makes specific claims around the Waitōtara purchase and the Crown’s alleged failure to protect Te Reo Māori, such as the ‘misspelling’ of the name of the Wanganui/Whanganui township.

Ngāti Tamareheroto (Wai 634)

Māori land and the laws of succession claim

Claimants: Te Aroha Ann Waitai and Raukura Waitai

Claimant counsel: Charl Hirschfeld, Moana Tūwhare, and Tony Shepherd

This hapū claim concerns the area of land on the northern side of the Whanganui purchase. The claim states that

Ngāti Tamareheroto has retained very small parcels of land within their rohe and alleges Crown actions or inactions that caused this. Military engagement is a focus of the claim.

Ngā Wairiki (Wai 655)

Whanganui/Rangitikei block claim

Claimants: Pōtonga Neilson, Tūrama Hāwira, Pou Pātea, Ani Waitai, Desmond Canterbury Te Ngaruru, and Ngāhina Matthews

Claimant counsel: Charl Hirschfeld and Tavake Afeaki

The Whanganui Tribunal panel reported on aspects of this claim in July 2009. The Tribunal released a short report at the request of the Wai 655 claimants. The report recognised the Wai 655 claimants' involvement in the Whanganui district inquiry by reporting on their historical claims to the extent possible within the limited time available. The Ngāti Apa (North Island) Claims Settlement Bill was introduced to Parliament on 25 August 2009, thus removing the Tribunal's jurisdiction to further report on the Wai 655 claim.

Ngāti Hau (Wai 979)

Ngāti Hau lands transfer claim

Claimants: Rangiwhakateka Hough and Michael Bell

Claimant counsel: Charl Hirschfeld, Moana Tūwhare, and Tony Shepherd (2007)

This is a hapū claim that concerns the area surrounding Patiarero or Jerusalem. The management of Vested Lands is also an issue raised in this claim, including the administration of Morikau Farm.

Hapū of the lower reaches of the Whanganui River and the Te Poho o Matapihi Trust (Wai 999)

Te Poho o Matapihi Trust reserved lands claim

Claimants: Manukāwhaki Taitoko Metekingi,* John Tauri,* James Takarangi,* Mariana Waitai, and Huia Kirk

Claimant counsel: Aidan Warren and Rachel Hall

This claim is brought on behalf of the hapū of the lower reaches of the Whanganui River and the Te Poho o Matapihi Trust, a charitable trust established to advance certain claims before the Tribunal in regards to lands and

resources located at the lower reaches of the Whanganui River. In particular, the amended statement of claim is filed on behalf of Tūmango and Tūpoho. The area the claim follows, generally, is the boundary of the 1848 Whanganui Block, the purchase of which is a key issue for these claimants. This claim also concerns the Crown's alleged failure to protect the Māori language.

Ngāti Hineoneone (Wai 1028)

Ngāti Hineoneone Te Tuhi block claim

Claimants: Bill Ranginui, Timothy Waitōkia, and Tracey Waitōkia

Claimant counsel: Moana Tūwhare

This hapū claim concerns the Crown's alleged failure to recognise Ngāti Hineoneone tino rangatiratanga and ownership of the resources within the rohe of Ngāti Hineoneone. Ngāti Hineoneone, a hapū of Ngāti Tūpoho and Ngā Poutama who are hapū of Te Ātīhau-nui-ā-Pāpārangi, are a people of the Ātene region.

Ngā Paerangi (Wai 1051)

Ngā Paerangi descendants claim

Claimants: Kenneth Clarke and Frances Huwyler

Claimant counsel: Peter Johnston, Bryan Gilling, Campbell Duncan, and Jo Ella Sarich

The Ngā Paerangi claim is fully set out in the main document. Key concerns include the 1848 Whanganui purchase and Tūtaeika; the Native Land Court; survey and court costs; blocks subject to 10-owner rule; issues including public works takings in the Kaiwhaiki, Ōmaru, Rākātō, Tokomaru, Tauwhare, Puketarata, Maramaratōtara, Ramahiku, and other blocks; destruction of wāhi tapu on Rangiwhakaahua Ridge (Kaiwhaiki).

Ngāti Kauika (Wai 1105)

Upper Waitōtara River claim

Claimants: Rangimārie Kauika-Moses, Trevor Kauika, and Desmond Canterbury Te Ngaruru

Claimant counsel: Mark McGhie and Moana Tūwhare (2007)

This claim regards the area around the upper Waitōtara and extending in places across to the Whanganui River.

In addition to the generic pleadings, this claim concerns the Mangaporau block; insufficient reserves; survey costs and related land loss in Mangapapa, Manganuiotahu, and Ōruanga; Crown purchase of Kaitangiwhenua, theft of purchase money; and the alleged failure of the Crown to assist in 1906 potato blight.

Ngāti Rūwai, Ngāti Hine, and Ngāti Waikārapu (Wai 1107)
Mangawhero River land and resources claim

Claimants: Tawhitopou Pātea, Maemae Ashford, Bernadine Pātea, Gloria Ashford, Gayle McRitchie, Tanea Tangaroa, and James Kumeroa*

Claimant counsel: Charl Hirschfeld and Moana Tūwhare (2007)

Three hapū of the Mangawhero River area bring this claim which concerns the Crown's alleged failure to recognise the rangatiratanga and ownership of the resources within the rohe of Ngāti Rūwai, Ngāti Hine, and Ngāti Waikārapu. This claim is called 'Te Korowai o Te Awaaiti'.

Ngā Poutama-nui-a-Awa (Wai 1254)

Ngā Poutamanui-a-Awa land blocks claim

Claimant: Haimona Te Iki Frank Rzoska

Claimant counsel: Peter Johnston, Campbell Duncan, and Jo Ella Sarich

This claim is on behalf of the Ngā Poutama Claims Committee and Matahiwi Marae Committee for themselves and the descendants of the tipuna Poutama. While adopting the generic pleadings, specific issues for this claim include: the 1848 Whanganui purchase; Morikau Station and Farm; and the Rānana Development Scheme.

1.2.2 Central cluster

The following claims were presented during the second hearing block from February to June 2008, in the central reaches of the Whanganui district inquiry.

Pēhi whānau owners in Waimarino 4B2 (Wai 73)

Waimarino lands claim

Claimants: Te Mataara Pēhi, Sharon Pēhi, and Tira Pēhi-Leed

Claimant counsel: Tom Bennion, Aidan Warren, and Rachel Hall (2007)

This claim relates to the interests of the Pēhi whānau in the Waimarino block, and in particular Waimarino 4B2. The claim alleges that the Crown breached the principles of the Treaty of Waitangi in compulsorily acquiring lands in Waimarino 4B2 for defence and other purposes. It concerns the resulting loss of land base, customary interests, and social and economic impacts for the Pēhi whānau. The Pēhi whānau presented their evidence under the embrace of Uenuku.

Uri of Tamaūpoko and Waikaramihi (Wai 221)

Waimarino 1 and railway lands claim

Claimant: Don Robinson

Claimant counsel: Tom Bennion

This claim was initially lodged as Wai 48 by the late Joan Akapita. In 1991 it was changed to Wai 221 to avoid confusion with a claim also lodged by A Waitai. The claim is made on behalf of the descendants of Tamaūpoko and Waikaramihi. In addition to adopting the generic pleadings, a number of specific issues are raised including, Kirikiriroa, Aurupu (sometimes known as Arupu) and Tieke in the Waimarino block, Waikune Prison, and railways lands takings.

Ngāti Kurawhatia (Pipiriki Incorporation) (Wai 428)

Pipiriki township claim

Claimant: Te Whetūrere (Bobby) Gray

Claimant counsel: Tom Bennion

The Pipiriki Incorporation and its Committee of Management bring this claim on behalf of Ngāti Kurawhatia. The claim relates to land in the Pipiriki Township, Whakaihuwaka, and Waharangi blocks along with a number of generic pleadings. In particular, this claim engages with actions of the Crown in relation to Native Townships and the prejudicial effect this had on Ngāti Kurawhatia. The claim also concerns a number of contemporary issues such as rating and compulsorily acquired land still held by the Ruapehu District Council.

Ngāti Whākiterangi (Wai 458)

Ōhotu 1c2 block claim

Claimant: Richard Marumaru,* Ngaire Tairei Williams, and Karina Williams

Claimant counsel: Charl Hirschfeld and Tavake Afeaki

This is a hapū claim that focuses on the Ōhotu 1c2 block, in the central region of the inquiry. While the comprehensive generic pleadings are adopted, the claim primarily relates to the partitioning of this block, timber extraction, access to Ōruakūkuru Pā and Marae, and the amalgamation and vesting of the land as Ōhorea Station in the Aotea Māori Land Board, and currently, the Āti hau-Whanganui Incorporation. The claim alleges that the claimants did not give consent for the amalgamation of the lands.

Tamahaki Council of Hapū Incorporation (Wai 555)

Taumatamāhoe block claim

Claimants: Mark Cribb,* Larry Ponga,* Robert Cribb, and Rangi Bristol

Claimant counsel: Richard Boast, Josey Lang, Jolene Patuawa-Tuilave,* and Laura Carter

This comprehensive claim is brought on behalf of the hapū that identify as Tamahaki, a grouping of the central reaches of the Whanganui awa. The claim identifies lands within the Whanganui district inquiry boundaries where Tamahaki hold customary interests. The claim also raises specific issues for Tamahaki, including lands gifted for schools at Pipiriki and Parinui that have not been returned after the schools ceased to operate. Tieke and the Waimarino block are also a focus.

Āti hau-Whanganui Māori Land Incorporation (Wai 759)

Whanganui Vested Lands claim

Claimant: Dana Blackburn.

Claimant counsel: Tom Bennion

Filed on behalf of the shareholders of the Āti hau-Whanganui Māori Land Incorporation by the former chairperson, this claim focuses solely on vested lands and land administration. The claim regards land that was formerly Māori customary land, whose title was investigated by the Native Land Court and converted to Māori freehold land and awarded to named Māori individuals

and their successors, which is now vested in the Āti hau Incorporation. The Āti hau Incorporation reached a settlement with the Crown in 2008.

Te Puāwaitanga Mokopuna Trust, Elenore Anaru Whānau Trust, and Te Tira Taurerewa (Wai 836)

Mākōtuku block claim

Claimants: Patricia Hēnare and Vivienne Kōpua

Claimant counsel: Tom Bennion, Donna Hall (2007), and Māui Solomon (2008)

This claim relates solely to the land that the Claimants' descendants lived on and used in Raetihi 4B block. The claimants adopt the generic pleadings and argue that they have been prejudicially affected by Crown compulsory acquisitions such as takings for the main trunk railway, for scenic reserve purposes, and by way of public works takings for the Ōhākune Scoria pit.

Ngāti Ātamira, Ngāti Kahukurapango, Ngāti Maringi, and Ngāti Ruakōpiri (Wai 843)

Waimarino blocks and Waikune Prison claim

Claimant: Barbara Lloyd

Claimant counsel: Tom Bennion

Almost exclusively dealing with Waimarino 4 block, this claim is on behalf of the owners, and represents shareholders in parts of that block. The claim concerns alleged Crown takings in the Waimarino 4 block for timber resources, for scenic purposes, for the main trunk railway, and for the Waikune Prison.

Tamakana Council of Hapū (Wai 954)

Tamakana Waimarino (No 1) claim

Claimants: Rangi Bristol and Raymond Rāpana

Claimant counsel: Mark McGhie, Aidan Warren, and Rachel Hall (2008)

During the interlocutory phase of the inquiry, this claim was grouped with other Tamakana claims (Wai 1072, Wai 1073, Wai 1189, Wai 1192, and Wai 1197), as Te Uri o Tamakana. A comprehensive final statement of claim was filed on behalf of all of these claims in 2006. During the hearing-planning phase, Tamakana Council of Hapū (Wai 954) and Ngāti Maringi (Wai 1192) instructed new counsel,

however they retained the final statement of claimed filed in 2006.

This comprehensive claim adopts entirely the generic pleadings contained in the main document for Te Uri o Tamakana, a group that exercises rangatiratanga within the area south and west of Mount Ruapehu. The Manganui-a-te-ao River is the central feature of the claim area and Ngāti Uenuku is the hapū name with which Te Uri o Tamakana now identifies.

Ngāti Hinewai and Ngāti Hotu (Wai 1029)

Taurewa block public works acquisition claim

Claimant: Monica Mātāmua

Claimant counsel: Darrell Naden and Annette Sykes, Jason Pou and Terena Wāra (2007)

This hapū claim was aggregated into the Whanganui district inquiry in August 2007. It concerns the alienation of Waimarino block lands and the erosion of Ngāti Hotu and Ngāti Hinewai identities. The Wai 1029 claim was amalgamated within the embrace of Uenuku for the purposes of presenting their claim before the Tribunal in the Whanganui district inquiry.

Te Uri o Tamakana (Wai 1072, Wai 1073, Wai 1189, Wai 1197)

A comprehensive final statement of claim was filed on behalf of all Tamakana claims in 2006 (Wai 954, Wai 1072, Wai 1073, Wai 1189, Wai 1192, and Wai 1197). During the hearing-planning phase, Tamakana Council of Hapū (Wai 954) and Ngāti Maringi (Wai 1192) instructed new counsel, however they retained the final statement of claim filed in 2006.

Claimants: Wai 1072 (Ngāti Ruakōpiri Waimarino block alienation claim), Matiu Haitana; Wai 1073 (Ngāti Kōwhaikura Waimarino and Ruapehu blocks alienation claim), Chris Ngātaiērua and Petuere Kīwara; Wai 1189 (Ngāti Kahukurapango and Ngāti Matakaha land claim), Adam Haitana, Matiu Haitana, and Henry Haitana
Claimant counsel: Mark McGhie

This comprehensive claim adopts entirely the generic pleadings contained in the main document for Te Uri

o Tamakana, a group that exercises Rangatiratanga within the area south and west of Mount Ruapehu. The Manganui-a-te-ao River is the central feature of the claim area and Ngāti Uenuku is the hapū name with which Te Uri o Tamakana now identifies.

