

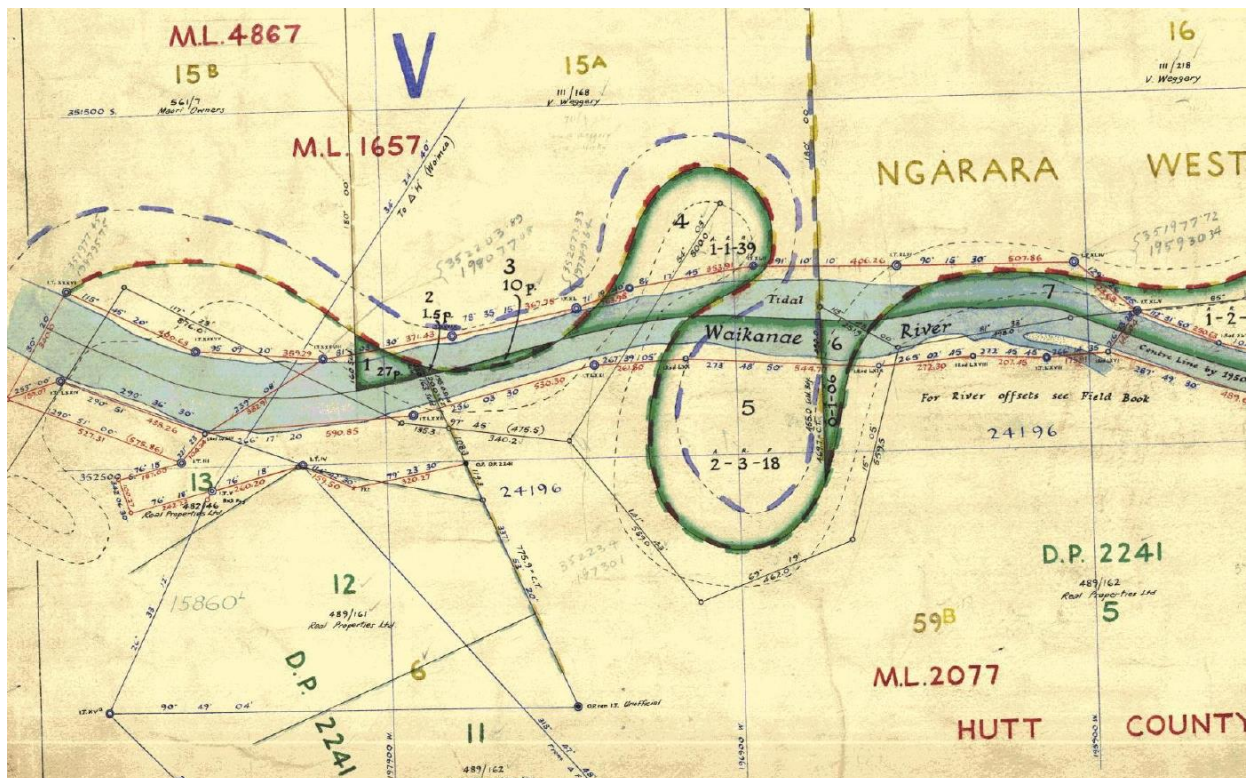
Te Atiawa/Ngati Awa ki Kapiti - Inland Waterways: Ownership and Control



FISHING FOR WHITEBAIT IN THE WAIKANAЕ RIVER, WELLINGTON.

A native woman setting a net.

—Staff Photographer.



Ross Webb

A report commissioned by the Waitangi Tribunal for the Porirua ki Manawatū

District Inquiry (Wai 2200) Research Programme

September 2018

Cover Image: 'A native woman setting a net' on the Waikanae river, *Auckland Weekly News*, 16 October 1924 Sir George Grey Special Collections, Auckland Libraries, AWNS-19241016-42-9; Wellington Plan DP 15859 (Source: Quick maps)

The Author

Ross Webb is a Senior Research Analyst at the Waitangi Tribunal Unit and holds a Masters of Arts in History from the University of Auckland. Ross has been employed at the Unit since 2015. In this time, he has also presented evidence in the Te Paparahi o Te Raki Inquiry (Wai 1040) on rural rivers, environmental management and the Resource Management Act 1991. More recently, Ross has completed a report for the Military Veterans Inquiry (Wai 2500), entitled 'Equality and Autonomy: An Overview of Maori Military Service for the Crown, c1899-1945'. Ross has also worked as a research assistant in the Porirua ki Manawatu Inquiry (Wai 2200). Before working at the Tribunal Unit, Ross completed an MA Thesis in History at the University of Auckland which explored the lives of men and women who worked in New Zealand's freezing works between 1973 and 1994. Ross has published historical articles in the *Australasian Journal of American Studies* and the *New Zealand Labour History Project Bulletin*. He is also a member of New Zealand Historical Association, the Professional Historians Association New Zealand and the Labour History Project. Prior to working at the Tribunal, Ross has worked as a researcher and a teaching assistant.

Acknowledgements

I would like to thank the following people for their help in the production of this report: Suzanne Woodley, Cathy Marr, Emma Kelly, Tui MacDonald and Craig Innes.

Contents

| | |
|---|-----------|
| Introduction | 1 |
| Chapter One:..... | 11 |
| Te Atiawa/Ngati Awa ki Kapiti Ownership and Control of Waterways, and Environmental Change | 11 |
| 1.1 Introduction..... | 11 |
| 1.2 Te Atiawa/Ngati Awa ki Kapiti ‘ownership’ and control of waterways and waterway resources 12 | |
| 1.3 New forms of Ownership and Control and resulting Environmental change..... | 15 |
| Chapter Two: | 21 |
| Settlement and New Forms of Legal Ownership and Control and Inland Waterways: the Waikanae river | 21 |
| 2.1 Introduction..... | 21 |
| 2.2 Common law assumptions and waterway ownership..... | 23 |
| 2.3 Land ownership adjoining the Waikanae river and other waterways..... | 25 |
| 2.4 Implications for Te Atiawa/Ngati Awa ki Kapiti of new forms of ownership..... | 26 |
| 2.5 Questions about river boundaries and legal title in the mid-1930s..... | 30 |
| 2.6 The upper reaches of the Waikanae river tributaries and Reikorangi area..... | 34 |
| Chapter Three | 36 |
| The Management and Control of the Waikanae river: Flood Protection, Soil Conservation, and Compulsory Takings..... | 36 |
| 3.1 Introduction..... | 36 |
| 3.2 Early twentieth-century concerns about flood damage..... | 36 |
| 3.3 Soil Conservation and river control, 1941-1968..... | 44 |
| 3.4 Compulsory takings for soil conservation..... | 49 |
| 3.4.1 Ngarara West A3C | 50 |
| 3.4.2 Ngarara West A21D..... | 52 |
| 3.4.3 Ngarara West A22A1 and A22A2 | 52 |
| 3.5 Further areas along the Waikanae river acquired as reserves | 54 |
| Chapter Four..... | 56 |
| The Waikanae river Mouth and Estuary..... | 56 |
| 4.1 Early application of common law assumptions..... | 56 |
| 4.2 The Waikanae Land Company purchase and water rights application | 60 |

| | | |
|--|---|-----------|
| 4.3 | Crown purchase of River mouth and estuary | 64 |
| Chapter Five..... | | 68 |
| Other waterways of significance to Te Atiawa/Ngati awa ki Kapiti..... | | 68 |
| 5.1 | Waimeha (Waimea) river and the Waimeha and Waimanu lagoons..... | 69 |
| 5.2 | Pirikawau springs..... | 71 |
| 5.3 | Lakes Totara and Kawhakahia..... | 74 |
| Summary and Concluding Remarks | | 76 |
| Bibliography | | 79 |
| | Archives New Zealand..... | 79 |
| | Alexander Turnbull | 82 |
| | Wellington City Council Archives..... | 83 |
| | Kapiti Coast District Council Archives..... | 83 |

Table of Figures

| | |
|--|----|
| Figure 1 ‘River scene at Waikanae, New Zealand’, painted by Charles Barraud, 1852. | 11 |
| Figure 2 ‘A native woman setting a net’, Auckland Weekly News, 16 October 1924..... | 14 |
| Figure 3 Wellington and Manawatu Railway Company Ltd. Waikanae [ca 1890s]..... | 17 |
| Figure 4 Wellington Plan ML 1491 Sheet 1 (Source: Quick map) | 22 |
| Figure 5 Wellington Plan DP 3432 (See Quickmaps)..... | 28 |
| Figure 6 Wellington plan ML 4075 (Source: Quickmaps)..... | 31 |
| Figure 7 Wellington Plan DP 15859 (Source: Quick maps)..... | 33 |
| Figure 8 Wellington Plan SO 13529 (Source: Quickmaps) | 35 |
| Figure 9 Petition from a number of landowners, most of whom were Maori, 1913. | 39 |
| Figure 10 ‘Waikanae river on the rampage’ in 1923 | 43 |
| Figure 11 Maori land acquired for soil conservation along the Waikanae river. | 49 |
| Figure 12 Wellington Plan SO 24197 (Source: Quick Map) | 50 |
| Figure 13 Wellington Plan SO 24520, (Source: Quick Map) | 54 |
| Figure 14 Wellington Plan SO 15982 (Source: Quickmaps) | 55 |
| Figure 15 Wellington Plan ML 4533 (Source: Quick maps) | 57 |
| Figure 16 Proposed Road access to a Fishermen's reserve at the Waikanae river..... | 58 |
| Figure 17 The Waikanae Land Company's Certificate of Title Plan..... | 61 |
| Figure 18 Waikanae river Mouth..... | 66 |
| Figure 19 This 1872 Surveyors Map..... | 68 |
| Figure 20 Details from ‘Part of course of the Waikanae river showing site of Pa-o-toata’ | 73 |
| Figure 21 Lakes Totara and Kawhakahia..... | 75 |

Introduction

This report has been commissioned by the Waitangi Tribunal for the Porirua ki Manawatu District Inquiry (Wai 2200). Its purpose is to provide targeted research on what the documentary archival record reveals about ownership and control of the rivers and waterways of importance to Te Atiawa/Ngati Awa ki Kapiti over time. On 12 April 2018, Presiding Officer Deputy Chief Judge Fox issued a direction that, having received advice from the Chief Historian on an identified gap in the Te Atiawa/Ngati Awa ki Kapiti casebook, additional research on aspects of ownership and control of rivers and waterways was required as a matter of priority.¹ In addition, the reports on ownership and control of waterways would be produced in two separate parts to assist with the inquiry timetable. This is the first of these reports and focuses particularly on rivers and waterways of importance to Te Atiawa/Ngati Awa ki Kapiti. The second report concerns waterway ownership and control in the wider inquiry district. The commission for this report requires an analysis of what the documentary record reveals over time for the following where this is not already covered in the district wide environmental reports prepared for this inquiry:

- a) Crown and Maori understandings and assumptions concerning the assertions of ownership and control of river and lake beds, estuaries, springs and other inland waterways identified as of importance to Te Atiawa/Ngati Awa ki Kapiti, particularly the Waikanae river and the Pirikawau (or Parikawau) spring;
- b) The extent to which common law presumptions concerning ownership and control of river beds, springs, estuaries, lakes and other waterways and ground water ownership (such as *ad medium filum aquae* riparian rights) were applied to the waterways of importance to Te Atiawa/Ngati Awa ki Kapiti in this district and the extent to which these changed over time;
- c) The extent to which legislative provisions relevant to navigable rivers (such as the Coal Mines Act 1903) were applied to rivers and waterways of importance to Te Atiawa/Ngati Awa ki Kapiti in this district and the extent to which this changed over time;
- d) Mechanisms by which Te Atiawa/Ngati Awa ki Kapiti allegedly lost ownership and control of waterways in the inquiry district, including by public works takings, destruction or loss from infrastructure development, roads along river banks, rights to take shingle/gravel, land purchasing and partitioning where this is not already covered in commissioned reports for this inquiry;
- e) Te Atiawa/Ngati Awa ki Kapiti responses or protests to Crown and local authority assertions of rights of control and ownership of waterways (or beds of waterways) in this inquiry district;
- f) The impacts for Te Atiawa/Ngati Awa ki Kapiti of the application of common law and/or legislative presumptions to waterways of importance to them in this district for the continued exercise of their customary rights in fisheries and other waterways resources;

¹ Wai 2200 #2.5.175

g) The application of common law and/or legislative provisions concerning the ownership and control of the Pirikawau spring and the impacts for Te Atiawa/Ngati Awa ki Kapiti, including the circumstances of the apparent destruction of the spring for the construction of a road or rail bridge over the Waikanae river sometime between the mid-1880s and early 1900s, and the Te Atiawa/Ngati Awa ki Kapiti participation in and response to that decision; and

h) The impacts over time for Te Atiawa/Ngati Awa ki Kapiti of the application of common law and/or legislative presumptions concerning ownership and control of their waterways of importance in this inquiry district, including rivers, lakes, estuaries, springs and other inland waterways.²

It is important to note that the commission requires additional reporting on issues of ownership and control of waterways and not to duplicate existing coverage. The research and scope of this project is discussed later in this introduction.