Ngāti Hinewai (Wai 1191)

Ngāti Hinewai lands – alienation and introduction of flora and fauna claim

Claimants: Eleanor Taiaroa, Margaret Edwards, and Matt Te Huia

Claimant counsel: Mark McGhie

Concerning the area between Ērua, Piriaka, and Rētāruke, this hapū claim is expressed through the generic pleadings in the main document.

Ngāti Maringi (Wai 1192)

Ngāti Maringi land claim

During the interlocutory phase, this claim was grouped with other Tamakana claims (Wai 1072, Wai 1073, Wai 1189, and Wai 1197), as Te Uri o Tamakana. A comprehensive final statement of claim was filed on behalf of all of these claims in 2006. During the hearing-planning phase, Tamakana Council of Hapū (Wai 954) and Ngāti Maringi (Wai 1192) instructed new counsel, however they retained the final statement of claim filed in 2006.

Claimants: Dean Hiroti, Aiden Gilbert, Patrick Te Oro, and Garth Hiroti

Claimant counsel: Mark McGhie and Annette Sykes, Jason Pou and Terena Wāra (2008)

This comprehensive claim adopts entirely the generic pleadings contained in the main document for Te Uri o Tamakana, a group that exercises rangatiratanga within the area south and west of Mount Ruapehu. The Manganui-a-te-ao River is the central feature of the claim area and Ngāti Uenuku is the hapū name with which Te Uri o Tamakana now identifies.

Te Iwi o Uenuku (Wai 1084, Wai 1170, Wai 1202, Wai 1229, Wai 1261)

This claim is filed as an amalgam of those who stem from within the embrace of Uenuku.

Claimants: Wai 1084 (Te Tangata Whenua o Uenuku fore-shore and seabed claim), Matiu Haitana, Don Robinson, Rangi Bristol, and Raymond Rāpana; Wai 1170 (Tangata Whenua o Uenuku claim), Rangi Bristol, Raymond Rāpana, and Matiu Haitana; Wai 1202 (Whanganui River Trust Board Representation claim), Rangi Bristol, Raymond Rāpana, Dean Hiroti, Geraldine Taurerewa, Ngaire Tairei Williams, SK Taiaroa, Rufus Bristol, Marilyn Mako, Rosita Dixon, and Matiu Haitana; Wai 1229 (Āti hau lands claim), Selwyn Brown, Tāhiwi Peni, Karina Williams, Thomas and Margaret Waara, Rex Peni, Gloria King, Rangi Bristol, Wayne Waara, Michael Marumaru, Paul Marumaru, Lance Ruke, Brian Ruke, and David Wīari; Wai 1261 (lands in national park and Whanganui inquiry claim), Aiden Gilbert

Claimant counsel: Annette Sykes, Jason Pou, and Terena Wāra

Uenuku are a people of the central reaches of the Whanganui awa. This comprehensive claim adopts the generic pleadings and alleges that the acts and omissions of the Crown and its subsequent actions resulted in the social and economic destabilisation of Ngā Hapū o Uenuku and as a result, they have suffered prejudice and consequent loss.

Uenuku Tūwharetoa (Wai 1224)

Loss of lands and minerals claim

Claimants: Robert Cribb, Marina Williams,* and Roberta Williams

Claimant counsel: Richard Boast, Josey Lang, Jolene Patuawa-Tuilave,* and Laura Carter

This claim is made on behalf of all the descendents of Uenuku Tūwharetoa and concerns land in the central region of the Whanganui inquiry district, including the Manganui-a-te-ao awa. This claim adopts the generic pleadings in the main document.

Te Whare Ponga Taumatamāhoe Incorporated Society and the Te Whare Ponga Whānau Trust (Wai 1393)

Claimants: Geraldine Taurerewa, Rosita Dixon, Sharlene Winiata, and Phillip Ponga

Claimant counsel: Annette Sykes, Jason Pou, and Terena Wāra

This claim was consolidated into the Whanganui district inquiry in August 2007 to be advanced within the embrace of Uenuku for the purposes of presenting their claims before the Tribunal.

1.2.3 Northern cluster

The following claims were presented during the third hearing block from October to March 2009, in the northern reaches of the Whanganui district inquiry.

Ngāti Hāua (Wai 48, Wai 81, Wai 146)

Wai 48 Whanganui ki Maniapoto claim, Wai 81 Waihāhā and other lands claim, and Wai 146 King Country lands (main trunk railway acquisitions) claim

Claimant: Kevin Amohia

Claimant counsel: Spencer Webster

Hikaia Amohia originally filed these three claims that were used to present the evidence of Ngāti Hāua in the Whanganui inquiry district. Utilising the generic pleadings in the main document, the claims also focused on public works takings in and around Taumarunui, management of the Taumarunui township and the operation of the Native Land Court within their rohe.

Uri of Tānoa and Te Whiutahi (Wai 764, Wai 1147)

Claimants: Wai 764 (Piriaka School claim), Cedric Tānoa, Irene Harvey, Michael Le Gros, and Grace Le Gros; Wai 1147 (Te Uhi Ōhura South claim), Michael Le Gros, Grace Le Gros, Cedric Tānoa, and Tahuri Te Ruruku

Claimant counsel: Peter Johnston, Bryan Gilling, Campbell Duncan, and Jo Ella Sarich

These whānau claims regard an area to the north of the inquiry district and adopt the generic pleadings in the main document. A particular focus is the Piriaka School site in the Waimarino block. It is alleged that the Crown wrongfully acquired the land, and failed to return the land once the school was closed.

Ngāti Urunumia (Wai 987, Wai 1255)

Claimants: Wai 987 (Rangitoto–Tūhua land block claim), Tāme Tūwhāngai and Pauline Kay Stafford; Wai 1255 (Te Anapungapunga lands (Ōhura South A1) claim), John Wī, Pauline Kay Stafford, and Thomas Te Nuinga Tūwhāngai
Claimant counsel: Te Kani Williams, Dominic Wilson, and Bernadette Arapere

This hapū claim concerns the Ōhura South block and the area of land within that block known as Te Horongopai. Ngāti Urunumia are a hapū of Ngāti Maniapoto and their claims address land at the very northern tip of the Whanganui district inquiry, also spanning into the Central North Island and Te Rohe Pōtae inquiry districts. Landlessness as a result of Native Land Court proceedings and alleged unfair survey costs are key concerns of the Ngāti Urunumia claim, as is access to a land-locked urupā, Te Anapungapunga, and compulsory acquisitions in and around Taumarunui.

Ngāti Rangatahi (Wai 1064)

Ngāti Rangatahi public works claim

Claimant: Robert Herbert,* Robert Jonathan

Claimant counsel: Māui Solomon

This claim concerns the Ōhura South block, and the Taumarunui area in general. Ngāti Rangatahi, a Ngāti Maniapoto hapū with close links to Whanganui Māori, allege that Crown actions have resulted in their virtual landlessness with subsequent social, economic, cultural, and spiritual hardship placed upon their people for successive generations.

Ngāti Hira and Ngāti Hari (Wai 1097)

The Ōhura South A (Taringamotu) survey block alienation claim

Claimants: Terry Turu and Ngaku Rangitonga

Claimant counsel: Māui Solomon

Concerning the Ōhura South A (Taringamotu) survey block and lands in and around the vicinity, this is a hapū claim for Ngāti Hira and Ngāti Hari. The claim alleges that Crown actions and policies have resulted in the loss of land and cause continued prejudice for the hapū.

Uri of Tūtemahurangi and Waikura and the descendants of Te Tarapounamu (Wai 1203)

Ōhura South B and associated land blocks claim

Claimants: Lois Tūtemahurangi, Ihāia Te Ākau, and Piripi Tūtemahurangi

Claimant counsel: Peter Johnston, Campbell Duncan, and Jo Ella Sarich

This whānau claim relates to lands in the Ōhura South B block to the Ōhura South D block, and across the river to Piriaka and Kākahi, on the Waimarino block, taking in the Ōngarue and Whanganui River junction. This claim adopts the generic pleadings in the main document.

Ngāti Hekeāwai (Wai 1299)

Taumarunui Hospital block claim

Claimants: Inuhaere (Lance) Rupe, Te Poumā Rupe, and Albion Para Bell

Claimant counsel: Darrell Naden and Yashveen Singh

This claim alleges that the Crown enacted legislation that facilitated the loss and destruction of Te Peka Pā. In addition, the claim concerns the compulsory acquisition of Ōhura South N2E1 from its Māori owners for the Taumarunui Hospital.

Tāhana whānau (Wai 1394)

Claimant: Kura Te Wanikau

Claimant counsel: Richard Boast, Josey Lang, Jolene Patuawa-Tuilave,* and Laura Carter

This whānau claim relates to land blocks surrounding the Manganui-a-te-ao River. The claimants allege that through the Crown's actions and inactions they have been deprived of their lands and resources in breach of the protections guaranteed to them under the Treaty of Waitangi.

1.2.4 Other groups

Ngāti Rangi (Wai 151, Wai 277, Wai 554, Wai 569, Wai 1250)

The Ngāti Rangi iwi formed a cluster and presented their claims in the third hearing block in March 2009.

Claimants: Wai 151 (Waiōuru to Ōhākune lands claim), Matiu Māreikura,* James Akapita,* Mark Gray, Robert Gray, and Toni Waho; Wai 277 (Raetihi and

Mangaturuturu blocks claim), Matiu Māreikura,* Thomas Māreikura, and Lulu Bridger; Wai 554 (Mākōtuku and Ruapehu survey district claim), Hune Rāpana, Colin Richards, and Richard Pirere; Wai 569 (Murimotu 3B1A1 block claim), Pita Reo,* Sarah Reo; Wai 1250 (Ngāti Rangi (Paerangi-i-te-Wharetoka) claim), Toni Waho

Claimant counsel: Liana Poutū and Paranihia Walker
Ngāti Rangi filed a consolidated final statement of claim for their five claims that adopts the generic pleadings in the main document. In addition, Ngāti Rangi provided specific pleadings on forestry issues such as *Pinus contorta*, and Pāuro Marino and Mere Kūao lands that were presented as case studies during the Ngāti Rangi hearing week.

1.2.5 Unclustered groups

Ngā Hapū o Ngāti Tūwharetoa (Wai 575)

Ngāti Tūwharetoa comprehensive claim

Claimant: Te Ariki Tumu Te Heuheu

Claimant counsel: Karen Feint and Kelly Fox

This is a comprehensive iwi claim that adopts the generic pleadings for Ngā Hapū o Ngāti Tūwharetoa. The Wai 575 claim incorporates the following claims: Wai 61 (Kaimanawa to Rotoāira Lands claim), Stephen Asher; Wai 178 (Lake Rotoāira claim), Stephen Asher; Wai 226 (Tūwharetoa geothermal claim), George Asher; Wai 269 (Kaingaroa Forest estate claim), Sir Hepi Te Heuheu,* Wai 480 (conservation management strategy claim), Sir Hepi Te Heuheu,* Wai 490 (Tokaanu hot springs claim), Stephen Asher; Wai 502 (Tongariro maunga claim), Mahlon Nēpia.*

Having presented evidence in the Central North Island and National Park inquiries, this claim focuses on lands where Ngāti Tūwharetoa have customary interests within the Whanganui district inquiry boundaries. These areas include Ōhura South, Ōkahukura, and the Waimarino region of the inquiry. This claim adopts and supports those filed by Ngāti Tūwharetoa hapū participating in the inquiry: Ngāti Waewae, Ngāti Manunui, and Ngāti Hikairo.

Ngāti Hikairo (Wai 37, Wai 933, Wai 1196)

Claimants: The claimants in this grouping are one of three groups of claimants advancing the claims of Ngāti Hikairo in this Tribunal inquiry: Wai 37 (Ōkahukura block claim), Margaret Poinga,* Terrill Campbell, and Alec Phillips; Wai 933 (Lake Rotoāira and Wairehu Stream claim), Margaret Poinga,* Terrill Campbell, and Alec Phillips; Wai 1196 (Tongariro Power Development Scheme lands claim), Merle Ormsby, Tiaho Pillot, Daniel Ormsby, and Rāuaiterangi Mary Pātena.

Claimant counsel: Richard Boast, Josey Lang, Jolene Patuawa-Tuilave,* and Niki Sharp

Having previously given evidence in the National Park inquiry, this comprehensive claim concerns lands within the Whanganui district and addresses all the main categories of alleged Crown breach, and the prejudice resulting. The claim draws on the generic pleadings contained in the main document.

Ngāti Pouroto and Ngāti Te Ika of Ngāti Hikairo (Wai 833, Wai 965, Wai 1044)

The claimants in this grouping filed their final statement of claim with the Wai 37, Wai 933, and Wai 1196 Ngāti Hikairo claimants, however they did not present their claims together at the Tribunal hearings, wishing not to present their claims under the mantle of Tūwharetoa.

Claimants: Wai 833 (Te Moana Rotoāira and other resources claim), Carmen Kapea-Sutcliffe Te Maioro Kōnui, Rawinia-Gail Kōnui-Paul, James Pākau, Lyndon Pākau Bowring, and Daryn Pākau; Wai 965 (Ngāti Pouroto Taurewa 1 block claim), Carmen Kapea-Sutcliffe Te Maioro Kōnui, Rawinia-Gail Kōnui-Paul, James Pākau, Lyndon Pākau Bowring, and Daryn Pākau; Wai 1044 (Ngāti Te Ika of Ngāti Hikairo ki Tūwharetoa lands and resources claim), Carmen Kapea-Sutcliffe Te Maioro Kōnui, Rawinia-Gail Kōnui-Paul, James Pākau, Lyndon Pākau Bowring, and Daryn Pākau

Claimant counsel: Hēmi Te Nahu, Berenize Peita, and Alex Hope

Having previously given evidence in the National Park inquiry, this comprehensive claim concerns lands within the Whanganui district and addresses all the main

categories of alleged Crown breach, and the prejudice allegedly resulting. The claim draws on the generic pleadings contained in the main document.

Ngāti Hikairo ki Tongariro (Wai 1262)

Claimants: Tyrone Smith, Te Ngahe Wanikau, Ngāiterangi Smallman, Brenda Pākau, and Hinemanu Gardiner

Claimant counsel: Te Kani Williams and Dominic Wilson
This claim is brought on behalf of Ngāti Hikairo ki Tongariro, a hapū of Ngāti Tūwharetoa and concerns lands along the north-eastern boundaries of the Whanganui inquiry district, particularly in the Waimarino, Urewera, and Murimotu blocks. In addition to the pleadings in the main document, the claimants allege that the Crown, in breach of the Treaty and its principles, caused, promoted, assisted, or failed to prevent, rectify, or remedy, the rapid alienation of Ngāti Hikairo ki Tongariro lands so that the remaining lands in tribal ownership are insufficient for the present and future needs of the tribe.

Ngāti Manunui (Wai 998)

Whanganui River Crown negotiations claim

Claimants: John Manunui

Claimant counsel: Peter Johnston, Campbell Duncan, and Jo Ella Sarich

Ngāti Manunui, a hapū of Ngāti Tūwharetoa, have a core claim area within the Whanganui district inquiry of the Ōhura South block. The key concerns of the Ngāti Manunui claim are rivers and other water resources; gravel extraction from the Whanganui River; Whanganui River–Crown negotiations; effects of Tongariro Power Development scheme; and Ōhura South B block.

Ngāti Waewae (Wai 1260)

National Park and Taihape inquiry claim

Claimants: William Kane, John Rēweti, and Louis Chase

Claimant counsel: Te Kani Williams and Dominic Wilson
This claim is made on behalf of Ngāti Waewae, a hapū of Ngāti Tūwharetoa. The claim area includes lands along the Eastern and Southeastern limits of the Whanganui inquiry district in the Waimarino and Murimotu/Rangipō-Waiū

region. The claim concerns the rapid alienation of almost all of Ngāti Waewae's land base as a result of alleged Crown breaches of the Treaty of Waitangi.

1.2.6 Watching brief

Ngāti Apa (Wai 265)

Ngāti Apa lands claim

Claimants: Chris Shenton

Claimant counsel: Michael Doogan

This iwi claim on behalf of Te Rūnanga o Ngāti Apa has a watching brief status for the purposes of the Whanganui district inquiry, having entered direct negotiations with the Crown when Tribunal hearings began. The Rūnanga gave evidence for the Te Poho o Matapihi Trust claimants in hearing week one.

Ngāti Maniapoto Ngāti Tama (Mōkau) (Wai 800)

Claimants: Harold Maniapoto, Roy Haar, Tāme Tūwhāngai, Dr Tui Adams,* Tiaki Ormsby-Van Selms, and Valerie Ingleby

Claimant counsel: Te Kani Williams

This iwi claim was granted a watching brief status in the Whanganui district inquiry. The broad claim is designed to ensure that the Ngāti Maniapoto position is protected in all inquiries surrounding the Te Rohe Pōtae inquiry district. Contextual evidence was given to the Tribunal during the Northern cluster hearings.

1.3 TRIBUNAL HEARINGS AND SITE VISITS

1.3.1 Southern cluster hearings

Week 1, 6–10 August 2007

Hearings were held at Pūtiki Marae in Whanganui. There were site visits on 10 August 2007 to the Pūtiki and Whanganui township region and the following areas of significance: Taumatakororo; the Whanganui Rifle Range; Rihai Urupā; Onetere Drive; the Whanganui Airport; Pātapu; Kaiwharawhara; Wāhipuna; Landguard Bluff; Karamu Stream; Te Oneheke; Te Ahi Tuatini; Te Whare Kākaho; Kokohuia; Pungarehu; Kaihau-o-Kupe; Wai Mōwhānau; Rotokawa; Kaihērau; Nukuiro Pā; Pukenamu; Patapūhou Pā; and Pākaitore.

Week 2, 27–31 August 2007

Hearings were held at the Whanganui Racecourse in Whanganui. There were site visits on 29 August 2007 to Tūtaeika; Mateongaonga; Aramaho; Kaimatira; Waitaha and Mangawhati Pā; Papaiti; Ōpiu Pā; Tauraroa; Te Korito; Kaipua Stream; 1848 Purchase Deed boundary; Tunuhaere Pā; Kaiwhaiki; Poutama Road; Kūaomoa; Raorikia; Kawera Reserve; Puketarata; and Te Whakataurangi.

Week 3, 10–14 September 2007

Hearings were held at Parikino Marae in Parikino. There were site visits on Thursday 13 September 2007 to Pungarehu Marae and sites downstream of Pungarehu and on the eastern side of the river. Koriniti and Hiruhārama were then visited by bus.

Week 4, 24–25 September 2007

Hearings were held at the Whanganui Racecourse in Whanganui on 24–25 September 2007, and at Kauriki Marae in Taumarunui on 26–28 September 2007.

1.3.2 Central cluster hearings

Week 5, 10–14 March 2008

Hearings were held at Paraweka Marae in Pipiriki. There was a site visit on Thursday 13 of March 2008 to Tieke by jet boat, stopping at various sites down the Whanganui River on the return.

Week 6, 31 March to 4 April 2008

Hearings were held at Mangamingi Marae in Raetihi. There were site visits on Friday 4 of April 2008 to Raetihi Hospital; Manganui-a-te-ao River; Ruatiti Airstrip/Domain; Ruakākā; Te Kauhi/Te Kawakawa blocks; Tapeka; Rangitaepa; Mākākahi Road School at Manganui-a-te-ao; and Tao Kinikini.

Week 7, 15–18 April 2008

Hearings were held at the Centre in Raetihi.

Week 8, 28 April – 2 May 2008

Hearings were held at Mangamingi Marae in Raetihi. There were site visits on Friday 2 May 2008 to Raetihi Urupā; Banana Bridge; Tuhiriki; Oreore Native School; Ruke (Ruki) Urupā; Te Wiki/Hāwira Urupā; Marumaru Urupā; Tūpapanui Urupā; Te Ao te Rangi Wharepuni; Āti hau Incorporation lands; Ōhorea Station; Ōmerei Station; Tawanui; Pah Hill Station; Ngā Mōkai; Karioi; Ōhākune Metal Pit; Ōhākune Dump Site; Sewage Plant; Umumore Native School site; Lakes Reserve; and Winiata Kākahi Kāinga.

Week 9, 19–23 May 2008

Hearings were held at Te Puke Marae in Raetihi. There was a site visit on Friday 23 May 2008 by train from Waiōuru to National Park, followed by a bus journey. Sites visited include Mangaehuehu/Waiākāki Puna (Kōkōwai); Rangataua; Raurimu whenua; Waimarino 4B2; Mangahua Stream; Urupā – Waikune; Waikune Prison; Ērua Forest; and Manganui-a-te-ao.

1.3.3 Northern cluster hearings

Week 10, 29 September – 3 October 2008

Hearings were held at Wharaurua Marae in Taumarunui. On Friday 3 October 2008 we saw many places: Mangakahikātoa; Tūhua Domain; Tarrangower Golf Course; Taumarunui High School; Te Horangapai Tūāhu; Ōngaruhe River; Taringamotu River; Mangapakura Stream and kāinga; Lake Ngarongohira; Te Anapungapunga kāinga and urupā; Taringamotu School; Te Ringa a Tawhia; Hikurangi Maunga; Taumarunui Airport; Tūwhenua kāinga and urupā; Te Wharowharo kāinga; Te Huru o te Ngarahu kāinga; Te Ara-Kōwhai mahinga kai; Ngā Moeringitia mahinga kai; Ngakonui Stream; Papawaka Pā–Tangata; Hiakaitūpeka Marae; Pūwharawhara Valley; Tūhua Maunga; Mākokomiko Road urupā; dairy factory site; Matua Kore Marae; Piriaka Township and School; Ōhura South GAE2; Ngā Rarahuarau Ōhura South (B2C2); Te Ariki Pakewa; Pourikiriki; Kākahi Marae; Ariki–Pakewa Pā; Te Rangi-ā-tea; Mangakēkeke Stream; Tamakana Te Rena;

Whakapapa River and Island; Takapuna; and Te Rena Road.

Week 11, 20–24 October 2008

Hearings were held at Wharauoa Marae in Taumarunui. On 23 October, we visited Piriaka and were shown the urupā above Makakomiko Road, Matua Kore Marae, Piriaka township, and the sites of Piriaka School and the old dairy factory. We also were also shown parts of the Ōhura South block.

Week 12, 10–14 November 2008

Hearings were held at Taumarunui War Memorial Hall, Taumarunui (Mōrero Marae). There were site visits on Monday 10 November 2008 to Bell Road; Sunshine Settlement; Hikumutu Sewage Treatment Plant; Taumaruiti; Racecourse Road; Manunui; Piriaka Power Station; Matahānea; Tapui; Tuku Street Domain; and the Taumarunui Sale Yards.

1.3.4 Ngāti Rangi hearings

Week 13, 1–7 March 2009

Hearings were held at Maungārongo Marae in Ōhākune. There were site visits on Wednesday 3 of March 2009 to Pāuro Marino lands and on Friday 6 March to Mere Kūao lands.

1.3.5 Crown hearings

Week 14, 4–8 May 2009

Hearings were held at the Centre in Raetihi.

Week 15, 25–29 May 2009

Hearings were held at Pūtiki Marae in Whanganui.

29 June 2009

Hearings were held at Pūtiki Marae in Whanganui.

19 August 2009

Hearings were held at the James Cook Hotel in Wellington.

1.3.6 Closing submissions

Week 16, 6–9 October 2009

Hearings were held at the Athletic Sports Club in Taumarunui.

Week 17, 18–20, 22–23 October 2009

Hearings were held at Maungārongo Marae in Ōhākune.

Week 18, 14–15 December 2009

Hearings were held at Pūtiki Marae in Whanganui.

1.3.7 Evidence given in support of claims

Te Poho o Matapihi Trust (Wai 999)

James Takarangi and Chris Shenton gave evidence on 6 August 2007 at Pūtiki Marae in Whanganui.

Mariana Shenton, Arahia Olney, Hōne Tamehana, and Tahu Nēpia gave evidence on 8 August 2007 at Pūtiki Marae in Whanganui.

Julian Bailey, Marama Dey, Kataraina Millin, Rangi Wills, and Mariana Waitai gave evidence on 9 August at Pūtiki Marae in Whanganui.

Tūpoho hapū (Wai 671, Wai 978)

Ben Pōtaka gave evidence on 9 August 2007 at Pūtiki Marae in Whanganui.

Ngā Paerangi (Wai 1051)

Morvin Simon,* Kenneth Joseph Somme Clarke, Dave Hōri Pāuro, Frances Merekānara Huwyler, Maude Hauru Clarke, Gregory Dean Andrew Rātana, and Hera Te Ūpokoiri Peina gave evidence on 27 August 2007 at the Whanganui Racecourse in Whanganui.

Ngā Poutama (Wai 1254)

Haimona Te Iki Frank Rzoska, Kurai Toura, and Ramari Ranginui gave evidence on 28 August 2007 at the Whanganui Racecourse in Whanganui.

Ngāti Pāmoana (Wai 180)

John Maihi, Huruanga Teki Te Utupoto, and George Marshall gave evidence on 28 August 2007 at the Whanganui Racecourse in Whanganui.

Ngāti Hineoneone (Wai 1024)

Bill Ranginui, Terence Ranginui (evidence read by Sandi Ranginui), and Tracey Waitōkia, gave evidence on 29 August 2007 at the Whanganui Racecourse in Whanganui.

Ngāti Hine, Ngāti Rūwai, and Ngāti Waikārapu (Wai 1107)

Tūrāma Hāwira, Tawhitiopou Pātea, John Maihi, Tanea Tangaroa, Retihia Cribb, and Ripeka Green gave evidence on 30 August 2007 at the Whanganui Racecourse in Whanganui.

Ngā Wairiki (Wai 655)

Ngāhina Matthews, Tūrāma Hāwira, George Matthews, Mihi Hēnare, Pōtonga Neilson, and Desmond Canterbury Te Ngaruru gave evidence on 31 August 2007 at the Whanganui Racecourse in Whanganui.

Ngāti Hinearo and Ngāti Tuera (Wai 214, Wai 584, Wai 1143)

Wiremu (Bill) Pōtaka (read by Charles Osborne), Michael Pōtaka, Hine Stanley, Jason Harrison, Tessa Harrison, Jennifer Tamehana, and Bryan Kora gave evidence on 10 September 2007 at Parikino Marae, Parikino.

Ben Pōtaka, Eddie Rātana, and Te Kenehi Mair gave evidence on 11 September 2007 at Parikino Marae, Parikino.

Whanganui River Māori Trust Board (Wai 167)

Archie Taiaroa, Che Wilson, Nancy Tuaine, Rāwiri Tinirau, and Brendan Puketapu gave evidence on 12 September 2007 at Parikino Marae, Parikino.

Ngāti Hau (Wai 979)

Rangiwhakateka Hough, Jessie Munroe, Te Aroha McDonnell, Hoani Hipango, and Michael Bell gave evidence on 24 September 2007 at the Whanganui Racecourse, Whanganui.

Ngāti Kauika and Ngāti Tamareheroto (Wai 1105, Wai 634)

Tūrāma Hāwira and Che Wilson gave evidence on 24 and 25 September 2007 at the Whanganui Racecourse, Whanganui.

Tūrāma Hāwira, Raukura Waitai, Desmond Canterbury Te Ngaruru, Kataraina Tāhau, Riki Waitōkia, Che Wilson, and Rana Waitai gave evidence on 25 September 2007 at the Whanganui Racecourse, Whanganui.

Ngāti Tūwharetoa (Wai 575)

Paranapa Ōtimi gave evidence on 26 September 2007 at Kauriki Marae, Taumarunui.

Ngāti Manunui (Wai 998)

John Manunui and Lois Tūtemahurangi gave evidence on 27 September 2007 at Kauriki Marae, Taumarunui.

Ngāti Hikairo ki Tongariro (Wai 1262) and Ngāti Hikairo (Wai 37, Wai 933, Wai 1196)

Brenda Pākau, Merle Ormsby, and Terrill Campbell gave evidence on 27 September 2007 at Kauriki Marae, Taumarunui.