Inland Waterways of importance to Te Atiawa/Ngati Awa ki Kapiti

The commission requires a consideration of 'inland waterways of importance to Te Atiawa/Ngati Awa ki Kapiti'. In considering waterways of significance to Te Atiawa/Ngati Awa ki Kapiti, this report relies heavily on the *Porirua ki Manawatu Inquiry Inland Waterways Cultural Perspectives Technical Report* by Associate Professor Huhana Smith and the relevant claims in the inquiry. Smith provides an overview of inland waterways of significance and their cultural values to Te Atiawa/Ngati Awa ki Kapiti.³ The waterways listed in this report include:

Te Atiawa ki Whakarongotai inland waterways of significance:

- Mangaone in Te Horo
- Ngawhakangutu – north around Peka Peka
- Kukuāuaki – Olliver Crescent
- Ngarara Swamp
- Ngarara Stream – Black Drain
- Ngarara Stream – Kawakahia
- Moss Smith's Lake/Totara lagoons
- Te Puka Stream
- Te Uruhi lagoon
- Tikotu Stream mouth
- Nikau Valley Streams
- Kebbel Farm's Puna – turf farm

² Wai 2200, #2.3.30.

³ Huhana Smith, 'Inland Waterways Cultural Perspectives Technical Report', Te Rangitawhia Whakatupu Maturanga Ltd. (CFRT, 2017), Wai 2200 #A198, pp26-31.

- Greenaway Road Puna
- Waikanae river
- Waikanae river Mouth and Estuary
- Maungakōtukutuku Stream
- Maungakōtukutuku Stream – East
- Waikanae river tributary
- Ratanui Stream – on Waipunahau land, near Otaihanga
- Ratanui Wetland
- Hadfield Road creeks – that flow into Kōwhai on eastern side of SH1
- Puna at Tukurakau
- Te Whare o te Kopete – by Southwards Car Museum
- Emerald Glenn Lakes and Streams
- Kaitawa reserve wetlands – behind the statue of Mary in Paraparaumu
- Paraparaumu wetlands – south western end of the airport runway⁴

Ngatiawa inland waterways of significance:

- Waimea stream/Waimeha lagoon
- Reikorangi Stream
- Waikanae river
- Pirikawau Springs
- Wharemake Stream
- Whareroa Stream
- Tikotu Creek/Tikotu Stream
- Maungakōtukutuku Stream
- Ngatiawa River
- Rangiora Stream
- Muaūpoko Stream.⁵

⁴ Ibid., pp26-29

⁵ Ibid., pp26-31.

Claims issues and Nga Korero Tuku Iho

The claims issues of relevance to this report have been reviewed and are listed below.

| Wai | Claim name | Claims issues relevant to this report |
|------|---|--|
| 1018 | Otaraua and Rahiri Hapū ki Waikanae Lands | <ul style="list-style-type: none"> Fishing Rights in the Waikanae and its tributaries Extraction of resources from the river Pollution of Waikanae and Wharemauku Stream Rights to exercise kaitiakitanga of waterways disregarded Economic deprivation due to depletion of food resources including whitebait and mullet |
| 1945 | Ngarara West A14B1 Block Claim | <ul style="list-style-type: none"> Concerns Ngarara West A14B1 Tamati Place urupa in the lagoons/swamp area near the Waikanae river mouth |
| 2228 | Ngati Awa of Taranaki (Moore and Taylor) Claim | <ul style="list-style-type: none"> Cites destruction of eel fisheries but does not specify whether this is at Taranaki or Waikanae or both |
| 2361 | The Kapiti and Motungaro Islands (Webber) Claim | <ul style="list-style-type: none"> States that the Resource Management Act 1991 has imposed restrictions on water rights Issues are identified regarding unmitigated siltation in the area of the wahi tapu at Otaihanga. |
| 2390 | Takamore Trust Claim | <ul style="list-style-type: none"> Takamore Trust manages urupa and wahi tapu at Waikanae Ngarara West A24C Rangatiratanga over waterways Errors in the survey of the Urupa Significant puna-wai, flora and fauna were left unprotected by the Crown |

Coverage of Waterway issues of importance to Te Atiawa/Ngati Awa ki Kapiti

Four inquiry district wide environmental reports have been produced for the Porirua ki Manawatu Inquiry (Wai 2200) that contain information pertinent to Te Atiawa/Ngati Awa ki Kapiti.⁶ Five Te Atiawa/Ngati Awa ki Kapiti specific reports have also been produced. These

⁶ These reports include: Vaughan Wood, Garth Cant, Eileen Barrett-Whitehead, Michael Roche, Terry Hearn, Mark Derby, Bridget Hodgkinson, Greg Pryce, 'Environmental and Natural Resource Issues Report', (CFRT, 2017) Wai 2200 #A196; Helen Potter, Aroha Spinks, Mike Joy, Mahina-a-rangi Baker, Moira Poutama, and Derrylea Hardy, 'Porirua Ki Manawatu Inland Waterways Historical Report', Te Rangitawhia Whakatupu Matauranga Ltd. (CFRT, 2017), Wai 2200 #A197; Huhana Smith, 'Inland Waterways Cultural Perspectives Technical Report', Te Rangitawhia Whakatupu Matauranga Ltd. (CFRT, 2017), Wai 2200 #A198; Moira Poutama, Aroha Spinks and Lynne Raumati, 'Inland Waterways Cultural Perspectives Collation of Oral Narrative Report', Te Rangitawhia Whakatupu Matauranga Ltd. (CFRT, 2017), Wai 2200 #A198(a)

address issues of land and politics, block narratives, oral and traditional history, land and local issues and public works.⁷ Below is a summary of materials from these reports that specifically address Te Atiawa/Ngati Awa ki Kapiti waterways of significance and claims.

The district wide environmental reports

The *Environmental and Natural Resource Issues Report* by Vaughan Wood *et al* (Wai 2200 #A196) provides the main evidential coverage for issues of environment, land, and coast natural resources and wahi tapu and the management of these. The report sets the scene for customary uses and management of natural resources and the environment including early populations and settlement in Chapter 3.⁸ Chapters 4 to 7 discuss the major environmental transformation of the district, discussing contributing factors such as land tenure, extensive settlement, new and more intensive forms of land use and new forms of environmental authority and management. Forest clearance and wetland drainage are covered in chapters 5 and 6. Coastal areas and resources, conservation estate and marine reserves are covered by Chapters 8-10. Developments of urbanisation, infrastructure and the RMA environmental regime in Chapters 11 and 12. Flora and fauna are discussed in Chapter 13.⁹ Wahi tapu are described in Chapter 14.¹⁰ The discussion of legislation and policies, infrastructure development, wetland drainage, urban waste disposal and coastal resource management are useful though do not specifically address issues for Te Atiawa/Ngatiawa communities. They do examine the impacts of the railway, roads and suburban infrastructure on the dune land and estuary in Chapter 11. The drainage of a lake for the Waikanae golf club by prominent Pakeha settler in Waikanae and Member of Parliament W.H. Field in 1920, the Crown drainage of Wharemauku swamp, and the later bulldozing in 1939 for the Paraparaumu airport is discussed in Chapter 6.

The *Inland Waterways Historical Report* by Helen Potter *et al* (Wai 2200 #A197) features the Waikanae river as a case study. This includes an examination of Native Land Court minutes for the Ngarara Block partition hearings in 1887. The report suggests that following the development of the Parata Township, the 'archival records give further evidence of Crown mechanisms that reduced Maori ownership surrounding inland waterways'.¹¹ It then provides a brief overview of soil conservation

⁷ Tony Walzl, 'Ngatiawa: land and political engagement issues C. 1819-1900' (Waitangi Tribunal Commission, 2017), Wai 2200 #A194; Lou Chase, 'Ngatiawa/Te Ati Awa Oral & Traditional History Report' (Waitangi Tribunal Commission, 2018), Wai 2200 #A195; Walghan Partners, 'Block Research Narratives: Ngatiawa Edition' (Waitangi Tribunal Commission, 2018), Wai 2200 #A200; Heather Bassett and Richard Kay, 'Preliminary Report on Public Works Case Studies for Te Atiawa/Ngati Awa ki Kapiti' (CFRT, 2018), Wai 2200 #A202; Barry Rigby and Leanne Boulton, 'Te Atiawa/Ngati Awa ki Kapiti ki Kapiti : Twentieth Century Land and Local Issues Gap-filling Report DRAFT' (Waitangi Tribunal Commission, August 2018).

⁸ Wood *et al.*, 'Environmental and Natural Resource Issues Report', Wai 2200 #A196, pp48-82

⁹ *Ibid.*, pp593-632

¹⁰ *Ibid.*, pp632-671

¹¹ Potter *et al.*, 'Porirua Ki Manawatū Inland Waterways Historical Report', Wai 2200 #A197, p90

and land acquisition.¹² The report also describes historical sites on the banks of the Waikanae river, including the burial ground at the old Waimeha Pa (as outlined by Rawhiti Higgott in a report to the Wellington Regional Council in 1993). A useful map of these Wahi Tapu for the Waikanae region is included.¹³ The report also includes a discussion of wetland and dune lake areas in the Porirua ki Manawatu area, though Waikanae is not specifically discussed. The report also provides a brief case study on the Pirikawau Spring (sometimes spelt Parikawau), referred to by Ngatiawa claimants. Apihaka Tamati/Pirikawau-Mack described ‘the healing springs fed by groundwater being blown up to make way for the Waikanae Bridge’ with the site becoming a reserve in the 1980s. A gargoyle was allegedly placed there which was insulting to the mana of the iwi and tangata whenua of the site. The authors state that the Kapiti Coast District Council ‘still currently owns the land with access to the sacred spring restricted to walking’ which has been problematic for some kaumatua.¹⁴ Outside of the information provided by claimants, the report does not provide any documentary evidence relating to the springs. There is a general discussion of ownership of water, which cites Rawhiti Higgott describing the struggle Te Atiawa has had with charges for water rates. Higgott claimed that the New Zealand Railway Company paid Wi Parata for use of water from the Kakariki Stream in Waikanae, whereas now local iwi members pay the Kapiti District Council water rates. Flood control of the Waikanae river for 1956/57 year is mentioned, as is the modifications to the Waikanae river and the Waimeha stream by the Waikanae Land Company and local authorities in the 1970s.¹⁵

The *Inland Waterways Cultural Perspectives Technical Report* by Huhana Smith et al (Wai 2200 #A198) and the accompanying *Inland Waterways Cultural Perspectives: Collation of Oral Narratives* by Moira Poutama et al (Wai 2200 #A198(a)) report provides Te Atiawa/Ngati Awa ki Kapiti perspectives. Statements from Te Atiawa and Ngatiawa are documented separately. Rawhiti Higgott, Tutere Parata, Bill (William) Carter, Les Mullens, André Baker and Kristie Parata spoke to interviewers Mahina-a-rangi Baker and Moira Poutama at a Wananga at Whakarongotai Marae at Waikanae in June 2016. Key sections of the interview of relevance to this report include descriptions of Tutere’s father using a smoke house to pawhera eels out of the Waikanae ‘because the water was nice and clear, nice running water’.¹⁶ Others also discussed eeling in their own lifetimes and the changes to the river, challenging the notion of ‘ownership’ versus ‘possession’.¹⁷ In a separate section entitled, ‘Ngatiawa descendants’ perspective’, Apihaka Tamati/Pirikawau-Mack of Ngati Kahukura me Tuiti and Ngatiawa,

¹² Ibid., pp92-98. This example is discussed in this report as well, as it relates to issues of ownership and control of the Waikanae river.