Ngāti Waewae (Wai 1260)

Louis Chase, John Rēweti, Daniel Paranihi, Tūroa Karatea, and Tumu Te Heuheu gave evidence on 28 September 2007 at Kauriki Marae, Taumarunui.

Tamahaki Council of Hapū and Uenuku Tūwharetoa (Wai 555, Wai 1224)

Tūrāma Hāwira, Gordon Turi Cribb, and Robert (Boy) Cribb gave evidence on 10 March 2008 at Paraweka Marae in Pipiriki.

Pāora (Baldy) Haitana, Rangi Bristol, Rangimārie Ponga, Harold (Harry) and Mini Haitana, Gabrielle Whitu, Roberta Williams, Wai Wiari Southen, and Kupenga Te Huia gave evidence on 11 March 2008 at Paraweka Marae in Pipiriki.

Tom Huriwaka gave evidence on 13 March 2008 at Paraweka Marae in Pipiriki.

Whare Ponga Taumatamāhoe Incorporated Society and the Te Whare Ponga Whānau Trust (Wai 1393)

Terena Wāra, Robin Te Wano, and Geraldine Taurerewa gave evidence on 13 March 2008 at Paraweka Marae in Pipiriki.

Geraldine Taurerewa and Rosita Dixon gave evidence on 14 March 2008 at Paraweka Marae in Pipiriki.

Pipiriki Incorporation (Ngāti Kūrawhatia) (Wai 428)
Bobby Gray, Don Robinson, and Adrian Pucher gave evidence on 14 March 2008 at Paraweka Marae in Pipiriki.

Tamakana Council of Hapū (Wai 954)
Tūrama Hāwira, Rangi Bristol, Raymond Rāpana, and Pura Whale gave evidence on 31 March 2008 at Mangamingi Marae in Raetihi.

Ngāti Ruakōpiri (Wai 1072), Ngāti Tūmānuka (Wai 1197), and Ngāti Kōwhaikura (Wai 1073)
Matiu Haitana gave evidence on 31 March 2008 at Mangamingi Marae in Raetihi.

Matiu Haitana, Adam Haitana, Rufus Bristol, and Rangihopuata Rāpana gave evidence on 3 April 2008 at Mangamingi Marae in Raetihi.

Ngāti Kahukurapango and Ngāti Matakaha (Wai 1189)
Kahukura (Buddy) Taiaroa gave evidence on 31 March and 3 April 2008 at Mangamingi Marae in Raetihi.

Ngāti Maringi (Wai 1192)
Clive Te Iwimate gave evidence on 3 April 2008 at Mangamingi Marae in Raetihi.

Patrick Te Oro and Aiden Gilbert gave evidence on 4 April 2008 at Mangamingi Marae in Raetihi.

Ngāti Hinewai (Wai 1191)
Wairata Te Huia gave evidence on 4 April 2008 at Mangamingi Marae in Raetihi.

Āti hau–Whanganui Incorporation (Wai 759)
Dana Blackburn and Chris Scanlon gave evidence on 28 April 2008 at Mangamingi Marae in Raetihi.

Ngāti Ātamira (Wai 843)
Barbara Lloyd gave evidence on 28 April 2008 at Mangamingi Marae in Raetihi.

Waikaramihi and Tamaūpoko (Wai 221)
Don Robinson gave evidence on 28 and 29 April 2008 at Mangamingi Marae in Raetihi.

Robert (Boy) Cribb gave evidence on 29 April 2008 at Mangamingi Marae in Raetihi.

Ngāti Whākiterangi (Wai 458)
Graham Sun, Ngairi Tairei Williams, Matarita Wīari, Therese Wī Pere (read by Karina Williams), Piki McFadyen, and Karina Williams gave evidence on 29 April 2008 at Mangamingi Marae in Raetihi.

Te Iwi o Uenuku, Ngāti Hinewai, and Ngāti Hotu (Wai 1170, Wai 1202, Wai 1261, and Wai 1029)
Don Robinson, Rangihopuata Rāpana, and Aiden Gilbert gave evidence on 1 May 2008 at Mangamingi Marae in Raetihi.

Te Puāwaitanga Mokopuna Trust, Elenore Ānaru Whānau Trust, and Te Tira Taurerewa (Wai 458)
Ōriwa (Olive) Hāpuku, Raymond Hāpuku, Patricia Hēnare, and Vivienne Kōpua gave evidence on 1 May 2008 at Mangamingi Marae in Raetihi.

Tāhana Tūroa whānau (Wai 1392)
Kura and Joanne Tāhana gave evidence on 2 May 2008 at Mangamingi Marae in Raetihi.

Pēhi whānau (Wai 73)
Te Matāra Pēhi gave evidence on 19 May 2008 at Te Puke Marae in Raetihi.

Te Iwi o Uenuku (Wai 1170, Wai 1084, Wai 1202, Wai 1229, Wai 1261, Wai 1393)
Tūrama Hāwira gave evidence on 19 May 2008 at Te Puke Marae in Raetihi.

Mōrehu Paranihi Wana, Matiu Haitana, Harold Haitana, Rufus Bristol, and William McDonnell gave evidence on 20 May 2008 at Te Puke Marae in Raetihi.

Christine Herewini, Shona Albert-Thompson, Milton Thompson, and Rosita Dixon gave evidence on 21 May 2008 at Te Puke Marae in Raetihi.

Dean Hiroti, Garth Hiroti, Adam Haitana, and Kahu Takarangi gave evidence on 22 May 2008 at Te Puke Marae in Raetihi.

Ngāti Hotu and Ngāti Hinewai (Wai 1029)

Tūrama Hāwira, Monica Mātāmua, Arin Mātāmua, and Michael Mātāmua gave evidence on 29 September 2008 at Wharauora Marae in Taumarunui.

Ngā Uri o Tānoa (Wai 764, Wai 1147)

Michael Le Gros, Cedric Tānoa (read by Rachel Tānoa), Pōkaitara (Beau) Tānoa, Leichelle Tānoa, and Tahuri Te Ruruku gave evidence on 30 September 2008 at Wharauora Marae in Taumarunui.

Irene Harvey, Simone Tānoa, and Grace Le Gros gave evidence on 1 October 2008 at Wharauora Marae in Taumarunui.

Ngā Uri o Tūtemahurangi (Wai 1203)

Lois Tūtemahurangi and Eva Tūtemahurangi gave evidence on 1 October 2008 at Wharauora Marae in Taumarunui.

Ngāti Maniapoto (Wai 800)

Dr Tui Adams gave evidence on 2 October 2008 at Wharauora Marae in Taumarunui.

Ngāti Urunumia (Wai 987, Wai 1255)

Tāme Tūwhāngai, Pauline Kay Stafford, and Hoani (John) Wī gave evidence on 2 October 2008 at Wharauora Marae in Taumarunui.

Ngāti Hekeāwai (Wai 1229)

Te Poumua (Francis) Rupe, Inuhaere (Lance) Rupe,* Douglas Bell (read by Janice Bell), Joan Wright, and Gail Bell gave evidence on 20 October 2008 at Wharauora Marae in Taumarunui.

Ngāti Hira and Ngāti Hari (Wai 1097)

Veronica Canterbury,* Terry Turu, Ngaku Rangitonga (read by Lucy Rangitonga-Pukawa), and Amelia Kereopa*

gave evidence on 22 October 2008 at Wharauora Marae in Taumarunui.

Ngāti Rangatahi (Wai 1064)

Rovina Maniapoto-Anderson, Robert Herbert,* Wayne Herbert (read by Patricia Te Atarua Allen), and Roger Herbert gave evidence on 22 October 2008 at Wharauora Marae in Taumarunui.

Ngāti Hāua (Wai 48, Wai 81, Wai 146)

Kevin Amohia and Anne Tūroa gave evidence on 11 November 2008 at Taumarunui War Memorial Hall, Taumarunui (Mōrero Marae).

Archie Taiaroa, Hōhepa Te Āwhitu, Norma Turner, and Julie Te Turi Ranginui gave evidence on 12 November 2008 at Taumarunui War Memorial Hall, Taumarunui (Mōrero Marae).

Hinewai Barrett (read by Connie Delamere) and Florence Amohia gave evidence on 13 November 2008 at Taumarunui War Memorial Hall, Taumarunui (Mōrero Marae).

Christina Jones, Don Taumata, Neville Fox, Frana Chase, Rihi Te Nana, and Nyree Nikora gave evidence on 14 November 2008 at Taumarunui War Memorial Hall, Taumarunui (Mōrero Marae).

Ngāti Rangi (Wai 151, Wai 277, Wai 554, Wai 569, Wai 1250)
Toni Waho, Hune Rāpana, and Tūrama Hāwira gave evidence on 2 March 2009 at Maungārongo Marae in Ōhākune. Janice (Wendy) Ēpiha, Lou Brider, Richard Pirere also gave evidence on behalf of themselves and Stella Mill.

Esther Tinirau, Toni Waho, Che Wilson, and Gerrard Albert gave evidence on 3 March 2009 at Maungārongo Marae in Ōhākune.

Keith Wood and Che Wilson gave evidence on 3 March 2009 at Maungārongo Marae in Ōhākune.

Dr Karen Sinclair, Raana Māreikura, Janeita (Korty) Wilson, Esther Tinirau, Toni Waho, Sarah Reo, Hiria Tūtakangahau, and Che Wilson gave evidence on 5 March 2009 at Maungārongo Marae in Ōhākune.

Dr Charlotte Severne and Keith Wood gave evidence on 6 March 2009 at Maungārongo Marae in Ōhākune.

Harvey Bell, Che Wilson, Bonnie Sue, Luana Akapita, Nancy Tuaine, and Raana Māreikura gave evidence on 7 March 2009 at Maungārongo Marae in Ōhākune. The evidence of Tūrama Hāwira was also presented by Gerrard Albert.

Notes

* These claimants or witnesses have passed away since their claims were filed or since they appeared at our hearings.

APPENDIX II

NEW CLAIMS

The final claim to be heard in this inquiry was filed in April 2007, a few months before the start of hearings in August 2007.¹

We did, however, accept a number of new claims in mid-2008. Generally speaking, these were filed in response to the Government's deadline of 1 September 2008 for historical claims, by which time our hearings were already underway. Because it is not likely that any further inquiries will be held into historical claims specifically relating to the Whanganui inquiry district, we felt that it was important to include these claims in our inquiry to the extent possible.

By this stage, no hearing time was available for these claims. The nature of the new claims varied. Some came with evidence and detail, while some lacked both. We inquired into them in so far as we could, but in the case of those that were filed very late, this was inevitably very limited. Many claims overlapped with those already before us, and in those cases the material in this report addresses the claims extensively.

This appendix to the report serves as an acknowledgement of each of the 17 new claims that relate to this district, which formed part of the late stages of the inquiry to differing degrees.

In relation to each, the following list:

- › identifies who the claimants were (individual, group, or organisation);
- › says how each new claim related to other claimants already in the inquiry;
- › records our understanding of the matters alleged in the claim; and
- › identifies where this report addresses relevant claim issues.

We make no findings or recommendations in relation to the claims listed for which no evidence was filed.

II.1 NEW CLAIMS THAT FILED EVIDENCE

Claimants and group: Jenny Tamakehu on behalf of the whānau and hapū of Ngāti Taanewai of Matahiwi

Wai: 1483

Relationship to existing groups: Ngāti Taanewai is a hapū of Ngā Poutama

Key issues: This claim alleged that the Ōhotu 1 block was vested in the Aotea Māori Land Council without consultation with owners; that attempted partitioning of this block to create the Matahiwi Reserve was subject to inordinate delay; that the Crown has not actively protected the claimants' taonga, including the Kāwana Flour Mill, waterways,

mahinga kai, and lands. In addition, the claim alleged that the Crown did not consult adequately in the planning of the Ātene Dam or the Whanganui National Park, or on the acquisition of land for public works purposes from the Matahiwi Reserve. Aerial 1080 poison application, the use of asbestos in State buildings, the removal of timber from vested lands, rating, and the Death Duty Act are other issues in this claim. The claimants also alleged that the Crown failed to actively protect the Manawakōwhara Reserve. The report addresses some of these issues in chapters 18, 22, and 26.

Claimants and group: Albion Manawaiti Para Bell on behalf of Te Patutokotoko and Ngāti Heke

Wai: 1505

Relationship to existing groups: Te Patutokotoko and Ngāti Heke

Key issues: This claim concerned several parcels of land in the Taumarunui area, and the loss of these lands allegedly through the operation of the Native Land Court; compulsory takings for public works, scenic reserves, and for gravel extraction; the Tongariro Power Development project, which resulted in diverting the natural flow of the Whanganui River; the operation of the Taumarunui native township; and acts and administration of local government. The report addresses some of these issues in chapters 16, 17, and 26.

Claimants and group: Geraldine Taurerewa on behalf of the descendants of Te Hore Te Wā Nukuraerae

Wai: 1594

Relationship to existing groups: Ngāti Ruru of the Taumatamāhoe, Whitianga, and Maraekōwhai blocks

Key issues: This claim alleged that the Crown, when purchasing the Taumatamāhoe block, failed to protect the interests of Ngāti Ruru, and manipulated the Native Land Court partition hearings in 1893. The policy and practice behind Crown purchasing was a key issue in this claim, with the claimants alleging the Crown engaged in dishonest practices when purchasing the Taumatamāhoe block and hindered the development of the land remaining in the claimants' ownership. In addition, the claim alleged

that the Crown failed in its obligation to protect Māori interests by extracting coal from the Tatū mine without consultation or compensation. The claimants sought the return of the Parinui school site. Some of these issues are addressed in chapters 12 and 25.

Claimants and group: George Pōtaka and Jacqueline Flight on behalf of the owners of Ōhotu 6F1

Wai: 1604

Relationship to existing groups: Ngāti Waikārapu

Key issues: This claim concerned the Crown's alleged failure to protect the land base of Ngāti Waikārapu, in particular land in the Ōhotu 6F1 block. The processes of the Native Land Court were a key concern, as were the Crown's compulsory acquisitions for the establishment of the Parapara Road, allegedly without compensation or consultation with the claimants. The claimants argued that the rates payable on the 6F1 block were unfair, as it was uneconomic. They alleged that the Regional and District Councils, and the Department of Conservation, consistently failed to respect and protect the interests of the owners of the block, and failed in their obligation to consult with the owners of the block. The report addresses some of these issues in chapter 26.

Claimants and group: Maxine Kētū on behalf of the Albert and Sophia Kētū Whānau Trust

Wai: 1605

Relationship to existing groups: Beneficiaries of the Trust whakapapa to Ngāti Hikairo, Tūwharetoa, and other hapū and iwi within the Whanganui inquiry district.

Key issues: This claim concerned loss of land at Kaitieke, which we address in chapter 20.

Claimants and group: Karl Burrows and Holden Hōhaia on behalf of Ngāti Maru

Wai: 1609

Relationship to existing groups: Ngāti Maru interests have not previously been brought before the Waitangi Tribunal.

Key issues: This claim concerned the loss of Ngāti Maru land to the Crown, including Taumatamāhoe, Whitianga, Maraekōwhai, Ōhura South block, Mangaehu, Pohokura,

Pāhautaua, Mangaotuku, and others. In addition the claimants argued that the ‘non-sellers’ interests in those blocks were not recognised by the Crown. The report addresses these issues in chapter 12.

Claimants and group: Hari Benevides, Hoani Hipango, and Wilson Ropoama Graham Smith on behalf of the descendants of Ropoama Pohe

Wai: 1632

Relationship to existing groups: Ngāti Tama hapū, Te Āti Haunui-a-Pāpārangi, and Tūwharetoa iwi.

Key issues: This claim concerned land in the Raketāpāuma land block that the Crown took to build the main trunk line in the late 1890s. The claim alleged that no compensation was paid to Ropoama Pohe or his descendants. The report addresses these issues in chapter 25.

Claimants and group: Kahukura Taiaroa on behalf of the descendants of the original owners of the Raetihi block

Wai: 1633

Relationship to existing groups: Ngāti Hinekoropango

Key issues: This claim concerned Crown acquisition of land in the Raetihi 2B and 3B blocks, which left Ngāti Hinekoropango with insufficient land for present and future needs. In addition, the claim alleged that the Crown did not make available to Māori ex-servicemen the same opportunities for rehabilitation following the Second World War. The report addresses some of these issues in chapter 15 on Crown purchasing and chapter 21 on socio-economic issues.

Claimants and group: Ngāwai Tāmehana, Hone Tāmehana, Julian Bailey, Wendy Mohi, and Hoani Hipango on behalf of the Pātapu whānau

Wai: 1636

Key issues: This claim concerned the impact of Native Land laws and Native Land Court processes that led to the fragmentation, partitioning, and ultimate sale of the Waipākura block. The claimants alleged the Crown failed to protect their tino rangatiratanga over taonga, and left the Pātapu whānau virtually landless after purchasing

their land and taking it for public works. The report addresses these issues in chapters 11, 12, and 15.

Claimants and group: Rufus Bristol on behalf of the descendants of the non-sellers of the Waimarino block

Wai: 1738

Relationship to existing groups: Non-sellers in the Waimarino block

Key issues: This claim concerned the Crown’s alleged failure to protect the rights of the non-sellers during the acquisition of the Waimarino block. Through the Native Land Court and related legislation, the claimant argued that the Crown facilitated the erosion and fragmentation of non-sellers’ land. In addition, he alleged that the Crown failed to protect the interests of the non-sellers during Crown purchasing associated with the establishment of the North Island main trunk railway. The report addresses these issues in chapter 13.

Claimants and group: Raymond Rāpana and Robert Cribb on behalf of the descendants of the original owners of the Waimarino 3 non-seller reserve

Wai: 2203

Key issues: This claim concerned the loss of land, alienation from natural resources and the loss of customary rights in the claimants’ rohe, which includes land surrounding the Manganui-a-te-ao River. The claimants alleged that certain provisions of the Native Land Acts, and general Crown purchasing policies relating to the Waimarino 3 non-seller reserve, alienated their land and prejudicially affected them. The report addresses some of these issues in chapters 20 and 25.

Claimants and group: Gabrielle Whitu and Robert Cribb

Wai: 2204

Relationship to existing groups: These claimants have previously lodged a claim under their tupuna Tamahaki.

Key issues: This claim concerned lands in the Waimarino 4B2, Ngāpākihi 1W3, Mākākahi, and Waimarino 3J blocks, and the Pipiriki, Mangaetūroa, and Horopito Schools, particularly in relation to public works legislation. The report addresses some of these issues in chapters 15, 20 and 25.

Claimants and group: Taylor Solomon Wīari,² Betty-Joe Wīari, and Helen Mannerings on behalf of the Wīari Tūrangapito Tungāne Peti Whānau Trust

Wai: 2205

Relationship to existing groups: The claimants adopted the generic submissions on protection of land base, Maori land development and administration, rating, local government, and socio-economic issues. They were particularly concerned about the loss of whānau land in the Rangiwaea 4F16 2B block, but the claim also related generally to the fragmentation of their other land interests, which they said was a prejudice arising from the Crown's Treaty breaches. Other prejudicial effects were loss of tūrangawaewae, and loss of opportunities to develop their lands and resources in an economic and sustainable manner. The report addresses these issues in chapters 12, 14, 15, and 21.

Claimants and group: Eruera Te Kahu Waitai and Ira Tamehana on behalf of the Eruera Te Kahu Waitai Foundation

Wai: 2218

Relationship to existing groups: Whānau of Eruera Te Kahu and Ware Tangata Pukenamu Waitai

Key issues: This claim concerned allegations that the Crown undermined the claimants' mana whenua and that Ngā Wairiki's status as an iwi was affected by the practices and policies of the Crown historically, and currently through accepting Ngā Wairiki as a hapū of Ngāti Apa. The claimants also alleged that Crown policies and actions resulted in the alienation of Ngā Wairiki land. In particular, the Native Land Court, Māori Land Court, and Māori land administration structures employed flawed statutory processes that fragmented land through policies concerning title and ownership. The report addresses issues around Native Land Court Processes and land administration in chapters 11, 14 and 15. The report on Ngā Wairiki identity issues, *Report on Aspects of the Wai 655 Claim*, was published in 2009.

Claimants and group: Rangiwaiata Tahupārae² and Roseanna Tahupārae on behalf of the owners of the Ngāpakihī 11 block

Wai: 2275

Relationship to existing groups: The claimants alleged that the Crown failed to adequately acknowledge, protect, and uphold the rights and interests of the claimants in Ngā Taonga o Te Taiao in relation to lands, waterways, the foreshore and seabed, flora, fauna, minerals and other resources, and mātauranga Māori. They alleged the Crown has also failed to preserve and protect the health and well-being of Te Taiao. The report addresses some of these issues in chapter 21.

11.2 NEW CLAIMS THAT DID NOT FILE EVIDENCE

Claimants and group: Erina Pucher, Adrian Pucher, Don Robinson and Bobby Gray on behalf of Ngāti Kurawhatia

Wai: 1607

Relationship to existing groups: Ngāti Kurawhatia (Pipiriki Incorporation)

Key issues: This claim concerned Crown purchase and acquisition of lands for scenery reserves under the Scenery Preservation Act 1903 and the alleged loss of customary interests in land, and associated cultural and spiritual impacts, loss of autonomy, social and economic impacts, that resulted. The report addresses this issue in chapter 17.

Claimants and group: Marilyn Tamakehu and Jenny Tamakehu on behalf of the descendants of Tamakehu

Wai: 2158

Key issues: This claim concerned the Crown's failure to recognise and protect the lore, customs, cultural and spiritual heritage of the claimant group's tūpuna, and its use of 1080 poison. The report addresses some of these issues in chapter 22.

Notes

1. Paper 2.3.50, pp 8–9
2. These claimants or witnesses have passed away since their claims were filed or since they appeared at our hearings.

APPENDIX III

SURVEY CHARGES IN WHANGANUI, 1866–1900

The table on the following pages lists the survey charges per block in the Whanganui district from 1866 to 1900.

Years	Block	Area (acres, roods, perches)			Survey charge (£, s, p)			Cost per acre (s, p)	
1866–74	Aratōwaka	26	3	34	200	0	0	1	6.6
	Kaiate 2	735	0	0	3	3	0	1	8.9
	Kaikai Ōhākune	708	0	0	72	0	0	1	3.5
	Kaiwaka	161	0	20	47	17	0	0	16.4
	Kohipō	57	0	32	13	10	0	1	0.6
	Kōpuaruru	95	2	32	6	0	0	1	5.2
	Manawakōara 1	34	2	23	10	8	0	1	6.8
	Manawakōara 2	58	1	2	3	3	0	1	2.5
	Manawakōara 3	1,151	0	0	3	3	0	0	13.4
	Mangawhero East	594	0	0	32	6	6	0	6.8
	Mangawhero West	1	2	21	41	4	5	0	16.7
	Matangiāwhea	0	3	39	3	3	0	23	18.2
	Matapohe 1	1,230	0	0	2	12	6	36	10.6
	Matatara and Mākirikiri	4	1	7	51	1	8	0	10.0
	Ngātarua 2 and Whakamaru 2	5	0	29	4	3	6	11	19.0
	Ngātarua 3	2	0	28	3	0	0	6	19.0
	Ngātarua 4	16	3	10	2	12	6	16	13.8
	Ngātarua 5	128	3	26	4	4	0	3	1.9
	Ngāturi	634	3	19	15	7	3	1	9.0
	Ōmaru	15	3	27	8	2	0	0	3.1
	Paranuiamata 2	13	0	3	3	13	6	3	1.9
	Paranuiamata 3	2	2	0	3	13	6	3	15.7
	Paranuiamata 4	49	1	10	3	13	6	19	14.4
	Pariatumaunga 1	22	0	0	5	5	0	1	6.4
	Pariatumaunga 2	3,600	0	0	5	5	0	2	19.0
	Pikopiko 1	310	0	0	19	10	0	0	1.3
	Pikopiko 2	76	0	12	7	10	0	0	6.1
	Pungarehu	3,100	0	0	6	0	0	0	18.9
	Rānana	1,750	0	0	174	19	5	0	13.6
	Ruahine	12	0	20	91	2	6	0	12.5
	Te Riri a te Hore 1	62	1	0	2	12	6	2	19.9
	Te Riri a te Hore 2	25	1	6	7	16	6	1	12.2
	Te Riri a te Hore 3	24	1	20	3	13	0	1	18.8
	Te Riri a te Hore 4	6	1	31	5	19	0	3	4.8
	Ti Kahu	33	2	30	3	13	6	7	13.0
	Tunuhaere 2	1,355	0	0	6	0	0	2	2.7

SURVEY CHARGES IN WHANGANUI, 1866–1900

App III

Years	Block	Area (acres, roods, perches)			Survey charge (£, s, p)			Cost per acre (s, p)	
	Ūpokongaro	1,406	0	0	49	19	0	0	9.0
	Ūpokongaro 2	2,272	0	0	49	19	0	0	8.6
	Waikupa	59	2	0	4	4	0	0	0.5
	Waipuna East	4	3	24	7	7	0	1	10.6
	Waitahanui 1	12	0	24	4	4	0	10	12.2
	Waitahanui 2	13	2	15	4	14	6	5	2.6
	Waitahanui 4	9	0	16	3	13	6	3	12.5
	Waitahanui 5	1	2	11	3	13	6	5	8.4
	Whakamaru 1	11	1	38	2	12	6	23	2.8
	Whakamaru 3	1	0	34	3	13	6	4	5.8
	Whakamaru 4	4	3	11	1	0	0	9	17.9
	Whakaniwha	0	1	18	2	2	0	5	7.9
	Wharepapa	236	0	0	2	2	0	71	14.5
	Whataroa	236	0	0	18	5	0	0	18.7
1875–80	Kārewarewa 1 and 2	3,679	0	0	92	0	0	0	6.0
	Mangapapa 2	14,400	0	0	549	2	11	0	9.2
	Mangapōrau	16,062	0	0	700	0	0	0	10.5
	Maramaratōtara	1,100	3	0	134	2	0	1	9.3
	Ngāpukewhakaipū	5,071	2	0	125	0	0	0	5.9
	Ngārākauwhakarara	4,995	0	0	70	5	6	0	3.4
	Ōtāmoa 2	3,008	0	0	126	5	0	0	10.1
	Ōtaupari	540	0	0	27	0	0	0	12.0
	Paratīeke	6,006	0	0	285	16	12	0	11.4
	Pikopiko 3	1,112	0	0	8	8	0	0	1.9
	Puketōtara	22,524	0	0	211	13	0	0	2.3
	Rangitatau	41,676	0	0	300	0	0	0	1.7
	Raoraomouku	8,697	0	0	144	19	6	0	4.0
	Rāwhitiroa	36,800	0	0	233	6	8	0	1.5
	Tawhitoariki	2,880	0	0	48	8	6	0	4.1
1881–86	Ahuahu	11,640	0	0	291	0	0	0	6.0
	Aratawa	4,207	0	0	105	3	6	0	6.0
	Huiakamā	8,540	0	0	332	1	0	0	9.3
	Huikumu	1,206	0	0	30	3	0	0	6.0
	Kōiro	7,636	0	0	236	3	4	0	7.4

Years	Block	Area (acres, roods, perches)			Survey charge (£, s, p)			Cost per acre (s, p)	
	Mangaotuku	38,860	0	0	915	2	8	0	5.7
	Mangapukatea	2,485	0	0	110	12	0	0	10.7
	Matawhitia	1,858	0	0	189	3	0	1	4.4
	Maungakaretū	63,600	0	0	767	12	6	0	2.9
	Ōahurangi	266	0	0	33	2	2	1	9.9
	Ōkehu	1,370	0	0	346	0	0	3	0.6
	Ōtaranoho	1,361	0	0	34	0	6	0	6.0
	Pohonuiatāne	35,538	0	0	906	14	10	0	6.1
	Popotea	606	2	0	60	0	0	1	3.7
	Puketarata	2,380	0	0	86	0	0	0	8.7
	Rāwhitiroa	36,800	0	0	233	6	8	0	1.5
	Taumatamāhoe	146,000	0	0	76	8	6	0	0.1
	Tāwhai North	3,000	0	0	6	8	7	0	0.5
	Tokorangi	1,735	0	0	121	0	0	0	16.7
	Umumore	842	0	0	52	12	6	0	15.1
1887–1900	Maraetaua	7,500	0	0	239	2	0	0	7.7
	Morikau	24,100	0	0	24	3	0	0	0.2
	Ōhura South	116,152	0	0	1,088	13	5	0	2.3
	Ōtiranui	5,150	0	0	50	0	0	0	2.3
	Ōwhangaroa	57	0	0	20	0	0	4	4.2
	Raetihi	17,200	0	0	291	13	4	0	4.1
	Taonui	7,250	0	0	127	8	6	0	4.2
	Tauakirā	50,700	0	0	15	0	0	0	0.1
	Te Tuhi 1	2,320	0	0	69	18	10	0	7.3
	Te Tuhi 2	1,480	0	0	44	12	4	0	7.3
	Te Tuhi 3	8,480	0	0	255	12	11	0	7.2
	Te Tuhi 4	7,510	0	0	226	8	5	0	7.2
	Te Tuhi 5	322	0	0	9	4	1	0	7.0
	Tūpapanui	3,378	0	0	111	10	7	0	7.9
	Urewera	12,479	0	0	100	0	0	0	1.9
	Waharangi	16,151	0	0	175	0	0	0	2.6
	Wharepū	250	0	0	14	15	0	0	14.6

APPENDIX IV

DISCRETE REMEDIES PILOT

At a judicial conference held at Parikino Marae in September 2007, Judge Wainwright canvassed the idea of a discrete, small-scale remedies process to benefit particular whānau or small hapū groups with deserving claims. The idea was that the remedy would be delivered in advance of the general negotiation and settlement of the claims in Whanganui,¹ enabling a measure of reconciliation between the Crown and small groups whose grievances and mamae (pain) had been for too long unaddressed.