¹³ Ibid., p162

¹⁴ Ibid., p131

¹⁵ Ibid., pp169-170

¹⁶ Smith, ‘Inland Waterways Cultural Perspectives Technical Report’, Wai 2200 #A198, p163

¹⁷ Ibid., p164

Yvonne Mitchell of Puketapu and Ngatiawa, Rawiri Jenkins-Evans (via Skype) of Puketapu and Ngatiawa, Muriway Tamati/Pirikawau-Goodman of Ngati Kahukura me Tuiti and Ngatiawa, and Hirini Jenkins-Mepham Puketapu of Ngatiawa shared their perspectives. Their information is ‘directly copywrited by the Ngatiawa group’. Inland waterways of significance discussed include: Pirikawau Springs, described as a sacred waterfall at the Waikanae Bridge that is fed by Otaihanga, Waimea, Mangaone, Tikotu, Whareroa, Wharemauku, Mangakotukutuku, Ngatiawaa, Reikiorangi, Rangiora, Muaūpoko and Kapakapanui Streams, Rawakahia lagoon, Ngawhakakangutu Lake, Waimea Stream pipe outlet at Waikanae Beach, and the Waikanae river. Apihaka Mack described the whakapapa of Ngatiawa and the river that marked the boundaries to the rohe, providing details of the impacts on the awa including loss of access, loss of kai species and rongoa, and concerns for water pollution.¹⁸ In summary, the oral accounts describe ‘wide and damaging impacts of urbanisation on their lands and highly engineered waterways. The challenges their collective mana faces in attempts to alleviate such poor water quality conditions, are palpable’.¹⁹

The Te Atiawa/Ngati Awa ki Kapiti specific reports

The five Te Atiawa/Ngati Awa ki Kapiti specific reports on land and politics, block narratives, oral and traditional history, land and local issues and public works reports also provide information of relevance to the ownership and control of waterways of significance to Te Atiawa/Ngati Awa ki Kapiti. Tony Walzl’s *Ngatiawa: land and political engagement issues C. 1819-1900* (Wai 2200 #A194) provides an overview of the broader patterns of land alienation, and provides some details from the Native Land Court minutes regarding customary use of waterways in the area. Chapter One of this report draws on some of that information. Lou Chase’s *Ngatiawa/Te Ati Awa Oral & Traditional History Report* (Wai 2200 #A195) provides some useful contextual information on Ngatiawa/Te Atiawa ki Kapiti and their relationship to the environment and waterways in the Waikanae area and is also utilised in Chapter One of this report. The report draws heavily on the Nga Kōrero Tuku Ihō evidence and includes a description of traditional fishing rights, environmental change and impact on kai, the depleted fishery and the importance that the iwi traditionally placed on subsisting through fishing and cultivations by the waterways, and a 2010 agreement between Ngatiawa/Te Atiawa and the Kapiti Coast District Council regarding water management.

Barry Rigby and Leanne Boulton’s *Te Atiawa/Ngati Awa ki Kapiti: Twentieth Century Land and Local Issues Report* (draft) provides some information on river control during the early twentieth century through Pakeha settler and MP W.H Field’s work to develop flood prevention mechanisms. The

¹⁸ Ibid., pp235, 236. Because there of copyright restrictions on the use of direct quotations I have not copied them in this report, but they are accessible from p 236-242. Reproduction of the direct quotations may only be made after permission is granted. Direct enquiries to Ngatiawa Iwi Charitable Trust.

¹⁹ Ibid., p243.

report also describes drainage disputes which accompanied land transactions through the extensive wetlands and water levels. The report discusses pollution of waterways, sand dune reclamation, and fisheries. Heather Bassett and Richard Kay's *Preliminary Report on Public Works Case Studies for Te Atiawa/Ngati Awa ki Kapiti* (Wai 2200 #A202) examines the Paraparaumu Airport land acquisitions in the twentieth century, as well as the development of various reserves and memorial parks and early roads in the 1890 period until recent times. The section on Sandhills Motorway in the 1950s through the Ngarara West A262A2 block is of interest as it describes an early plan to create a motorway to bypass Paraparaumu and Waikanae townships. Although the road did not eventuate at that time, the Public Works Department did acquire some land along the route through Maori-owned blocks, Ngarara West A24C Urupa (Takamore) and a map of the proposed route is provided. The taking of W. Hough's Ngarara West A262A2 under the Public Works Act is described, as it followed a request from G.S. Crimp to buy the property directly. After Hough rejected Crimp's stated price, the land was then taken under the Public Works Act. The report also provides a brief summary of public works takings for soil conservation in the 1960s, which is also discussed in this report as it relates to ownership and control of waterways.

Scope and methodology of this report

This report builds on some of the key issues described above alongside additional targeted documentary research for issues of ownership and control of waterways. The report does not duplicate the content described above, but is designed to be read in conjunction with the existing research. As the research and writing of this report was conducted over a short time-frame, the focus is on major patterns of ownership and control supported by selected studies. As directed in the commission, this report focuses specifically on understandings and assumptions concerning the assertions of ownership and control of the waterways. Given that the overview reports for this inquiry include substantive oral histories, this report focuses almost exclusively, as directed in the commission, on what the documentary record reveals over time. The report does not go into detail on the legal complexities and debates regarding riverbed ownership, nor does it address more general issues outside what the fragmentary documentary record reveals for waterways identified as significant (such as a consideration of the Resource Management Act 1991). It is expected that this coverage will feature in the district wide report on ownership and control. Similarly, the documentary record guided what waterways this report focuses on. The Waikanae river, for example, features most prominently in the official record and is thus a key area of focus. Other waterways identified as significance, such as the Pirikawau springs (which is specifically identified in the commission) have left no trace in the documentary record uncovered during research for this report.

Research for this report was conducted at Archives New Zealand, the Alexander Turnbull Library, the archives of the Kapiti Coast District Council and the Wellington City Council. The focus was on sources relating to waterway management to see what they revealed about inland waterway ownership and control. Government records consulted include Lands and Survey, Department of Conservation, Maori Affairs, and Marine Department files. Another key source used throughout this report are the maps and plans of the blocks of the areas. These reveal key details about ownership and control of the waterways discussed and are used as a visual guide throughout the report. Petitions and newspapers were also consulted during research for this report.

An overall assessment of the documentary record indicates that: the source material is patchy, scattered and uneven. As might be expected, the questions ownership and control of waterways are rarely discussed and only tends to be discussed in Crown records if and when land acquisition is contemplated. Much of the surviving documentary record is on the lower Waikanae river, and especially the Waikanae river mouth and estuary as these have been the areas of highest settler and Crown concern. The documentary record relates largely to the management of the Waikanae river, especially as it relates to flood protection and soil conservation, and there is little in the documentary record relating to many of the waterways outlined as significant. For example, there is no mention of the Pirikawau springs in the official documentary record uncovered for this report. Where waterways other than the Waikanae river are discussed, such as lagoons or lakes, these sources largely relate to conservations and reserve status and do not tend to address matters of ownership. Importantly, the documentary record provides little insights into the experience, responses, protests, and impact on Te Atiawa/Ngati Awa ki Kapiti communities. As the commission directed that the report focus on what the documentary record reveals, it largely reflects the limitations described above. Nevertheless, with these limitations in mind, the report outlines key developments and patterns from the available material.

Structure of this report

The report proceeds in a broadly chronological and thematic fashion. Chapter One provides a brief overview of the waterways and landscape under discussion, followed by a brief discussion of Te Atiawa/Ngati Awa ki Kapiti ownership, control and customary use of the waterways and ecological change over time. This chapter sets the scene of the report, describing important contextual information relating to waterways of significant to Te Atiawa/Ngati Awa ki Kapiti. Chapter Two provides an overview of the application of common law assumptions and narrows in on the issue of ownership and land titles on the Waikanae river. It describes the inclusion of the waterways into the land title paradigm in the

late nineteenth century. As land ownership by Te Atiawa/Ngati Awa ki Kapiti communities decreased in the years following, so did their ownership and control of significant waterways in the area, such as the Waikanae river. Chapter Three provides an overview of management and control issues, especially as they relate to flood protection and soil conservation, and the implications of this for ownership of the river. As the Crown started to recognise flood damage and soil conservation across the country as a national issue, and not simply the responsibility of private landowners, it assumed management rights over waterways. On the Waikanae river, this meant that the Crown had to contend with the private ownership of riparian land and riverbeds and, as a result, pursued a programme of compulsory takings. Chapter Four provides a brief case study on the Waikanae river mouth and estuary as it became the subject of debates about access, ownership and eventually shifted from Maori ownership into private ownership and then into Crown ownership. Chapter Five provides a summary of what the documentary record tells us about other waterways of significance to Te Atiawa/Ngati Awa, including lakes and lagoons. The concluding remarks brings together the broader themes of the report.

Chapter One:
**Te Atiawa/Ngati Awa ki Kapiti Ownership and Control of
Waterways, and Environmental Change**



Figure 1 'River scene at Waikanae, New Zealand', painted by Charles Barraud, 1852.
<http://catalogue.nla.gov.au/Record/1869045>

1.1 Introduction

This section provides a broad overview of the waterways of significance to Te Atiawa/Ngati Awa ki Kapiti, a discussion of Maori customary use, ownership and control of these waterways, an overview of environmental change over time as European settlement commenced in the area. While the focus of this report is on what the documentary record reveals about issues of ownership and control, this section provides some important contextual background to themes developed in later sections and draws on existing evidence in this inquiry. It begins with a brief description of the Waikanae catchment and of waterways and rivers of significance to Te Atiawa/Ngati Awa ki Kapiti, before providing an overview of what we know about Te Atiawa/Ngati Awa ki Kapiti customary use, ownership and control of waterways and of

waterway resources. The final section describes some of the broader environmental changes in the Waikanae area since the advent of European settlement in the area and some of the more recent pressures on waterways in the area. These environmental changes were facilitated in part by the introduction of new forms of ownership and control—a theme which developed in more detail in the following chapters—and led to the marginalisation of Te Atiawa/Ngati Awa ki Kapiti from their waterways of significance.

1.2 Te Atiawa/Ngati Awa ki Kapiti ‘ownership’ and control of waterways and waterway resources

To the east and inland of Waikanae is the Reikorangi Valley, a small agricultural area sheltered from the coast. It is here, in the Tararua Ranges, that the Mangaone, Ngatiawa, Reikorangi, and Rangiora rivers converge and form the Waikanae river, which passes through the gap in the foothills and towards the Kapiti coast where a total catchment area of 125 kilometres is discharged into the sea at Waikanae beach.²⁰ The Waikanae river passes through a diverse landscape on its journey towards the ocean. The upper reaches of the catchment are surrounded by a mix of predominantly regenerating native bush, mature forest and pasture as it cuts through alluvial gravels deposited by the river.²¹ Past the Reikorangi Valley, the river passes by the Waikanae Water Treatment Plant, established in 1977, which provides water supply to the town, the rail and road bridge, and the newly created SH1 motorway, before reaching the river mouth, now a reserve. The movements of the river mouth have been a cause of concern for settlers in the area for a long time. As is common along the West Coast of the North Island, littoral drift of the river mouth means an ever-moving lower river channel leading to the sea. This movement is important for birds who require the soft and shifting sands in order to nest and feed.²² Along the coast north of the Waikanae river is a series of lagoons in the place of the drained Waimeha River, including the Waimanu lagoon (created by the Waikanae Land Company in the 1970s) near the river mouth and the Waimeha lagoon further north. Still further north is the Lake Totara and two oxidation ponds for sewerage. The Kawahakia lagoon and wetlands were dredged and contoured in the 1970s to create the Totara lagoon and the two oxidation ponds for a sewage system.²³ Now decommissioned, the two oxidation ponds form part of Pharazyn Reserve.

²⁰ Waikanae river, LAWA: Land Air Water Aotearoa, website URL: <https://www.lawa.org.nz/explore-data/wellington-region/river-quality/waikanae-river/> (accessed 19 May 2018)

²¹ Greater Wellington Regional Council, Waikanae river Environmental Strategy, URL: <http://www.gw.govt.nz/waikanae-river-environmental-strategy/> (accessed 19 May 2018)

²² Department of Conservation publication, *Waikanae Estuary Scientific Reserve*, URL: <https://www.doc.govt.nz/waikanae-estuary> (accessed 19 May 2018).

²³ Wai 2200 #196, p521.