In order for claims to be eligible for consideration in the pilot, they needed to be:

- small-scale;
- discrete;
- self-contained and affecting only a particular, identifiable group;
- involving the return of land or assets that are owned by the Crown;
- already well researched and understood; and
- not too complicated.²

Claimant counsel identified a number of claims that might be suitable for the pilot. We list these in the table over. Although it was anticipated that negotiations for a limited number of discrete remedies would occur prior to the conclusion of the Whanganui hearings in December 2009, only the Pūtiki Rifle Range application was filed and pursued in time for this to occur.³

Notes

1. Memorandum 2.3.57, pp 3–4
2. Ibid, p 4
3. Memorandum 3.2.692; memo 3.4.104

No	Name	Group(s)	Claim issue	Reason for rejection
1	Ahuahu ohu	Ngāti Hineoneone (Wai 1028)	Crown purchasing, scenic reserves	Site too large, part of scenic reserve not available for settlement
2	Former Edgecombe Farm lands	Ngāti Hineoneone (Wai 1028)	Public works, scenic reserves	Site too large and complicated to pursue as a remedy
3	Kaiwhaiki Issues	Ngā Paerangi (Wai 1051)	Public works, socio-economic	Issue being dealt with outside Tribunal
4	Koriniti Native School site	Ngāti Pāmoana (Wai 180)	Public works	Land in private ownership
5	Lines Company Lands	Ngāti Hekeāwai (Wai 1299)	Public works	Land in private ownership
6	Mōrero issues	Ngāti Hāua (Wai 48, Wai 81, Wai 146)	Various, public works; native townships	Group does not have exclusive interest in land; application withdrawn
7	Ngāhuihuinga (Cherry Grove)	Ngāti Hāua (Wai 48, Wai 81, Wai 146)	Scenic reserves	Issue being dealt with outside Tribunal; application withdrawn
8	Ōhura South G4E2 and Piriaka lands	Uri of Tānoa and Te Whiutahi (Wai 764, Wai 1147)	Native reserves, sufficiency	Group does not have exclusive interest in land
9	Ōtoko scenic reserve	Ngāti Hine-o-te-rā, Ngāti Rūwai, and Ngāti Waikarapū (Wai 1107)	Scenic reserves	Vesting of title to be considered part of settlement negotiations
10	Parikino School site	Ngāti Hinearo and Ngāti Tuera (Wai 214, Wai 584, Wai 1143)	Public works	Land in private ownership
11	Puketapu Maunga	Ngāti Hineoneone (Wai 1028)	Crown purchasing, scenic reserves	Site too large, land in national park
12	Puketarata 4G1 workers' dwelling	Ngā Paerangi (Wai 1051)	Public works	Land in private ownership
13	Pūtiki Rifle Range	Te Poho o Matapihi (Wai 999)	Public works	Successful discrete remedy
14	Raketāpāuma 2B1C	Descendants of Ropoama Pohe (Wai 1632)	Railways, public works	Land owned by State-owned enterprise, too complex to pursue as remedy
15	Taringamotu School site	Ngāti Urunumia (Wai 987, Wai 1255), Ngāti Hari and Ngāti Hira (Wai 1097)	Public works	Group does not have exclusive interest in land
16	Taumarunui Hospital site, Te Peka, Titipa urupā	Ngāti Hekeāwai (Wai 1299)	Public works	Too complex to pursue as remedy
17	Tieke block	Tamahaki Council of Hapū and Uenuku Tūwharetoa (Wai 555, Wai 1224)	Waimarino, Crown purchasing	Site too large, application withdrawn
18	Waimarino 4B2 defence lands	Pehi Whānau (Wai 73)	Public works	Site too large

Issues submitted as discrete remedies in Whanganui inquiry district

APPENDIX V

LOCAL ISSUES CASES INVESTIGATED IN THIS REPORT

The table on the following pages lists the local issues cases investigated in this report.

No	Name	Group(s)	Region	Issues addressed
1	Tūwhenua (Taumarunui Aerodrome)	Ngāti Hari and Ngāti Hira (Wai 1097), Ngāti Urunumia (Wai 987, Wai 1255)	Northern	Public works
2	Te Anapungapunga	Ngāti Urunumia (Wai 987, Wai 1255), Ngāti Hari and Ngāti Hira (Wai 1097)	Northern	Māori land legislation
3	Taringamotu School	Ngāti Urunumia (Wai 987, Wai 1255), Ngāti Hari and Ngāti Hira (Wai 1097)	Northern	Public works
4	Taumarunui Hospital	Ngāti Hekeāwai (Wai 1299)	Northern	Public works
3	Te Peka Marae	Ngāti Hekeāwai (Wai 1299); Ngāti Rangitahi (Wai 1064)	Northern	Rating, Māori land legislation
6	King Country Electric Power Board depot	Uri of Tūtemahurangi and Waikura and uri of Te Tarapounamu (Wai 1203), Ngāti Hekeāwai (Wai 1299)	Northern	Public works
7	Ōhura South G4E2	Uri of Tānoa and Te Whiutahi (Wai 764, Wai 1147)	Northern	Public works
8	Other Taumarunui area issues	Te Patutokotoko and Ngāti Heke (Wai 1505)	Northern	Public works
9	The Piriaka puna	Uri of Tānoa and Te Whiutahi (Wai 764, Wai 1147), Ngāti Hinewai (Wai 1191)	Northern	Public works
10	Piriaka School site	Uri of Tānoa and Te Whiutahi (Wai 764, Wai 1147)	Northern	Public works
11	Ōhura South B2B2C2 and the Pukehou Road quarry	Ngāti Manunui (Wai 998), Ngā Uri o Tūtemahurangi and Waikura and Ngā Uri o Te Tarapounamu (Wai 1203)	Northern	Environmental management
12	Ōhākune area issues	Ngāti Rangi (Wai 151, Wai 277, Wai 554, Wai 569, Wai 1250), Te Puāwaitanga Mokopuna Trust, the Elenore Anaru Whānau Trust, Te Tira Taurerewa (Wai 836), Te Uri o Tamakana (Wai 1072, Wai 1073, Wai 1189, Wai 1197)	Central	Public works, environmental management; place names
13	Mangamingi Marae lands	Ngāti Rangi (Wai 151, Wai 277, Wai 554, Wai 569, Wai 1250)	Central	Public works
14	Parinui Native School site	Descendants of Te Hore Nukuraerae (Wai 1594)	Central	Public works
15	Pipiriki School site	Pipiriki Incorporation on behalf of Ngāti Kurawhatia (Wai 428), Tamahaki Council of Hapū and descendants of Uenuku Tūwharetoa (Wai 555, Wai 1224), Gabrielle Whitu and Boy Cribb (Wai 2204)	Central	Public works
16	Manganui-a-te-ao issues	Ngāti Ruakōpiri and Ngāti Tūmānuka (Wai 1072, Wai 1197), Tamahaki Council of Hapū and Uenuku Tūwharetoa (Wai 555, Wai 1224)	Central	Public works

No	Name	Group(s)	Region	Issues addressed
17	Tūrangarere railway reserve land	Descendants of Ropoama Pohe (Wai 1632)	Central	Public works
18	Whangaehu River	Ngāti Rangi (Wai 151, Wai 277, Wai 554, Wai 569, Wai 1250)	Central	Environmental management, waterways, fisheries
19	Ōtoko issues	Ngāti Rūwai, Ngāti Hine-o-te-rā, and Ngāti Waikārapu (Wai 1107)	Southern	Public works, environmental management
20	Taukoro Bush	Ngāti Rūwai, Ngāti Hine-o-te-rā, and Ngāti Waikarapū (Wai 1107)	Southern	Environmental management, land management
21	Ōhotu 6F1	Owners of Ōhotu 6F1 (Wai 1604)	Southern	Public works
22	Koriniti Native School	Ngāti Pāmoana (Wai 180)	Southern	Public works
23	Proposed Ātene Dam	Ngāti Taanewai (Wai 1483), Te Wai Nui a Rua and the descendants of Heeni Mātene and Pōkairangi Ranginui (Wai 2157), Ngāti Hineoneone (Wai 1028), Ngāti Hau (Wai 979)	Southern	Environmental management
24	Parikino School site	Ngāti Hinearo and Ngāti Tuera (Wai 214, Wai 584, Wai 1143)	Southern	Public works
25	Puketarata 4G1 taking	Ngā Paerangi (Wai 1051)	Southern	Public works
26	Kaiwhaiki Quarry	Ngā Paerangi (Wai 1051)	Southern	Public works
27	Taonga tūturu	Te Iwi o Whanganui (Wai 167), Te Whare Ponga Taumatamāhoe Incorporated Society and Te Whare Ponga Whānau Trust (Wai 1393), Ngāti Pāmoana (Wai 180), Ngāti Kōwhaikura (Wai 1073), Uenuku (Wai 1084, Wai 1170, Wai 1202), Ngā Poutama, Ngāti Wākiterangi, Ngāti Uenuku, and the Marumaru, Hīnana, and Waara whānau (Wai 1229), Ngāti Tara (Wai 1261)	Southern	Taonga management
28	Kaitoke Lake and Lake Wiritoa	Hapū of the lower reaches of the Whanganui River and Te Poho o Matapihi Trust (Wai 999)	Southern	Environmental management, waterways, fisheries
29	Two Kai Iwi issues	Ngāti Tamareheroto (Wai 634)	Southern	Public works, land management

APPENDIX VI

TE HORANGAPAI

In this appendix, we set out for use in the Te Rohe Pōtae inquiry material concerning Te Horangapai that was either presented or researched in the Whanganui inquiry.

VI.1 INTRODUCTION

The first aspect of Ngāti Hari and Ngāti Hira's claim relates to the compulsory acquisition of over two acres from Rangitoto Tūhua 52A1 for a gravel pit. Ngāti Hari and Ngāti Hira argue that the original owners received no compensation and point out that the land is no longer used for the reasons for which it was taken.¹ They seek the return of the block and compensation for its taking.² Ngāti Hari and Ngāti Hira say that, if a reserve strip adjacent to the Ōngarue and Taringamotu Rivers is required, then there would be almost no land available for the claimants. They seek compensation for the whole block if land is required for a reserve strip.³

The second aspect of the claim relates to the compulsory sale of Rangitoto Tūhua 52A1. Ngāti Hari and Ngāti Hira broadly submit that the block was alienated as a result of discriminatory legislation. They argue that the method of alienation – the Maori Purposes Act 1950 – was a tool used to deal with 'unproductive Māori land'.⁴ Under such legislation, Māori land became a 'tempting target' for local authorities, because it both established the notion that weed-infested Māori land which appeared to be lying idle was of no concern to its owners and allowed Māori land to be taken and sold without negotiating with the owners.⁵

The Crown did not respond to the claimants' submissions about Rangitoto Tūhua 52A1.

VI.2 TE HORANGAPAI GRAVEL PIT

In January 1921, the Public Works Department took over two acres of Rangitoto Tūhua 52A1 under the Public Works Act 1908 for the purposes of a gravel pit.⁶ Ngāti Hari and Ngāti Hira witnesses Terry Turu and Amelia Kereopa told us that, prior to the taking, one of the shareholders in the block, Mihiata Ngāhinu, had allowed the local council to extract gravel from her land in exchange for assistance with weed control.⁷

We do not know the circumstances that led to the gravel pit taking. However, we do note that it is highly unlikely that the taking would meet the Tribunal's 'in exceptional circumstances, as a last resort, in the national interest' standard for public works takings on Māori land (see section 16.1.2).

In the late 1960s, the Crown considered ‘disposing’ of the former gravel pit.⁸ The reserving of this land became further complicated by the fact that the block was adjacent to the Ōngarue and Taringamotu Rivers. Since 1892, the Crown has been required to reserve a strip of land along any major rivers when it sells land adjoining the waterways. This reserved land remains in Crown ownership, thereby guaranteeing the public both access to and use of river areas.⁹ If the Crown decided to sell the former gravel pit, it was obligated to maintain an esplanade strip of 20 metres alongside the Taringamotu River. With this in mind, the Crown concluded that the residue would be ‘hardly worth selling’ and, as a result, the land remained in Crown ownership.¹⁰

In 1985, The Taumarunui County Council again raised the possibility of removing the former gravel pit from Crown ownership. The assistant county clerk wrote to the commissioner of Crown lands asking if the land could be returned to Māori as part of a compensation package for Māori land taken for the Taumarunui aerodrome (see section 22.2).¹¹ The county council said that this would ‘help mitigate the grievances felt’, referring to the anger that former owners and their descendants felt in the aftermath of the aerodrome taking.¹² The commissioner replied that an inspection of the site would be arranged, with a meeting with the council and a report to follow.¹³ We do not know the outcome of the county council’s inquiries. The discussions for the compensation of the airport taking continued for over a decade, but there does not appear to be any further mention of Rangitoto Tūhua 52A1.¹⁴ The land remains in Crown ownership today.¹⁵

VI.3 ‘UNPRODUCTIVE’ LAND AT TE HORANGAPAI

The second aspect of Ngāti Hari and Ngāti Hira’s claim relates to the alienation of the remaining land under section 34 of the Maori Purposes Act 1950.¹⁶ The Maori Purposes Act was intended to address some of the problems that plagued Māori land. When it passed through Parliament, Ernest Corbett, the Minister of Māori Affairs, explained that the legislation was designed to ‘bring into profitable utilization idle Maori lands’, which ‘have been

said to constitute a burden on the local bodies so far as rates are concerned’ and were ‘weed-infested in many instances’.¹⁷ Section 34 empowered the Māori Land Court to vest Māori land in the Māori Trustee for lease or sale if it was satisfied that:

- ▶ the land was unoccupied; or
- ▶ it was covered in noxious weeds; or
- ▶ rates were owed on the land and a charge had been made; or
- ▶ the owners of the land had ‘neglected to farm or manage the land diligently’ and it was not being used in the best interests of the owners or in the public interest; or
- ▶ the owner of the land could not be found.

Every court order had to be approved by the Minister of Māori Affairs before it had effect and no land could be sold if it was capable of being leased and farmed.¹⁸

In accordance with section 34, the Taumarunui County Council applied to the Māori Land Court to have the remaining 10 acres of Rangitoto Tūhua 52A1 vested in the Māori Trustee in 1953. At the hearing, it appears that the court agreed to vest the land unless any interested person had called a meeting for the purpose of a sale.¹⁹ However, the court minutes do not indicate whether any of the 63 owners were physically present when this matter was discussed.²⁰ The court approved the county council’s application, ruling that the block was unoccupied, covered in noxious weeds, and neither farmed nor managed.²¹ Rangitoto Tūhua 52A1 was vested in the Māori Trustee and, two years later, was sold to an orchardist from Ōkahukura.²² Today, the land remains in private ownership.²³

VI.4 CONCLUSIONS

The Ngāi Tahu Tribunal considered section 34 of the Maori Purposes Act 1950 in the *Ngai Tahu Ancillary Claims Report 1995*. That Tribunal noted that there was no comparable law that allowed agents to sell general land owing to noxious weeds and, on that basis, it found the legislation to be in breach of article 3 of the Treaty of Waitangi.²⁴ We endorse the findings of the Ngāi Tahu Tribunal. Section 34 enabled the block to be sold because of noxious weeds, with no regard for the owners’ wishes.

This is directly at odds with the Treaty. However, we cannot, in good faith, recommend the return of the former gravel pit land and compensation for the alienation of the remaining 10 acres to Ngāti Hari and Ngāti Hira alone, when there may be other claimant groups with interests in the block.

Notes

1. Submission 3.3.83, pp17–18
2. Ibid, p18; doc J14 (Turu), p9
3. Submission 3.3.83, pp18–19
4. Ibid, p17
5. Ibid, pp17–18
6. 'Land Taken for the Purposes of a Gravel-pit', 21 January 1921, *New Zealand Gazette*, 1921, no7, p190 (doc J14 (Turu), p[17]); 'Notice of Intention to Take Land', 8 November 1920, *New Zealand Gazette*, 1920, no92, p3062
7. Submission 3.3.83, p17; doc J14 (Turu), p6; doc J1 (Kereopa), p8
8. Document J14 (Turu), pp[28]–[29]
9. Waitangi Tribunal, *The Whanganui River Report* (Wellington: Legislation Direct, 1999), pp22–23. Similar provisions are still in force: under the Resource Management Act 1991, esplanade reserves and strips must be created when land is subdivided; under the Conservation Act 1987, marginal strips will be created when land is alienated by the Crown.
10. Document J14 (Turu), pp[28]–[29]
11. Ibid, pp[26]–[27]
12. Ibid
13. Ibid, pp[28]–[29]
14. Document A114 (Young and Belgrave), pp160–166
15. Document J14 (Turu), p[30]
16. Submission 3.3.83, p17
17. Ernest Corbett, 29 November 1950, NZPD, 1950, vol 293, p 4722
18. Waitangi Tribunal, *The Ngai Tahu Ancillary Claims Report 1995* (Wellington: Brooker's Ltd, 1995), pp258–259; Maori Purposes Act 1950, ss36, 39(1)
19. Otorohanga Māori Land Court, minute book 78, 17 August 1953, fol 202
20. Ibid
21. Document J14 (Turu), p[18]
22. Ibid, p[19]
23. Ibid, pp[20]–[22]
24. Waitangi Tribunal, *Ngai Tahu Ancillary Claims*, pp258, 261

APPENDIX VII

LIST OF URUPĀ AND WĀHI TAPU COMPULSORILY TAKEN FOR SCENERY PRESERVATION

See chapter 16 for more information on all of these wāhi tapu and urupā, except the Ōhotu urupā.

VII.1 WĀHI TAPU AND URUPĀ AT MANGAPĀPAPA

Mangapāpapa is a wāhi tapu where peace was made between Te Kere and Tōpine Te Mamaku, and where there are also several urupā. It became part of the Whanganui River Trust Public Domain.¹

VII.2 URUPĀ ON AHUAHU B

Two acres of Ahuahū B was set aside as an urupā in 1912 with the remainder of the 50-acre block taken for scenery preservation as part of Riripō Scenic Reserve. Evidence given to the 1916–17 Whanganui River Reserves Commission asking for the urupā's return, and the commissioners' recommendation that it be cut out and returned to former owners, suggests that it was not set aside in 1912.²

VII.3 WĀHI TAPU AND URUPĀ AT OTEAPU ON WAHARANGI 2

Originally taken in 1911 for scenery preservation, this wāhi tapu and burial site became part of the Waharangi Scenic Reserve. The Whanganui River Reserves Commission recommended the land be cut out and restored to Māori.³

VII.4 PUKETAPU MAUNGA AND URUPĀ ON TAUAKIRĀ 2N

The Whanganui River once flowed over the flat land surrounding Puketapu, the maunga that Ngāti Hineoneone identify with. Although there are at least two urupā on Tauakirā 2N the land became part of the Atene Scenic Reserve.⁴

VII.5 PUKEMANU MAUNGA AND URUPĀ ON KŌIRO 1

Pukemanu and an urupā were included in the Kōiro Scenic Reserve (reserve 92) in 1914. Hakiha Tāwhiao gave evidence to the Wanganui River Reserves Commission that he thought the reserve's boundary had gone too far from the riverbank in encompassing Pukemanu. He did not want his maunga or the urupā to be part of the reserve. Although the commissioners recommended that 17 of the 36 acres be returned to the former owners, they did not specifically mention the urupā.⁵

VII.6 URUPĀ ON PAETAWA NORTH

An urupā of one acre two roods. When the land was taken in 1911 as part of the Paetawa Scenic Reserve, the urupā was included as Paetawa Cemetery Reserve. A year later, the Crown granted Māori the right to use the urupā as a burial ground.⁶

VII.7 URUPĀ AND PAPAKĀINGA ON ŌHOTU 5

Described by Tiemi Te Wiki as a burial block and papakāinga, in 1912 it became part of Galatea Pā Scenic Reserve. The Wanganui River Reserves Commission recommended that three areas be cut out and returned to the former owners, but did not refer to the presence of urupā or papakāinga.⁷

VII.8 KĀINGA AND URUPĀ AT TĪEKE IN WAIMARINO 5

Tīeke is an important kāinga 20 kilometres upriver from Pipiriki. Originally, it was a fighting pā on a hill above the current kāinga, and there are several urupā including Ōkirihaui and Wairere. It became part of the Whanganui River Trust Public Domain.⁸

VII.9 URUPĀ 'PUKETAPU' ON TAUMATAMĀHOE

Puketapu urupā is near the site of the second John Coull Hut which was built by Lands and Survey in 1981. A pā belonging to Te Kere Ngātaiērua was also in the vicinity.⁹

VII.10 WĀHI TAPU, WAIORA SPRING, NEAR PĪPĪRIKI

Said to be a 20-minute walk from Alexander Hatrick's hotel at Pipiriki, the springs were taken for scenery preservation in 1907, allowing Hatrick to develop them as a tourist attraction.¹⁰

Notes

1. See 'Land set apart as a Public Domain under "The Wanganui River Trust Act, 1891"', 19 December 1892, *New Zealand Gazette*, 1892, no 101, p1724; doc E6 (Haitana), p4; doc E9 (Haitana), pp 4–10; submission 3.3.18, p3; submission 3.3.85, pp160–163; submission 3.3.157, p3
2. See 'Land in Blocks VI, XI, and XV, Tauakira, and III and VII, Waipākura Survey Districts, taken for Scenic Purposes', 24 January 1912, *New Zealand Gazette*, 1912, no 8, p406; 'Granting the Right to Natives to use Ancestral Burial-grounds on Scenic Reserves in Te Tuhi No 1 and Ahuahu B Blocks', 8 August 1912, *New Zealand Gazette*, 1912, no 68, pp2507–2508; doc A34 (Hodge), pp43–44, 100, 110, 125–126, 141; doc A102 (Edwards), p198; doc A37 (Berghan), pp13, 18; claim 1.5.5, p320; submission 3.3.72, pp24–25
3. See 'Land taken for the Preservation of Scenery in Blocks XI, XII, and XIV, Rarete Survey District', 12 August 1911, *New Zealand Gazette*, 1911, no 67, pp2551–2552; doc A34 (Hodge), pp39, 70, 104, 125, 140–141; claim 1.5.5, p311
4. See 'Land taken for the Preservation of Scenery in Block III, Waipākura Survey District, Wanganui County', 18 May 1911, *New Zealand Gazette*, 1911, no 44, p1751; 'Land in Blocks VI, XI, and XV, Tauakira, and III and VII, Waipākura Survey Districts, taken for Scenic Purposes', 24 January 1912, *New Zealand Gazette*, 1912, no 8, p406; 'Land taken for Scenic Purposes in Block III, Waipākura Survey District, and for Road Access thereto', 8 September 1914, *New Zealand Gazette*, 1914, no 100, pp3490–3491; doc A34 (Hodge), pp86, 89–90, 101–102, 127, 141; doc C21 (week 3 site visit booklet), [p34]; claim 1.5.5, pp316, 321; submission 3.3.6, p13; submission 3.3.90, p24
5. See 'Land in Blocks IV, VII, and VIII, Hēao Survey District, taken for Scenic Purposes', 26 February 1914, *New Zealand Gazette*, 1914, no 16, p710; doc A34 (Hodge), pp55–56, 109–110, 123; doc A108 (Young and Belgrave), p135
6. See 'Land taken for the Preservation of Scenery in Blocks VI and VII, Waipākura Survey District, Waitōtara County', 23 May 1911, *New Zealand Gazette*, 1911, no 45, pp1790–1791; 'Granting the Right to Natives to use Ancestral Burial-grounds on Portion of a Scenic Reserve in the Paetawa North Block, Wellington Land District', 26 August 1912, *New Zealand Gazette*, 1912, no 70, p2611; doc A34 (Hodge), pp52, 127; claim 1.5.5, p322
7. See 'Land in Blocks VI, XI, and XV, Tauakira, and III and VII, Waipākura Survey Districts, taken for Scenic Purposes', 24 January 1912, *New Zealand Gazette*, 1912, no 8, p406; doc A34 (Hodge),

pp 86–87, 89; doc A51 (Walzl), pp 204–206; submission 3.3.6, pp 15, 24; submission 3.3.90, pp 24–25

8. See ‘Lands set aside as a Public Domain under “The Wanganui River Trust Act, 1891”’, 19 December 1892, *New Zealand Gazette*, 1892, no 101, p 1724; doc A34 (Hodge), pp 123, 131, 141–142; doc A42 (Oliver), pp 110–119; doc E1 (Dixon), pp 9–11; doc E4 (Cribb), pp 9–11; doc E6 (Haitana), pp 3–4; doc E7 (Bristol), pp 5–7; doc E8 (Ponga), pp 5–11; claim 1.5.5, pp 309–310; submission 3.3.85, pp 18–19, 57–80; submission 3.3.89, pp 31–36; submission 3.3.109, pp 7–11; submission 3.3.157, pp 1–6; submission 3.3.186

9. See doc A34 (Hodge), pp 179–180; doc A42 (Oliver), pp 75–76, 114–115; doc E6 (Haitana), pp 2–3; submission 3.3.6, p 25; submission 3.3.18, p 7; submission 3.3.58, p 74; submission 3.3.111, p 11; submission 3.3.143, p 33; submission 3.3.157, pp 2–7; submission 3.3.191, pp 14–15; submission 3.3.85, pp 20, 152–156, 188; submission 3.3.89, pp 31–36

10. See ‘Native Land in Rarete Survey District taken for Scenery-preservation Purposes’, 27 May 1907, *New Zealand Gazette*, 1907, no 47, pp 1656–1657; doc A51 (Walzl), pp 197–199; doc A39 (Boulton), pp 175–181; doc E16 (Pucher), pp 9–10; doc E16 (Pucher supporting documents), app 8; submission 3.3.20, p 5; submission 3.3.57, p 81; submission 3.3.85, pp 170–171; submission 3.3.87, pp 3–4, 6.