Maori customary use and ‘ownership’ of inland waterways has been described generally in numerous Waitangi Tribunal reports and commissioned research reports. The *Whanganui River Report*, for example, found that rivers were not ‘owned’ by Maori in the English sense, but rather rivers were transmitted from ancestors; it was through the transmission from ancestors that Maori saw themselves as permitted users, as having rights to waterways based on usage and possession rights.²⁴

From the early days of Te Atiawa/Ngati Awa ki Kapiti settlement in the Kapiti coast, the area originally consisted of wetland areas.²⁵ This series of wetlands was contained by the coastal dunes and were fed largely by the Waikanae river.²⁶ Te Atiawa/Ngati Awa ki Kapiti used and modified the environment in various ways. By the mid nineteenth-century, pa and kainga were dotted along the Waikanae river and other waterways in the area.²⁷ Te Atiawa/Ngati Awa ki Kapiti built three pa close to the Waikanae Estuary and their residents blocked some of the streams that drained the swamps, flooding much of the land between the sand dunes and the foothills. This practice allowed ease of travel by canoe and further opportunities for eel weirs and fish traps.²⁸ Much of the testimony at the Native Land Court during the Ngarara West 1890 rehearing described the use of the river for both fishing and cultivation using water from the river. Eruini Te Marau discussed traditional eel weirs and places where eels were collected, as well as where cultivations using river water were located.²⁹ Te Marau explained that there was no boundary laid down between hapū on the river. Similarly, Enoka Hohepa described the nature of occupation at Waikanae, noting that hapū did not have formal boundaries, but that each hapū knew their eel weirs and cultivations.³⁰ Wi Parata, for example, described eel weirs at Lake Totara in 1863.³¹ Various descriptions of ‘tussles’ and arguments over eel weirs suggest that they were keenly contested and therefore important sites for Te Atiawa/Ngati Awa ki Kapiti.³²

²⁴ The Waitangi Tribunal, *The Whanganui River Report*, 1999, pp48-49.

²⁵ Tony Walzl, ‘Ngatiawa / Te Ati Awa Research Needs Scoping Report, (Waitangi Tribunal Commission) Wai 2200, #A186, p107.

²⁶ Easter, John, ‘Waikanae river Archive Kapiti Coast Floodplain Management Plans’, Rivers Department Wellington Regional Council, 1991, p6.

²⁷ See ‘Locations of Maori Settlements mid-19th Century – Waikanae/Waimehe Rivers’, Wood *et al.*, ‘Environmental and Natural Resource Issues Report’, Wai 2200 #A196, p70.

²⁸ Chris Maclean and Joan Maclean, *Waikanae: Past and Present*, (Waikanae: Whitcombe Press, 1988), p218.

²⁹ Walzl, ‘Ngatiawa: land and political engagement issues C. 1819-1900’, Wai 2200 #A194, p394.

³⁰ *Ibid.*, pp512-513

³¹ Evidence of Wi Parata, Ngarara rehearing, 7 July 1890, Otaki Minutebook 10, pp176, 177.

³² *Ibid.*, p268



FISHING FOR WHITEBAIT IN THE WAIKANAЕ RIVER, WELLINGTON.

A native woman setting a net.

—Staff Photographer.

Figure 2 'A native woman setting a net' on the Waikanae river, Auckland Weekly News, 16 October 1924 Sir George Grey Special Collections, Auckland Libraries, AWNS-19241016-42-9

In his oral and traditional history report Lou Chase describes the Maori experience of environmental change in the Waikanae river area and its impacts on Maori customary use of the river. These changes included flax milling, deforesting and pollution which have impacted on the gathering of traditional kai in the river. Rawhiti Higgott, Mahina-a-rangi Baker and Tutere Parata all described the once plentiful waterways and the eel, trout, inanga (whitebait), kōkopu, kōarao, kahawai, kanae (mullet), patiki (flounder), koura (crayfish), tamure (snapper), toheroa, watercress, tuna (eels), piharau (lampreys), tipitipi (surf clams) and tuatua that could be gathered in the river or river mouth prior to the drainage of the wetlands and pollution and other changes to the river.³³ All agree that a key change has been that of the Waimeha, which was a channel of the Waikanae river which divided and flowed through 'salt marsh and swamp forest, before joining again at the dunes and lakelets of the estuary'.³⁴ These changes include the loss of the main flow of the Waimeha in the 1890s which reduced it to a stream. It was then diverted by William Fields in 1925 to supply to sections of his land, and led to Maori being denied water to their properties and cultivations and the drying up of the passageway needed for fish to access the Waikanae river.³⁵

³³ Chase, 'Ngatiawa/Te Ati Awa Oral & Traditional History Report', Wai 2200 #A195, pp119-121.

³⁴ Ibid., p121.

³⁵ Ibid., p121.

Rawhiti Higgott described important places along the Waikanae river as Waimeha Pa, Arapawaiti, Kaitoenga, Peka Peka, Pukekawa, Ngahuruhuru, Te Rere, Taewapaharahara, and Kuititanga.³⁶ Bill (William) Carter discussed the waterways in the 1820s when '[y]ou could paddle a waka from Paekakariki all the way to Ōtaki', but as the forests were cleared and the drains created, it is no longer possible. 'Well the whole place was water. It doesn't matter if the water is in the stream or underground, it's all part of the rohe and we want it dealt with in that way. It's not just confined to the water running down the channel'. Carter also discussed pollution of the waterways affecting the eel catch. He cites car parks, drains, stormwater all affecting the waterways as well as spray from fruit trees.³⁷ Kristie Parata remembered her father telling her that residents had told off his family for trying to access mahinga kai; 'Attitudes from the changing population impacted us, made us feel whakama about doing these practices.'³⁸ Les Mullens discussed the impact of flood protection works on watercress and tuna, while André Baker says the hapū have not been part of the conversation about the changes to the land and water.³⁹

1.3 New forms of Ownership and Control and resulting Environmental change

In the 1840s, Edward J. Wakefield visited the Waikanae estuary, writing that while the river was 'choked up with sandbanks...at high water a whale boat can enter and ascent the river about six miles'.⁴⁰ The river that Wakefield encountered has clearly changed as the river channel has silted up below Otaihanga as a result of bush clearance and gravel extraction, so that now it would be difficult for a boat to pass from the sea into the river mouth.⁴¹ In the late nineteenth and early twentieth centuries, following the creation in 1886 of the Manawatu Railway, European settlement increased. The harvesting of flax and clear-felling of lowland forests, combined with the large-scale logging and sawmilling in the Reikorangi valley in the Waikanae catchment led to loss of wetlands and the drying up of the Waimeha River (discussed above and in more detail below) to a stream.⁴² The comprehensive land use change in the area had a profound impact on the character of waterways in the catchment.⁴³

³⁶ Potter *et al.*, 'Porirua Ki Manawatū Inland Waterways Historical Report', Wai 2200 #A197, p98.

³⁷ Smith, 'Inland Waterways Cultural Perspectives Technical Report', Wai 2200 #A198, p164.

³⁸ *Ibid.*, p165.

³⁹ *Ibid.*, pp165, 166.

⁴⁰ Quoted in Maclean and Maclean, *Waikanae: Past and Present*, p191.

⁴¹ Maclean and Maclean, *Waikanae: Past and Present*, p191.

⁴² Easter, 'Waikanae river Archive', p7; Maclean and Maclean, *Waikanae: Past and Present*, p173.

⁴³ *Ibid.*

As colonisation commenced, Maori and Pakeha views about the ownership and control of waterways conflicted. According to Ben White, for Maori, estuaries and swamps were places to gather ‘fish, birds, and plants’ while for Pakeha they were often viewed as an impediment to farming, road and train networks.⁴⁴ In the developing settlement at Waikanae, settlers prioritised agriculture and roads and cleared and drained the area as much as possible. For example, between Waikanae and Waikanae Beach, prominent settler William Field drained a shallow lake in 1921 from land he proposed selling as a golf course, an area that remains the site of the Waikanae Golf Club.⁴⁵ In the 1930s, the Paraparaumu Swamp was drained as part of a programme of unemployment relief.⁴⁶

Drainage of wetlands affected nine-tenths of the wider inquiry district areas, according to Wood *et al.* Drainage proceeded in a piecemeal fashion, first in the ‘sand country’, with the smaller flax-growing dune hollows being drained. By the twentieth century, local and central government entities began modifying water levels of the larger dune lakes.⁴⁷ In Paetawa, in 1900, A.J. Hadfield objected to the swamp that was contained within his land being drained. Hadfield’s land was identified in the correspondence as being Ngawhakangutu South Blocks V and VI Kaitawa Survey. Following an inspection of the area, Hadfield was informed by the Chairman of the Horowhenua County Council, W.H. Simcox, that the Council would not ‘approve of any Public Money being spent in road making on Paetawa Swamp until the land is thoroughly drained’. Hadfield was given notice, under the Public Works Act 1894, and, Simcox wrote, ‘any other power enabling me in that behalf to enter upon your land... and to cut such drains and ditches as may be required for the purpose and at all times to keep such drains and ditches open within fourteen days of the date hereof’.⁴⁸ As the first Chairman of the Horowhenua County Council, Hadfield had himself been involved in swamp and lagoon drainage from 1878 onwards. In 1906, a dairy farmer named Victor Weggery bought land on the coastal strip, including the area around the Waimeha, and carried out vigorous planting of lupin and marram grass to check sand drift.⁴⁹ By the 1920s, the first holiday homes started to emerge in the area. Advertisements for ‘Seaside Sections at Waikanae’ appeared in the paper, advertising the new Waimeha Township, ‘which is being formed on the Waikanae Beach on Mr. W.H. Field’s property’.⁵⁰

⁴⁴ Ben White, ‘Rangahaua Whanui National Theme Q, Inland Waterways: Lakes’, *Rangahaua Whanui Series* (Waitangi Tribunal, March 1998), pviii.

⁴⁵ Wood *et al.*, ‘Environmental and Natural Resource Issues Report’, Wai 2200 #A196, p233.

⁴⁶ ‘Rivers Improvement and Protection – Paraparaumu Swamp – Drainage’, W1 1236, 48/515, 1, ANZ, Wellington.

⁴⁷ Wood *et al.*, ‘Environmental and Natural Resource Issues Report’, Wai 2200 #A196, p247.

⁴⁸ Simcox to Hadfield, 20 September 1900, ‘Paetawa Swamp, Waekanae into Ngawhakangutu, 1900’, ADXS 19483, LS-W1 397/20515, ANZ, Wellington.

⁴⁹ Horowhenua County Council, ‘The Waimeha and Waimanu lagoons Waikanae: Ecological Survey and Management Plan’, December 1985-February, Fleming, Charles Alexander (Sir), 1916-1987: Papers, 87-208-621, ATL, Wellington.

⁵⁰ *Horowhenua Chronicle*, 20 October 1923.

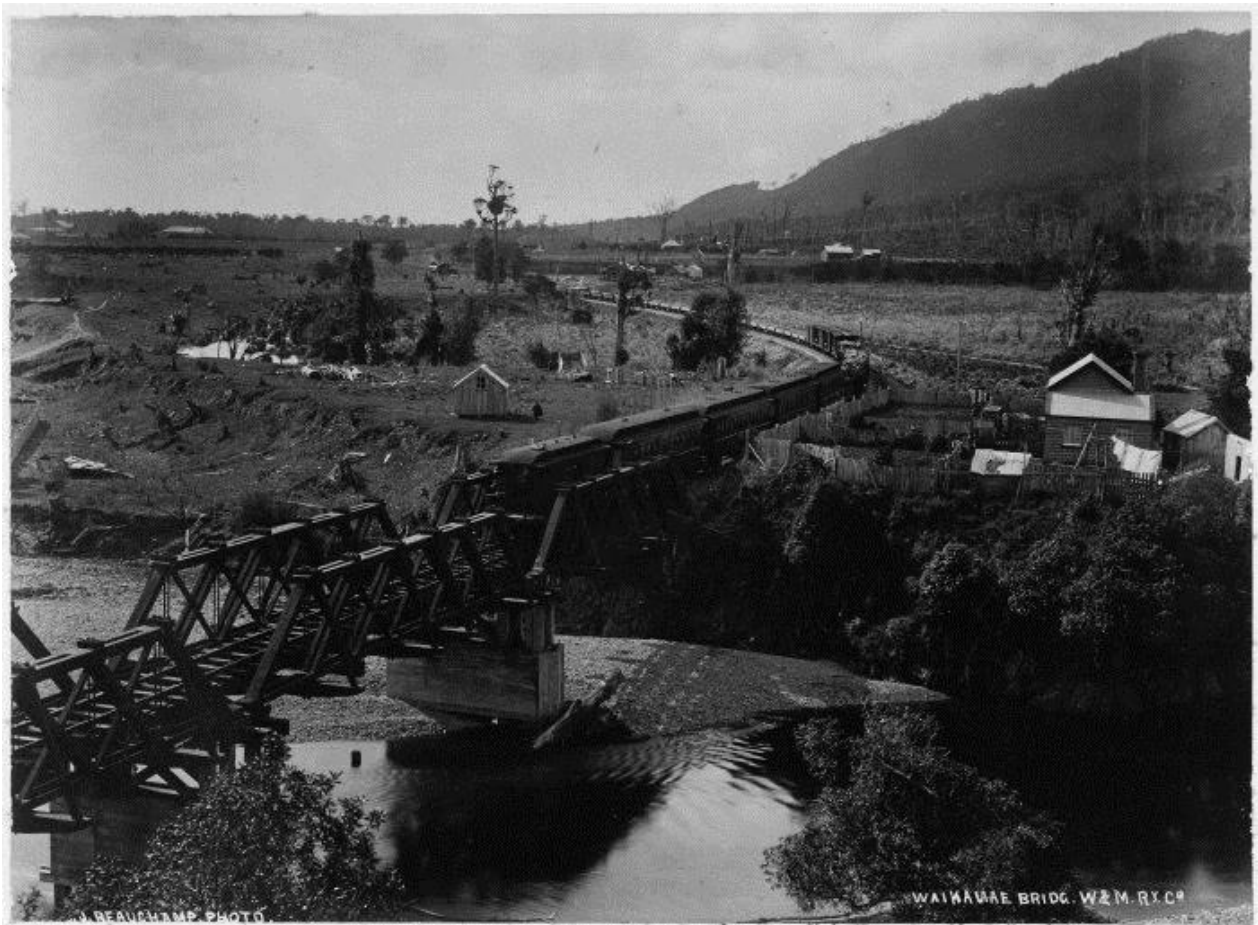


Figure 3 Wellington and Manawatu Railway Company Ltd. Waikanae, with rail bridge and train [ca 1890s]. Ref: 1/2-122099-F. Alexander Turnbull Library, Wellington, New Zealand. /records/23167420