APPENDIX VIII

SELECT RECORD OF INQUIRY

SELECT RECORD OF PROCEEDINGS

1.1 Statements

1.1.1 *Statements of claim*

1.1.9 Howard Brooks and others, statement of claim on behalf of Ngāti Pāmoana concerning Koroniti school site, 27 November 1990

1.1.2 *Final statements of claim*

1.2.1

(b) Cedric Powhiriwhiri Tanoa and others, and Michael John Le Gros and others, statement of claim, 13 March 2006

1.2.3

(b) Kenneth Joseph Clarke and Frances Merikanara Huwyler, final statement of claim on behalf of the descendants of Ngā Paerangi, 13 March 2006

1.2.4

(b) Robert Waretini Tukorehu Herbert, final amended statement of claim for Wai 1064: Ngāti Rangatahi, 6 April 2006

1.2.9

(a) Inuhaere Rupe, amended statement of claim of behalf of Ngāti Hekeawai, 27 January 2006

1.2.10 Te Kenehi Mair, first amended statement of claim for Tupoho, 26 August 2005

1.2.16 Statement of claim for Wai 555 – Tamahaki, 30 August 2005

(b) Final specific statement of claim for Tamahaki, 13 March 2006

1.2.17 Manukāwhaki Taitoko Metekīngi and John Murray Tauri, first amended statement of claim, 30 August 2005

1.2.18

(b) Meterei Tinirau, final amended statement of claim for Wai 759 on behalf of the Āti hau–Whanganui Māori Land Incorporation, 13 March 2006

1.2.28 Rangi Bristol and others, amended statement of claim for Wai 1202, 2 September 2005

1.2.29 Raymond Rapana and Rangi Bristol and others, amended statement of claim for Wai 954, Wai 1084, and Wai 1170, 5 September 2005

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1.2.30

(b) Mark Tumanako Gray and others, consolidated statement of claim for Ngāti Rangī, 20 March 2006

1.2.32

(b) Robert Wayne Cribb and Marina Ruuma Williams, final specific statement of claim for the descendants of Uenuku Tūwharetoa, 13 March 2006

1.2.36

(a) Kahukura Taiaroa and others, final amended statement of claim for Wai 954, Wai 1072, Wai 1073, Wai 1189, Wai 1192, and Wai 1197, 14 March 2006

1.2.37

(a) Hikaia Amohia and others, amended statement of claim, March 2006

1.2.45 Te Aroha Ruru Waitai, final particularised statement of claim on behalf of Ngāti Tamareheroto, 7 November 2006

1.2.53 Kahukura Taiaroa, amended statement of claim, 14 May 2009

1.2.54 Geraldine Taurerewa, amended statement of claim, 15 May 2009

1.2.55 Jenny Tamakehu, amended statement of claim on behalf of Ngāti Taanewai of Matahiwi, 1 June 2009

1.2.60 Gabrielle Theresa Whitu and Robert Wayne Cribb, statement of claim, 1 September 2008

1.2.62 Albion Manawaiti Para Bell, statement of claim for Te Patutokotoko and Ngāti Heke, 27 August 2008

1.1.3 Statements of response

1.3.3 Mark Hickford, Yvette Chtel, and Geetha Kumarasingham (Crown) final statement of response, 14 August 2006

(b) Supporting documents (Archives New Zealand, Wellington)

pp 112–114: Sievwright and Stout to John Bryce, Minister for Native Affairs, 28 September 1880, pp 1–3, ACIH 16046 MA13/22/14

HE WHIRITAUNOKA: THE WHANGANUI LAND REPORT

pp 115–123: Sievwright and Stout to John Bryce, concerning Land Trust Te Keepa, 30 September 1880, pp 1–9, ACIH 16046 MA 13/22/14

p 124: Ihaka te Raro to Bryce, Native Minister, 8 October 1880, ACIH 16046 MA13/22/14

pp 127, 129–130, 132: James Booth to under-secretary, Native Office, 5 January 1881, pp 1–4, ACIH 16046 MA13/22/14

p 210: Judge O'Brien, minute book 11, 1 March 1886, fol 252 (Waimarino)

1.1.4 Statements of issues

1.4.2 Final, 10 November 2006

1.1.5 Final generic pleadings

1.5.5 Final, 10 March 2006

1.2 Tribunal memoranda, directions, and decisions**1.2.1 Concerning judicial conferences and hearings**

2.3.46 Waterways issues

2.3.90 Crown hearings and other matters

2.3.103 Crown closing submissions and other matters

1.2.2 Concerning other matters

2.5.30 Consolidation and aggregation of further claims in the Whanganui district inquiry

1.3 Submissions and memoranda of parties**1.3.1 Pre-hearing stage, including judicial conferences**

3.1.175 David Soper and others (Crown) responding to landbanking issues, 2 June 2006

3.1.298 JP Ferguson concerning identification of waterways within Whanganui inquiry district, 31 May 2007

1.3.2 Hearing stage

3.2.92 Spencer Webster and James Fong (Wai 214, Wai 584, and Wai 1143) concerning Parikino School and T Bennion responses, 8 November 2007

3.2.188 Peter Johnston and Bryan Gilling (Wai 1051) concerning pre-negotiation settlement of issues relating to the river land and housing at Kaiwhaiki, 27 February 2008

3.2.226 Mark McGhie (Wai 1072, Wai 1073, Wai 1189, Wai 1191, Wai 1197) concerning questions of clarification for T Hāwira, 27 March 2008

3.2.320 Cameron Tyson and Geetha Kumarasingham (Crown) concerning Pipiriki School, 28 August 2008

3.2.329 Mark McGhie (Wai 1072, Wai 1073, Wai 1189, Wai 1191, Wai 1197) concerning questions for Brent Parker, 10 September 2008

3.2.367 Spencer Webster (Wai 214, Wai 584, Wai 1143) application by Ngāti Hinearō and Ngāti Tuera for the return of Parikino School, 19 October 2008

3.2.388 Phillip Green (Tribunal counsel) concerning hot-tubbing with attached appendixes, 21 November 2008

3.2.394 Cameron Tyson and Geetha Kumarasingham (Crown) in response to the application for the return of Parikino School, 11 December 2008

3.2.397 Cameron Tyson and Jo Mildenhall (Crown) concerning Crown land at Tanga Hill, Piriaka, and request for extension to file information concerning Ōhura South N2E3G3 lot 6, 12 December 2008

3.2.417 Mark McGhie (Wai 1072, Wai 1073, Wai 1189, Wai 1191, Wai 1197) concerning comments on the summary of the Ngāti Rangī Report (doc A149(b)), 20 January 2009

3.2.443 Mark McGhie (Wai 1604) seeking leave to participate in the inquiry, 19 February 2009

3.2.448 L Poutu and P Walker (Wai 151, Wai 277, Wai 554, Wai 569, Wai 1250) concerning additional evidence, 25 February 2009

3.2.461 Cameron Tyson and Geetha Kumarasingham (Crown) concerning Parikino School, 18 March 2009

3.2.478 Maui Solomon (Wai 1064, Wai 1097) concerning land block research, 27 March 2009

3.2.488 Cameron Tyson and Geetha Kumarasingham (Crown) concerning Parikino School, 8 April 2009

3.2.519 Peter Johnston, Campbell Duncan, and Jo-Ella Sarich (Wai 1051) concerning small discrete remedies, 30 April 2009

3.2.520 Peter Johnston, Campbell Duncan, and Jo-Ella Sarich (Wai 764, Wai 1147) concerning small discrete remedies, 30 April 2009

3.2.523 Moana Tūwhare and Tony Shepherd (Wai 1107) applying for a small discrete remedy, 30 April 2009

3.2.527 Spencer Webster (Wai 48, Wai 81, Wai 146) concerning application for discrete remedies by Ngāti Hāua, 30 April 2009

3.2.542 Moana Sinclair (Wai 1632) application for a small discrete remedy, 1 May 2009

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3.2.621 Peter Johnston, Campbell Duncan, and Bryan Gilling (Wai 764, Wai 998, Wai 1051, Wai 1147, Wai 1203) concerning Agreed Historian Position Statement, 19 June 2009

3.2.623 Mark McGhie (Wai 1191) concerning discrete remedy application for Ōhura South G4E2 and Piriaka lands, 23 June 2009

3.2.719 Josey Lang (MIR 6050, 5939) concerning new claims to the Whanganui inquiry, 24 November 2009

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- 3.3.10** J P Ferguson (Wai 167) opening submissions for the Whanganui River Māori Trust Board, 12 September 2007
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- 3.3.38** Yashveen Singh (Wai 1299) opening submissions for Ngāti Hekeawai, 20 October 2008
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- 3.3.53** Thomas Bennion (joint submissions) generic closing submissions on Whanganui vested lands, 6 September 2009
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3.3.59 Aiden Warren (joint submissions) generic closing submissions on Māori land development and administration, 9 September 2009

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6.2.5 Waitangi Tribunal, 'Agreed Historian Position Statement on Native Land Court Issues – March, April and May 2009', 8 May 2009

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p 20: Record sheet, Ahuahu, block order files, WH1, Aotea Māori Land Court

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pp 1247–1250: 'Agreement between William Rakeipoho Bennett and Maoriland Dairy and Produce Co Ltd', 12 June 1931, alienations file

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p 2298: P Sheridan to Native Minister, file note, 7 July 1903, ACIH 16046 MA 13/93/56d
p 2352: DD McLean, secretary, Ohotu Lessees Association, to T W Fisher, under-secretary, Native Department, 12 April 1912, ACIH 16036 MA W2459 5/2/4, pt 1
pp 2360–2364: Fisher, under-secretary, Native Affairs, to W A Veitch, ‘Ohotu Blocks’, 6 March 1912, ACIH 16036 MA W2459 5/2/4, pt 1
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A54 Craig Innes, ‘Whanganui Gap-Filling Narratives’ (commissioned research report, Wellington: Waitangi Tribunal, 2004)

- (i) Supporting documents: Raetihi
pp 146–150: Record sheet: Raetihi, pp 1–5, Aotea Māori Land Court, Whanganui
p 157: Partition order: Raetihi 3B1, 13 March 1899, Aotea Māori Land Court, Whanganui
p 195: Plan K34233, plan of sections in block VII Makotuku survey district and part Raetihi Farm Settlement, May 1951, Land Information New Zealand
- (r) Documents presented by Mark McGhie for cross-examination of the Raetihi block summary
 Attachment E: Deputy registrar, order vesting Raetihi 4B sections 15, 17, 18, 19, in the beneficial owners, 10 October 1960
- (s) Craig Innes, reply to memorandum of appointed counsel seeking leave to cross-examine C Innes
- (u) Craig Innes, post-hearing evidence, 23 February 2009
- (v) Craig Innes, response to questions concerning Raetihi block, 24 March 2009

(w) Craig Innes, post-hearing evidence concerning takings around Maungarongo marae

A55 Peter Clayworth, ‘“Located on the Precipices and Pinnacles”: A Report on the Waimarino Non-Seller Blocks and Seller Reserves’ (commissioned research report, Wellington: Waitangi Tribunal, 2004)

- (a) Peter Clayworth, ‘Summary of “Located on the Precipices and Pinnacles”: A Report on the Waimarino Non-Seller Blocks and Seller Reserves’’, February 2008
- (b) Peter Clayworth, errata for ‘“Located on the Precipices and Pinnacles”: A Report on the Waimarino Non-Seller Blocks and Seller Reserves’, not dated
- (h) Supporting documents: Waimarino 3
p [7]: Certificate of title, 227/90, 1 June 1914, WH 388 block order files, Aotea Māori Land Court, Whanganui
- (i) Supporting documents: Waimarino general
p [32]: Tuao to Lewis, under-secretary, and Butler, commissioner for the purchase of Waimarino and Papatupu block, 2 August 1887, ACIH 16036 MA1 1924/202 vol 1, Archives New Zealand, Wellington
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- (j) Supporting documents: scenery preservation
- (k) Supporting documents: Waimarino information from Philip Cleaver
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- (m) Supporting documents: Waimarino B and Kakahi Township land
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- (q) Supporting documents: Waimarino 3
- (v) Supporting documents: Waimarino F and 8 (Archives New Zealand, Wellington)

- p 16*: Tukere H Te Anga, resolution concerning Waimarino F, not dated, AEGX 19124 MLC-WG W1645/129, 3/1792
- pp [17]–[18]*: Tukere H Te Anga, chairman, ‘Minutes of the meeting of the owners of Waimarino F held at Tokaanu’, 14 October 1925, AEGX 19124 MLC-WG W1645/129, 3/1792
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- p [79]*: Native Minister, ‘Offer by the Crown to Purchase Native Land’, 25 August 1925, AEGX 19124 MLC-WG W1645/129, 3/1792

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(a) Revised version of ‘Murimotu and Rangipō-Waiū 1860–2000’ with amended footnotes (commissioned research report, Wellington: Waitangi Tribunal, 2006)

A57 Philip Cleaver, ‘The Taking of Maori Land for Public Works in the Whanganui Inquiry District: 1850–2000’ (commissioned research report, Wellington: Waitangi Tribunal, 2004)

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A59 Steven Oliver and Tim Shoebridge, ‘The Alienation of Maori Land in the Ohura South Block, Part One: c1886–1901’ (commissioned research report, Wellington: Waitangi Tribunal, 2004)

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(e) Cathy Marr, post-hearing answers to written questions, June 2008

A61 Kathryn Rose, ‘Whanganui Maori and the Crown: Socio-Economic Issues’ (commissioned research report, Wellington: Crown Forestry Rental Trust, 2004)

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- (l) Kathryn Rose, response to written questions of clarification, March 2004
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Page 1370: Winstone Pulp International pulp mill discharge, Whangaehu River

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Photograph by Duane Wilkins; reproduced courtesy of Duane Wilkins

Page 1388: Culvert next to Parapara Road

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Photograph by unknown (Alexander Turnbull Library, James Cowan collection, ½-005558-F)

Page 1393: Hongi line in front of Te Āraiteuru Pā

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Page 1399: Girls playing rugby outside Parikino School

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Page 1403: Whanganui District Native War Memorial (Moutoa Gardens)

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Page 1406: Te Mata o Hoturoa at the Whanganui Regional Museum

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Page 1413: Lake Wairitoa

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Page 1418: Kai Iwi beach and the Mōwhānau Stream

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