The settler presence also had an impact on water resources. Settlers released trout into the river for many years for recreational fishing, while eels were seen as competition for them. As a result, settlers led culls of eels along the river.⁵¹ Flaxmilling and farming settlements destroyed much of the coastal forest and exposed the river's flanks to flooding and erosion. While attempts to address flooding and erosion were implemented in the mid-twentieth century, gravel extraction, residential development storm water, farm waste and industrial discharges put further pressure on waterways in the area. In describing the land around the river in the 1950s, one engineer wrote: 'subdivision has been fairly extensive and the area is now of an urban nature from the Waikanae Beach settlement to the highway with housing along the river bank'.⁵² At the same time, efforts by conservationists have seen the protection of certain areas, especially around the river's mouth and estuary and around lagoons along the coast.

⁵¹ Maclean and Maclean, *Waikanae: Past and Present*, p164.

⁵² Chief Engineer to The Chairman of the Manawatu Catchment Board, 11 July 1955, Manawatu Catchment District - Waikanae river control (54/105), Wellington Regional Planning Authority: Records, 75-156-104, Alexander Turnbull Library.

While erosion due to flooding had a major impact on altering the river, Maclean and Maclean argue that the greatest changes have been brought about by human intervention and the extraction of gravel from the riverbed in particular. Between 1954 and 1975, the Waikanae Shingle Company extracted huge quantities of gravel, which was crushed and used on the Kapiti Coast and in Wellington. During the 1950s and 1960s, the Manawatu Catchment Board encouraged the extraction of gravel on the Waikanae river.⁵³ It did so for two main reasons. The Company paid the Board a royalty for the material removed, and the removal of gravel was thought to help control flooding by lowering the riverbed. William Field had suggested as much in Parliament in 1909.⁵⁴ Officials at the time saw the removal of shingle as a valuable tool of flood control (this is discussed in Chapter Three). The Commissioner of Works indicated that the removal of shingle from the river had caused a significant lowering of the bed level, which would be ‘of some benefit in improving flood discharge capacity but unless there is adequate supervision and control at all times there could also be equivalent detriment’.⁵⁵ Between 1960 and 1970, the total volume of gravel extracted ranged between 8000 and 13,000 cubic yards each year. In 1966, the Otaihanga Progressive Association complained about the damage done to the Waikanae river adjacent to Otaihanga from shingle brought down the River with each flood.⁵⁶ Control of the Waikanae river passed to the Wellington Regional Water Board in 1973, which began the process of closing the River to shingle extraction. By then, however, 20 years of shingle extraction had lowered the riverbed by 2 metres.⁵⁷

Overall, the Waikanae river has experienced significant ecological change over the past perhaps 150 years. In 1999, the ecologist and historian Geoff Park described the environmental changes to the Waikanae river:

The Waikanae river has been a focus of human activity since human communities first settled the Kapiti Coast. In recent decades, the river’s corridor has become increasingly flood-prone as the coastal plain it crosses on its path to the sea has become one of the fastest developing regions of New Zealand. More often than not, as the development pressure has mounted, usage and management of the river corridor has proceeded without regard for its indigenous ecological values and the delicate equilibrium integral to its health and sustainability.... Prior to European settlement and land clearances in the late 19th century, the Waikanae river flowed through a largely forested, indigenous landscape. During the 20th Century, gravel extraction from the river bed and the growth of Waikanae

⁵³ Maclean and Maclean, *Waikanae: Past and Present*, p177.

⁵⁴ NZPD, Vol 148, pp1074-5.

⁵⁵ Commissioner of Works to Allan McCreedy, 21 December 1970, SC [Soil Conservation] and RC [River Control]: Waikanae river, Part 2, 1955-1973, AATE 889 W3404 33/96/315000, ANZ Wellington.

⁵⁶ C. McIvor to Soil Conservation and River Control Council, 8 August 1966, SC [Soil Conservation] and RC [River Control]: Waikanae river, Part 2, 1955-1973, AATE 889 W3404 33/96/315000, ANZ Wellington

⁵⁷ Maclean and Maclean, *Waikanae: Past and Present*, p177.

as a residential centre demanding flat land free from flood risk have led to a comprehensive ecological transformation of the river corridor by flood protection plantings and weed growth. Exotic species now prevail throughout the corridor to the exclusion of all but very limited prospects for any future natural restoration of the former indigenous ecosystem.⁵⁸

Park listed the historical ecological alterations that the Waikanae river had undergone. These included:

The river's natural disposition established in deep alluvial gravels derived from massive quantities of eroded rock debris and silt brought down from the mountainous hinterland during its deforestation during last ice age;

The lowland-coastal environment and natural fertility of the river's floodplain enabling the development of a great diversity of environments, including river corridors and swamp forests;

The 19th century clearances of lowlands forests dramatically increasing the run-off into the river and removing the riverbank forests whose tree roots bound the gravel together;

The deliberate retention of riverbank forests on the upper floodplain (to retain quality trout habitat) when the remainder was cleared in the 1890s;

The disappearance, in the early 20th century, of one of two channels of the river's natural course across the floodplain – the upper Waimeha – and the Waikanae's consequent increased propensity to flood;

Gravel extraction between 1954 and 1975 lowering the river bed by some 2 metres and the Manawatu Catchment Board's encouragement of it through much of the period on the belief that the removal of gravel helped control flooding;

The expansion of settlement leading people to build houses either close to the river or in areas prone to flooding, and the need for flood protection works;

The Manawatu Catchment Board's tightening of its control and gravel extraction following its recognition in the early 1970s, that the lowering of the river bed was resulting in dangers such as upstream erosion of riverbanks;

Comprehensive ecological transformation of the river corridor by massive plantings of exotic tree species as part of flood protection works;

Stop banking;

The development of both pastoral and agricultural and residential gardens in the immediate proximity of the river corridor leading to establishment and spread of weed species to the current situation whereby they dominate over native species.⁵⁹

Park added that there were recent efforts to address the impacts of environmental changes. Led by the tangata whenua and key community groups, Park wrote, Waikanae's community

⁵⁸ Geoffrey Park, 'Strategy for restoring the Waikanae river Corridors' indigenous ecological values', 1999, Park, Geoffrey Nicholls, 1946-2009: Papers, MS-Papers-9392-093.

⁵⁹ Ibid.

was ‘rediscovering the indigenous values of their river and are searching for restorative solutions.’⁶⁰

Like much of the country, Te Atiawa/Ngati Awa ki Kapiti waterways of significance have undergone a fundamental environmental transformation, one that has had a major impact on Maori customary use, ownership and control of waterways. Prior to European settlement, Te Atiawa/Ngati Awa ki Kapiti exercised their own forms of ownership and control of waterways, through modification and the use of waterways for fishery resources. Increasing European settlement in the area introduced a different mode of ownership and control which resulted in significant environmental changes. As the following chapter details, the application of common law, legislation and the tying up of riverbed ownership within the land title paradigm introduced a new set of understandings regarding ownership and control of waterways.

⁶⁰ Ibid.

Chapter Two:

Settlement and New Forms of Legal Ownership and Control and Inland Waterways: the Waikanae river

2.1 Introduction

The changes described in the previous chapter were facilitated by the introduction of new understandings and assumptions that tied ownership of waterways with that of adjoining land. This section provides an overview of ownership and control as it relates to common law, titles and riparian rights. It does so by focusing specifically on the lower reaches of the Waikanae river, a significant waterway in the area and a major focus in the documentary record. When the title boundaries of the Ngarara block were set in the late nineteenth century, the Waikanae river was included within the titles. In other words, when the block was partitioned, the centre line of the river was used as a boundary between partition blocks and the partition titles along much of the Waikanae river extended to the mid-point of the river (for example, see Figure 4).⁶¹ The inclusion of the riverbed in the title meant that when the title passed out of Maori ownership, ownership of the riverbed portion passed out as well.

This chapter provides a brief overview of common law assumptions and inland waterways before detailing how this applied in the district. Despite some discussion regarding the ownership and control of the river and legal discussion regarding water boundaries, this appears to have been the assumption for much of the period.⁶² David Alexander writes that ‘rivers and their banks are a rich setting for legal and survey argument’.⁶³ But as will be clear in this section, the Waikanae river was not the subject of a long legal and survey discussion regarding ownership and control. Unlike rivers such as the Whanganui and the Waikato (or for comparison in this inquiry district, the Rangitikei River), discussions were ad hoc, and only arose in relation to land purchases, complaints about stock access, erosion and soil conservation. However, a survey of the documentary record (outside of the survey plans) reveals little about understandings and assumptions concerning the assertions of ownership and control of the Waikanae river and there is relatively little in the documentary record regarding the impacts on Te Atiawa/Ngati Awa ki Kapiti and on Te Atiawa/Ngati Awa ki

⁶¹ Also: on the south bank between the rivermouth and the railway bridge, Wellington plans ML 1106 (approved 1894) and ML 1122, 1127 and 1128 (all approved 1892); on the north bank upstream of the railway bridge, Wellington plan ML 1205 (approved 1893); on the south bank upstream of the railway bridge, Wellington plan ML 1130 (approval date not known).

⁶² The Waikanae river mouth and estuary are discussed separately in Part Four.

⁶³ David Alexander, ‘Rangitikei River and Its Tributaries Historical Report’, (CFRT Commission), Wai 2180, #A40, 76.

Kapiti responses or protests to Crown and local authority assertions of rights of control and ownership. Nevertheless, these are discussed where possible.

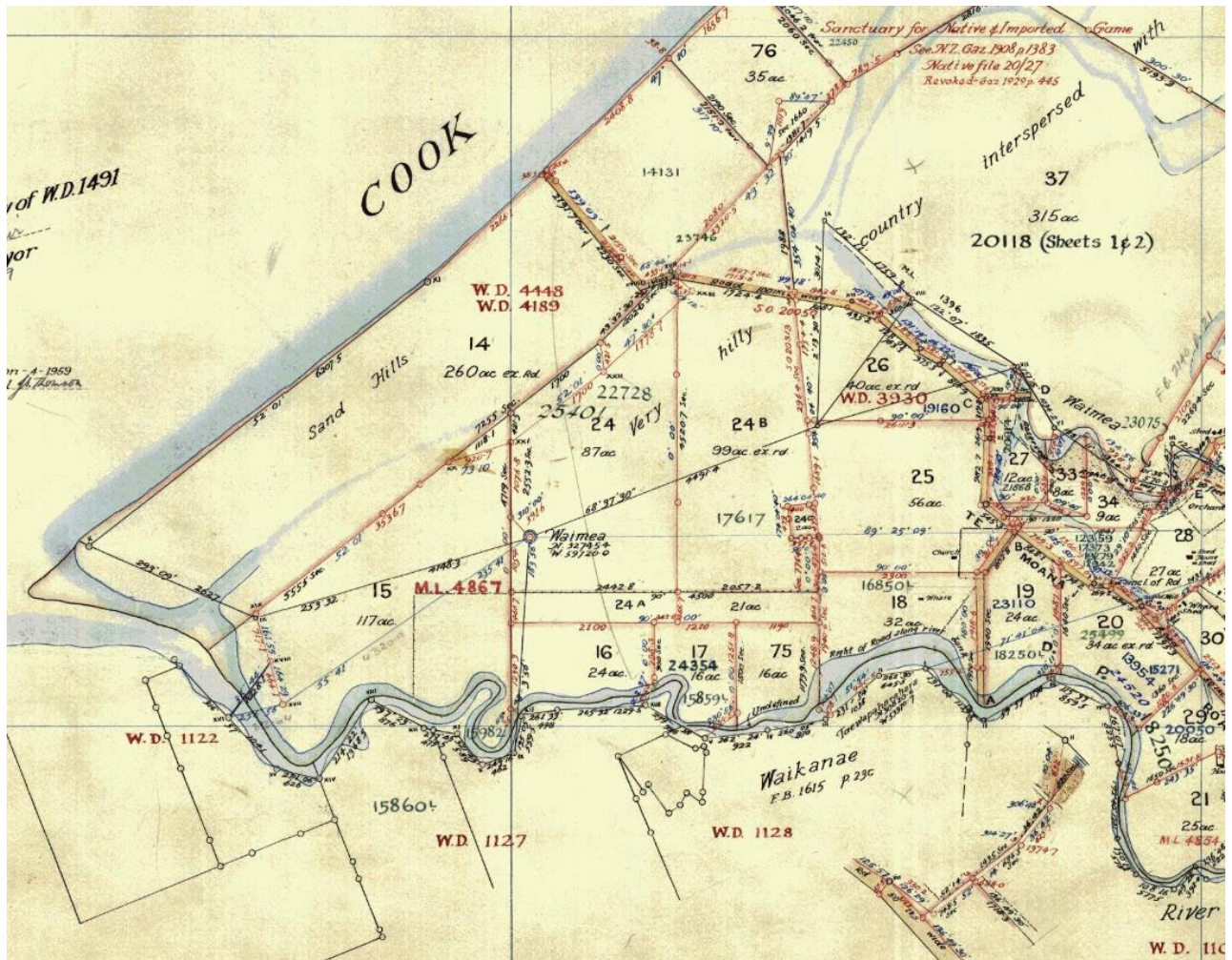


Figure 4 This excerpt from an 1898 plan of Ngarara West A partitions shows the Waikanae river from the river mouth to the area just before the railway bridge. Note that the mid-point of the river is treated as the boundary between the adjoining land titles. Wellington Plan ML 1491 Sheet 1 (Source: Quick map)

Before continuing, it is important to note that the focus of this chapter is the Waikanae river between the river mouth to the rail and road bridge (broadly what features in Figure 4). With the exception of the river mouth and estuary, this corridor of the river has received the most attention in the documentary record. The upper reaches of the river, past the rail and road bridge in the vicinity of Reikorangi is discussed at the end of this section, while the Waikanae river mouth and estuary is discussed separately in Chapter Four. As will become clear, the issues of ownership of the riverbed in these two other areas was treated in an unusual way. For example, in the the upper reaches of the river where the tributaries (Mangaone, Ngatiawa, Reikorangi, and Rangiora rivers) converge and form the Waikanae river, the rivers themselves

appear to have been explicitly excluded from titles. On the other hand, the Waikanae river mouth and estuary was treated as part of the titles to adjoining land, despite the general assumption under common law that the tidal reach of river was assumed to be in the ownership of the Crown.

2.2 Common law assumptions and waterway ownership

As already suggested, the issue of waterway ownership, the application of common law, and riparian rights is complex and has been the subject of numerous Waitangi Tribunal reports and commissioned research reports. In a number of reports, the Waitangi Tribunal has found that the Treaty of Waitangi guaranteed Maori full customary authority over their whole water resources and that in Maori customary terms, water resources were regarded as ‘single and indivisible entities, comprising the water, bank, and bed as a whole’.⁶⁴ While Maori generally viewed the river, bed and bank as ‘a single interconnected functioning system that was the responsibility of the hapū whose territory the river passed’, English common law introduced a complex and fragmented system of ownership and one that viewed and treated waterways and riverbeds as tradable commodities.⁶⁵ English common law presumptions concerning ownership of inland waterways divided waterways into ‘separate component parts’ associated with riparian landowners. Thus, the beds and banks of non-tidal inland waterways (such as rivers, lakes, streams, ponds and swamps) were regarded as forms of land capable of being privately owned, and landowners were granted the same rights to these waterways as to the rest of the land in the block. Landowners could modify, drain, or develop the waterways.⁶⁶ Where such waterways were bounded by more than one property, the law recognised the rights of all adjoining property owners to the bed of the waterway to the midpoint, known as *ad medium filum aquae*.⁶⁷ Common law, then, emphasised land ownership as being essential to the ownership of waterways. The benefits and use of the beds of those waterways belonged to the private riparian landowners, though the question about the ownership of the actual water was less clear.⁶⁸

⁶⁴ Marr, Hodge, and White, Crown Laws, ‘Policies, and Practices in Relation to Flora and Fauna, 1840 – 1912’, Wai 262 #K5, p338.

⁶⁵ Alexander, ‘The Rangitikei River, its Tributary Waterways, and other Taihape Waterways: Scoping Report’, Wai 2180 #A4, p60.

⁶⁶ Tom Bennion *et al.*, *New Zealand Land Law*, (Wellington: Brookers Ltd., 2005), pp21-24; Cathy Marr ‘Crown Impacts on Customary Maori Authority over the Coast, Inland Waterways (other than the Whanganui River) and associated mahinga kai in the Whanganui Inquiry District (Waitangi Tribunal Commission) Wai 903, #A36, p55.

⁶⁷ Marr, Hodge, and White, Crown Laws, ‘Policies, and Practices in Relation to Flora and Fauna, 1840 – 1912’, Wai 262 #K5, p336.

⁶⁸ *Ibid.*, p337.

Increasingly, however, the Crown pursued a policy to gradually modify common law and sought to obtain more certain authority over useful inland waterways. It did so by various means including the large scale purchasing of riparian land (apparent in the upper Waikanae catchment and Reikorangi valley), the assumption of Crown ownership over ‘navigable’ and ‘tidal’ rivers, the assertion of control and management rights over inland waterways, and through compulsory takings (the latter two are discussed in Chapter Three).⁶⁹ The Coal Mines Amendment Act 1903 proclaimed that the bed of all ‘navigable’ rivers in New Zealand were, and always had been, vested in the Crown, while non-navigable river remained under the *ad medium filum aquae* rule.⁷⁰ As discussed below, however, besides some brief suggestion that the Waikanae river was ‘navigable’, the general assumption for the river was that of common law private ownership. Thus, Maori ownership and control rights to the river were lost by the presumption of common law ownership over riverbeds. Similarly, because of the way title was fixed on the Waikanae river, even the tidal parts of the Waikanae at the river mouth were held under private title. This is not the norm, because tidal waterways are not usually included in titles, their legal status instead being that they are treated as arms of the sea and thus not subject to land law.⁷¹

Under English common law, the ownership and control of river and lake beds, estuaries, springs and other inland waterways is inherently tied up with that of land ownership. Thus, the alienation of Maori ownership of land was one means by which ownership and authority over waterways was undermined or diminished. If Maori sold land, Strack writes, it was assumed that title to half of the river passed with it in spite of the fact that Maori were ‘unlikely to have contemplated the effect of a sale of the river, much less considered the foreign notion of passing just half the river’.⁷² As law professor Andrew Sharp writes, ‘as went the land, so went the rivers, victims of the English common law rule of *ad medium filum aquae*: Maori, when they sold their land, unwittingly passed over legal control of the river banks to the new owners of the land, and of the river itself to the Crown’.⁷³ Historian Alan Ward wrote that the loss of Maori of their rights to waterways has been very heavy over the past 150 years of settlement – heavier in some respects than the loss of land’.⁷⁴

⁶⁹ Ibid., p334.

⁷⁰ Coal-mines Act Amendment Act 1903, section 14; Bennion *et al.*, *New Zealand Land Law*, p22.

⁷¹ Bennion *et al.*, *New Zealand Land Law*, p23; Mick Strack, ‘Watching the River Flow: The Law, Rights and Ownership of Rivers in New Zealand’, *New Zealand Surveyor*, No.302 (2013), p29.

⁷² Strack, ‘Watching the River Flow’, p30.

⁷³ Andrew Sharp, ‘Recent juridical and constitutional histories of Maori’, in Andrew Sharp and P.G. McHugh, eds., *Histories, Power and Loss: Uses of the Past – A New Zealand Commentary* (Wellington: Bridget Williams Books, 2001), p43.

⁷⁴ Alan Ward, *National Overview*, Volume I, p98.

Across the Porirua ki Manawatu inquiry district more generally, Helen Potter *et al.* write that the Crown imposed the English common law principle that the ownership of riverbeds and riverbed resources went with the ownership of riparian land and this, occurring alongside the large scale land acquisition in the inquiry district, meant that hapū and iwi were effectively denied access to many of their waterways of significance – ‘both directly when the adjacent land was no longer owned by them, and indirectly when access to their remaining lands and associated waterways were cut off by other blocks that they no longer owned’.⁷⁵ The authors note that the customary use and kaitiakitanga of inland waterways and their resources as well as the cultural practices associated with freshwater, were not voluntarily abandoned or alienated:

Indeed, hapū and iwi have continued to access and use the inland waterways and their resources within the inquiry district since the land sales of the late 1800s, both where they are riparian land owners and where their customary rights are recognised in law – and where waterways are in the public domain or in private hands. But this already limited access has become incrementally more limited over time as a result of Crown regulatory failures and the subsequent biodiversity loss from increasing pollution and decreasing habitats for aquatic fish, bird, and plant species.⁷⁶

2.3 Land ownership adjoining the Waikanae river and other waterways

The process of land alienation in the area surrounding the Waikanae river in the nineteenth-century and twentieth centuries has been covered in other commissioned research reports for this inquiry. This section provides a brief summary of broader patterns as context for later discussions. In the period after the 1870s, Te Atiawa/Ngati Awa ki Kapiti titles to land were awarded and then individualised. Following this process, Ngatiawa ‘experienced the most significant land loss of the nineteenth century’.⁷⁷ Following the settling of title in Ngarara West A in 1890 (the area that encompasses the length of the Waikanae river between the river mouth to the rail and road bridge), ‘a swathe of private purchases occurred over the next decade’. The Field, Elder and Morrison families featured as multiple land purchasers. Both smaller and larger sections were acquired. Walzl explained that, according to a 1900 map, the purchases were concentrated in three areas: north of Papaparaumu Beach; around Otaihanga (both sides of the railway); and towards Waikanae Beach, just back from the coast. The purchases totalled 2,424½ acres (38.5 per cent).⁷⁸ Along the Waikanae river, this included the purchase of Ngarara West sections A6 (200a), A16 (24a), A17 (16a), A75 (16a), A58 (85a. 3r), A37 (315a) and A38 (194a).⁷⁹ By 1925, except for land at the north and south of the river mouth, blocks along Te

⁷⁵ Potter *et al.*, ‘Porirua Ki Manawātū Inland Waterways Historical Report’, Wai 2200 #A197, p70.

⁷⁶ *Ibid.*, p71.

⁷⁷ Walzl, ‘Ngatiawa: land and political engagement issues C. 1819-1900’, Wai 2200 #A194, p636.

⁷⁸ Walghan Partners, ‘Block Research Narratives: Ngatiawa Edition’, Wai 2200 #A203, p25.

⁷⁹ See Map 4, ‘Ngarara West A and Kuketauaki – Tenure by 1900’ in *Ibid.*, p26.

Moana Road in Waikanae and blocks near the railway line, which is where the concentration of Maori land was retained, much of the land on the riverbank was sold to private purchasers.⁸⁰ By 1975, however, most of the land along the Waikanae river was no longer in Maori ownership.⁸¹ Today, only a 1.4 ha block (Ngarara West A22A2) remains in Maori ownership.⁸²

2.4 Implications for Te Atiawa/Ngati Awa ki Kapiti of new forms of ownership

Under common law presumptions, owners of lands adjoining river and lakes also acquired various use rights—‘riparian rights’—in respect of the water abutting their land. This included the right to take and discharge water in accordance with their own needs, including the watering of stock and rights to fisheries.⁸³ But as White points out, if a lake is contained within a single block, the land owner has exclusive access rights to the lake fisheries. However, if several people own lands abutting the lake, access rights to the lake fishery are shared between them.⁸⁴ Under common law, riparian owners also had rights to mineral resources on the riverbed, as discussed below. Because land adjoining the Waikanae river at the time that titles were established in the late nineteenth century was all Maori land, Maori also held such rights. As discussed above, however, these were lost with the alienation of land. While the documentary evidence reveals very little about this process, there is one recorded case in which Hira Parata (son of Wi Parata) and others were concerned about their loss of access to waterways following alienation. In 1923, a LH Greenaway wrote on behalf of himself and Hira Parata to the Minister of Native Affairs J.G Coates regarding access:

Mr [Hira] Parata’s complaint is that his people have sold their frontage, reserving a right of way (constituted by Order of the Native Land Court) to their lands at the back and that now they have no access to these lands. In this way, he says they have lost three rights of way – one to lands and two to important Tribal cemeteries. The writer’s complaint is that he has lost access to a tidal river by right of way attached (by Order of the Native Land Court) to his land and to that of Weggerly.⁸⁵

Thus, while Parata appears to have made an agreement regarding access to waterways, this was never formalised or registered. Coates replied that addressing this issue through legislation would be ‘extremely dangerous’ and that there was ‘no doubt some way out will be found’.⁸⁶ While no other files relating to this case have been located, it demonstrates an attempt by

⁸⁰ Ibid., p29.

⁸¹ For further discussion on patterns of land purchasing in Ngarara West B and C, see Ibid., p33-46.

⁸² Landcare Research: <https://whenuaviz.landcareresearch.co.nz/parcel/20270> (accessed 17 September 2018)

⁸³ White, ‘Inland Waterways: Lakes’, p5.

⁸⁴ Ibid. p5.

⁸⁵ LH Greenaway to J.G Coates, 12 July 1923, Received: 13th July 1923. - From: H.H. Greenway, Waikanae. - Subject: As to extinguishment of Rights of Way. Ngarara west A 16, 17, 24A and 75, MA1 1325/1923/365, ANZ, Wellington.

⁸⁶ J.G Coates to LH Greenaway, 21 July 1923, From: H.H. Greenway, Waikanae. - Subject: As to extinguishment of Rights of Way. Ngarara west A 16, 17, 24A and 75, MA1 1325/1923/365, ANZ, Wellington.

Maori to maintain access and interests in waterways under the new system following alienation of land and the difficulties associated with this.

Another implication of the loss of land is the loss of rights to waterway resources. Pakeha settlers asserted their riparian rights when land was purchased along the river. For example, as Rigby and Boulton suggest, a settler named Harry Elder leased the riverside stretch at Ngarara West C23 (see Figure 5) from the Parata whanau (who had taken over ownership following the death of Tutere te Matau), before he purchased it a few months before his death in 1919. As this block included the fishing spots on the Waikanae river, Elder based his claim to ‘my river’ on his lease there.⁸⁷ After Hira Parata built Mahara House in the township during 1901-1902 as a guest house and fishing lodge, Elder informed Parata that visiting fishers needed his consent first to fish in the area adjoining his land at Ngarara West C23.⁸⁸ Similarly, William Field (discussed in more detail below), sought to control whitebaiting in the lower reaches of the Waikanae river, and in the Waimeha and Ngarara Streams based on his ownership of adjoining land. This went as far as charging Te Atiawa/Ngati Awa ki Kapiti for use of fisheries. In return for 2/6d for every £1 worth of whitebait, Field granted Matai Kahawai exclusive rights to net ‘whitebait in the Waime[h]a and Ngarara streams . . . so far as they run through my property’.⁸⁹ However, according to Rigby and Boulton, Field abandoned his attempt to control whitebaiting in the face of opposition.⁹⁰ Nevertheless, Field still believed that he possessed legally-protected fishing rights based on his ownership of adjoining land, threatening to ban whitebaiting in streams within his property in 1913 and the following year he considered banning Hira Parata from whitebaiting at the mouth of the Waimeha.⁹¹

⁸⁷ Elder to Hira Parata, 26 Feb 1906, cited in Rigby and Boulton, draft report, p258.

⁸⁸ Ibid., p261.

⁸⁹ Field to Kahawai, 4 Oct 1912, cited in Rigby and Boulton, draft report, p287.

⁹⁰ Ibid., p287.

⁹¹ Ibid., p288



Figure 5 Plan of Subdivision of Ngarara West C23. Wellington Plan DP 3432 (See Quickmaps)

But while common law assumptions of private ownership were asserted in these cases, it was also unpalatable for settlers when it impeded on access to fishing and swimming areas. In the context of the debate about the Scenery Preservation Bill in 1903, Field advocated for the protection of the Waikanae river for fishing:

I refer to that strip of bush from the bridge over Waikanae river to Rikorangi [sic] which one of the most beautiful pieces of the river and bush scenery in the colony. It is now in private hands, but there runs through it that magnificent stream the Waikanae river, which

is well stocked with trout, and people come from the United Kingdom and other distant parts of the world to fish it. It should certainly be a public reserve.⁹²

In 1905, however, Elder challenged any suggestion of a scenic reserve near his land at Ngarara C23, writing: 'If they take all this of course they [will] ruin all my holding. I have kept the river beautiful to my own detriment ... And what right can they have to fish half the river [?]'⁹³ As late as 1986, new landowners in the area asserted their ownership of the riverbed, fencing off the area known as 'Love's Corner', a popular swimming spot, to public access.⁹⁴

Title to the riverbed also guaranteed access to another river resource: shingle. As Rigby and Boulton point out, Elder claimed rights to gravel in the river adjoining the land he leased.⁹⁵ In the mid-twentieth century, a private shingle recovery company, which operated a plant on Crown land, paid royalties to the Crown and shingle licences were paid to the Manawatu Catchment Board.⁹⁶ Similarly, royalties for shingle removed from the riverbed of Ngarara West A3C were paid to the 'Maori Owners'.⁹⁷ In 1965, the Horowhenua County Council consented to an application of the Waikanae Shingle Company to establish and operate a quarry in Ngarara West C23 Block X Kaitawa SD.⁹⁸

In the second half of the twentieth century, Crown legislation progressively modified some common law rights to waterways. The Water and Soil Conservation Act 1967 vested in the Crown the right to control and regulate the use of all natural waters through the establishment of regional water boards with delegated authority over water management. Section 21 of the Act states: 'the sole right to dam any river or stream, or to divert or take natural water, or discharge natural water or waste into any natural water, or to use natural water, is hereby vested in the Crown subject to the provisions of this Act'.⁹⁹ Thus, it instituted a permit system (administered by regional water boards) for the acquisition of a water right, a precursor of the resource consent. Michael Roche explained that the Act effectively replaced the riparian rights to water use, transferred from Britain in New Zealand's colonial past, by a new system whereby the Crown vested in itself the rights to natural waters. The detail of the legislation was concerned with laying out a means whereby the Crown could grant water rights for specific

⁹² Field, cited in Maclean and Maclean, *Waikanae: Past and Present*, p168.

⁹³ Elder to Morison, 5 Apr 1905, EL, vol. 2, p13, cited in Rigby and Boulton, draft report, p261.

⁹⁴ Maclean and Maclean, *Waikanae: Past and Present*, p168.

⁹⁵ Rigby and Boulton, 'Te Atiawa/Ngati Awa ki Kapiti ki Kapiti : Twentieth Century Land and Local Issues Gap-filling Report DRAFT', p261.

⁹⁶ J.D Aitchison, 'Waikanae river Control', SC [Soil Conservation] and RC [River Control]: Waikanae river, Part 2, 1955-1973, AATE 889 W3404 33/96/315000, ANZ Wellington.

⁹⁷ See discussion of land acquisition for soil conservation in Part Three.

⁹⁸ Waikanae Shingle Company Files, CF378, Kapiti Coast District Council Archives.

⁹⁹ Water and Soil Conservation Act (1967 No 135), Section 21.

uses of water, though the right to take water for reasonable domestic needs was preserved.¹⁰⁰ As Ben White points out, the Act has been criticised for making no provision for the protection of Maori interests.¹⁰¹ Few sources have been located relating to the operation of the Water and Soil Conservation Act 1967 in the Waikanae area as it relates to ownership, control and riparian rights, except for a brief mention of an application for the Waikanae Water Supply Treatment Plant and an application by the Waikanae Land Company to divert the Waikanae river mouth, which is discussed separately in Chapter Four.¹⁰²

2.5 Questions about river boundaries and legal title in the mid-1930s

While the basic assumptions of common law were straight forward, putting this into practice was far more complex and challenging. There was some debate among surveyors and Crown officials as to how riverbed ownership applied in relation to the boundaries of lands adjoining the Waikanae river and how the middle-line of the river was to be defined and understood. The debate focused on whether the middle boundary was a moving line as the river changed or whether early surveys showing a middle line in the river had therefore fixed that line (and with it the extent of adjoining land) regardless of changes in the river course.

For reasons that remain unclear, this became an issue briefly in the mid-1930s when the Chief Surveyor J.D. Clapperton wrote to the Under-Secretary for Lands, regarding river boundaries in the Ngarara West A63 block. Clapperton wrote that an 1872 plan was produced before the Native Land Court in Foxton and clearly showed boundaries ‘by colour as bordered by the sea coast and included all the Waikanae river down to where it meets the sea’ and that the Native Land Court in 1881 acknowledged the same boundaries. Clapperton continued that many subdivisions were made, among them being Ngarara West A63, which was issued to ‘the Natives’. ‘It is to be noted that the north-eastern boundary is approximately up to the middle of the tidal and navigable Waikanae river’ and he noted that the subdivision of Ngarara West A15 on the northern side of the river was issued ‘down to the same line’. ‘It seems most improbable’, he continued, ‘that the boundary line in the river is merely intended to be a meandering line; the general interpretation of the plan appears to suggest that although it is not drawn exactly in the middle in places, it is intended to represent the middle line of the

¹⁰⁰ Michael Roche, *Land and Water: Water and Soil Conservation and Central Government in New Zealand 1941-1988* (Wellington: Historical Branch, Department of Internal Affairs, 1994), p107; White, *Inland Waterways: Lakes*, p17

¹⁰¹ White, *Inland Waterways: Lakes*, p17

¹⁰² The Waikanae Water Treatment Plant was established in 1977 to supply water, sourced from Waikanae river, to Raumati, Paraparaumu and Waikanae. In 1976, the Wellington Regional Water Board applied for the continuation of a water rights under the Water and Soil Conservation 1967 (originally held jointly by Horowhenua County and Hutt County Council and granted in 1971) to take up to 23ml of water per day on a continuous basis from the Waikanae river, for a period of 10 years. Application of Water Right, 1 September 1976, Bulk Water Supply Scheme, Wellington Regional Council, 15/13/1, Kapiti Coast District Council Archives.

river'. According to Clapperton, an official from the Marine Department had stated that the river 'was tidal and navigable'.

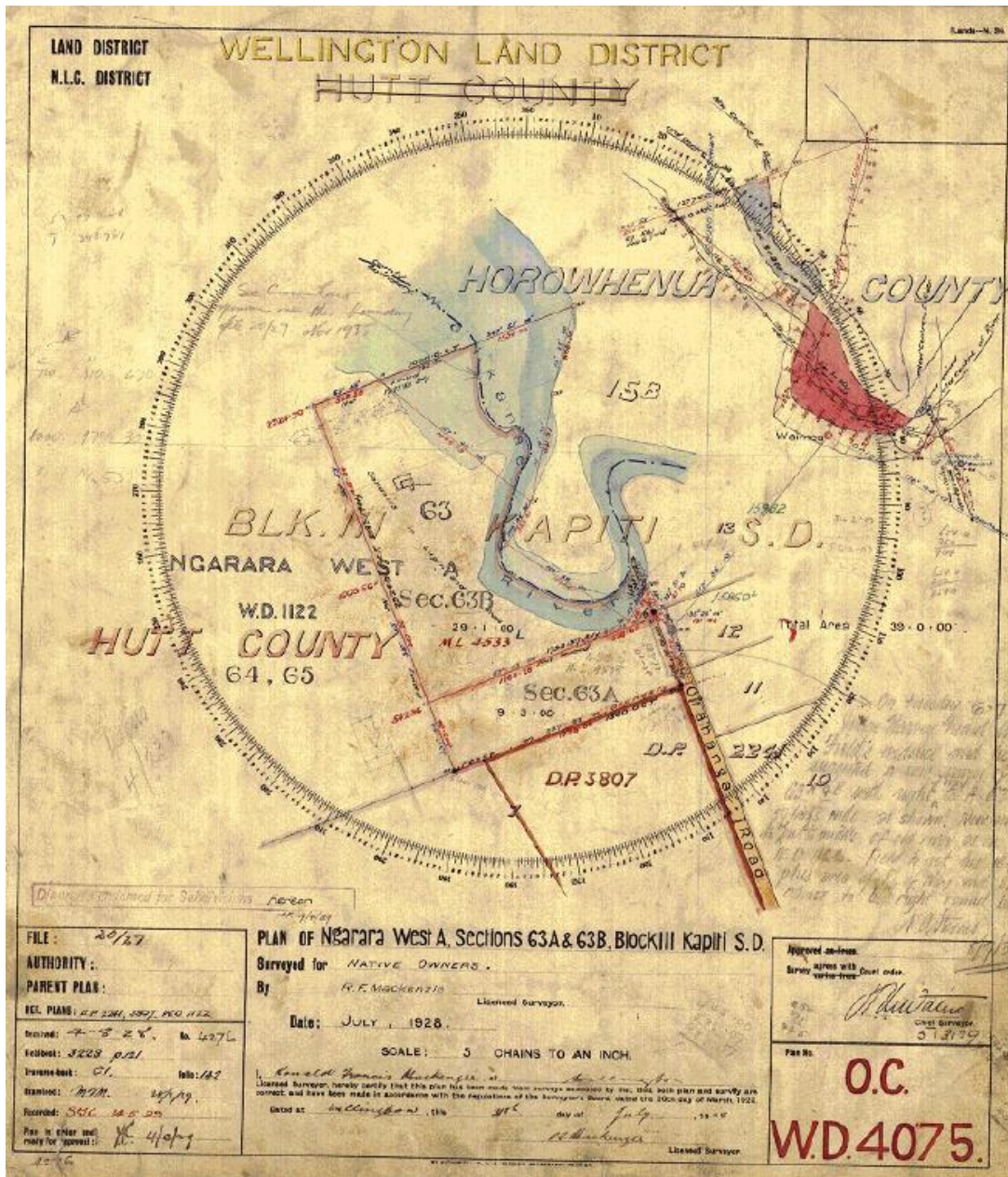


Figure 6 Ngarara West A63 Block. Wellington plan ML 4075 (Source: Quickmaps)

Clapperton claimed that his office had accepted Plan W.D. 4075 (See Figure 6), but that the river had eroded and accreted and the plan was approved with the new boundaries to the middle of the new course of the river. Clapperton sought advice:

The point now arises as to whether this is correct, and I would be obliged for direction as to the following:-

“Where the certificate of title boundary has issued to the middle line of the river, can the land in such title be accreted to or eroded, thus allowing for the ownership to be adjusted accordingly, assuming of course that the river movement has been slow and imperceptible”.

Usually where titles issue to the riparian boundary or bank, the accreting or eroding has been allowed on the assumption that prima-facie the soil of the bed of the river – ad medium filum aquae – is vested in the owners of the banks; a presumptive ownership to middle of river. Does the same apply to the former instance?¹⁰³

The Under Secretary for Land sought advice from the Acting Crown Solicitor, who replied that the line shown on the plan was a ‘fixed one’:

This question must be decided according to one of two principles; the first is that a line fixed after survey and recorded on a plan from which Crown Grants or Titles are to be issued is immutable; the second is that such a line thus fixed and recorded does not override the presumption of the common law that where a river is given as a boundary of a plot of land the boundary extends ad medium filum and fluctuates with the changes in the river’s bed. The mere statement of the second principle is almost sufficient to demonstrate its inapplicability here.

The second principle is based on the assumption that the plot of land is bounded by the river – in express terms; but far from that being the case here, no mention of the river being the boundary is made; on the contrary lines are extended from the upper and lower survey points on the bank to the approximate stream centre and these two central points are then connected by a rough ad medium filum line, which, duly coloured is shown on the plans and titles as the E. or N.E. limit of the section. Moreover, the upper stream-centre point serves, so far as one can judge, as the starting point (or whatever it may be termed in technical language) for a line running off at an angle therefrom and serving as the North-South boundary between Section 14 and 15B. But whatever the position might be in this incidental connection, I find it impossible to avoid the conclusion that the line, determined after survey, recorded on plan and title, and in all cases until the change was made in recent years coloured the same as the other boundary lines, represents something more than the common law rule as to the presumptive stream-centre.

As stated above, it seems to me that the common law rule applies only to those cases where the river is expressed to be the boundary and that under the system of survey in this country that rule does not apply at all when survey plans have been made, in which mathematical lines have in the vast majority of cases, if not in all, been adopted instead of natural boundaries.

The Acting Crown Solicitor concluded that:

...it seems to me impossible to contend that the certificate of title to Ngarara West A.63 can comprise any less land than that shown within the boundary lines shown on the earlier plans and title, or that the original boundary line must be shifted to suit the changed course of the river.¹⁰⁴

¹⁰³ Chief Surveyor Clapperton to Undersecretary for Lands, 5 October 1935, Commissioner of Crown Land, Wellington - Ngarara West A 63 Block, ABWN 6095 W5021 253/7/825, 1, ANZ, Wellington.

¹⁰⁴ Acting Crown Solicitor to Under-Secretary for Lands, 29 October 1935, Commissioner of Crown Land, Wellington - Ngarara West A 63 Block, ABWN 6095 W5021 253/7/825, 1, ANZ, Wellington.



Figure 7 This survey of Parts of Ngarara West A demonstrates why the question of the river boundary was the subject of debate. It demonstrates the centre line of the river by the 1892 survey, compared to its change in 1951. Wellington Plan DP 15859 (Source: Quick maps)

Thus, the legal opinion from the Crown solicitor was that the surveyed middle line which formed the basis for the issue of title for Ngarara West A63 was a fixed line, and remained in a fixed position regardless of alterations in the course of the river (as opposed to what might apply in the case of rivers where the title boundary was described as the riverbank or the water's edge, which could move under the common law of erosion and accretion and the rights arising from the *ad medium filum* presumptions). A handwritten pencil note on Wellington Plan ML 4075 (Figure 6) stated that the boundaries were the subject of a Native Land Court hearing in July of 1937. At that hearing, a lawyer named Mr. Stevens stated that 'Mr Field had complained that he had not received the correct area in the matter of the partition. We went with the matter, and produced a Crown Law Office opinion to the effect that the line down the middle of the Waikanae river was fixed and immutable and that could not in any circumstances be

altered'.¹⁰⁵ Similarly, in 1942, the County Clerk for the Horowhenua County Council wrote to the District Land Registrar of the Lands and Deeds Registry to ascertain the boundary of Ngarara West A18 with regard to the river. 'There is a difference of opinion as to whether the boundary is fixed or follows the centre of the river wherever it may go'.¹⁰⁶ No response to this question has been located, though the official position as outlined above was clear.

Figure 7, which shows both the original survey line down the middle of the river and the change in the course of the river, demonstrates why these questions were ongoing and a source of confusion for those involved.

2.6 The upper reaches of the Waikanae river tributaries and Reikorangi area

It should be noted that there are some differences in the upper reaches of the river towards the Reikorangi Valley and the waterways that sit broadly within the boundaries of Ngarara West C, the subject of a large Crown purchase. The Crown acquired large areas of land in the area, and according to Walzl, land had remained with the Crown well into the twentieth century and made available at long term leaseholds.¹⁰⁷ In acquiring Maori land, the Crown also acquired the title to the riverbeds passing through the acquired block. The Crown's choice was then not to include private title to the riverbeds in the titles it issued to European settlers. A survey map from 1892-1893 (see Figure 8), for example, explicitly excludes riverbeds and states that the Waikanae and Ngatiawa rivers 'are not included in the Section areas through which they run'. This is an example of where the Crown acquired ownership and control of waterways through large scale purchasing of riparian land.

¹⁰⁵ Maori Land Court Minutes, 30 WN Wellington, 7 July 1937, p92-93

¹⁰⁶ County Clerk to The District Land Registrar, 18 December 1942, Waikanae river, 1912-1978, CF1361, Series 4/15, Kapiti Coast District Council Archives.

¹⁰⁷ Many of the original sections in Reikorangi were selected by the Wellington Fruit Growers' Association, though fruit growing on a commercial scale never actually materialised. Walzl, 'Ngatiawa: land and political engagement issues C. 1819-1900', Wai 2200 #A194, p555; Maclean and Maclean, *Waikanae: Past and Present*, p157.

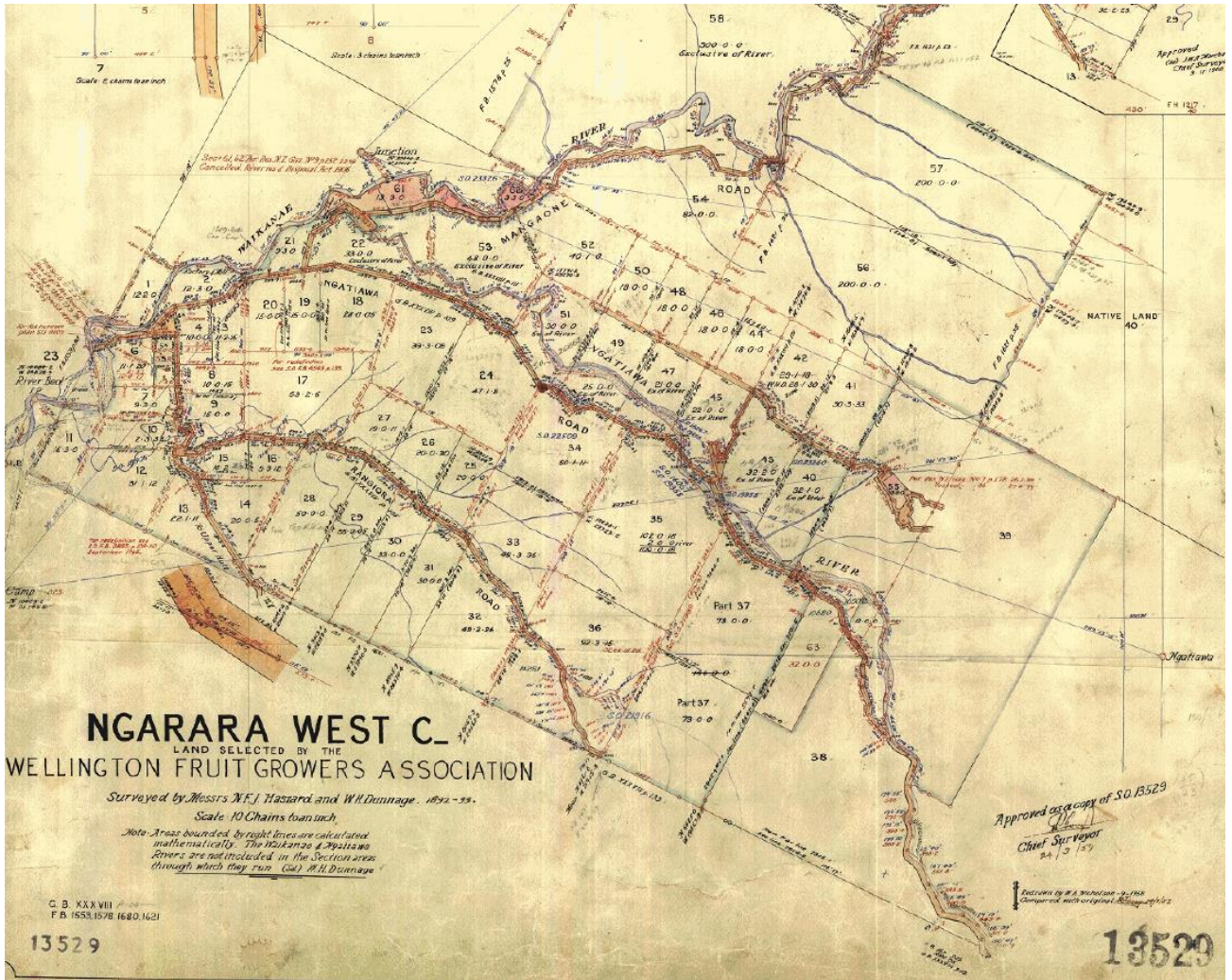


Figure 8 Survey of Ngarara West C. Wellington Plan SO 13529 (Source: Quickmaps)

Chapter Three

The Management and Control of the Waikanae river: Flood Protection, Soil Conservation, and Compulsory Takings

3.1 Introduction

As discussed in the previous chapter, the Crown increasingly sought to obtain more certain authority over inland waterways by various means, including the assertion of control and management rights and through compulsory takings. This Chapter concerns these two developments as they relate to the Waikanae river. In the early twentieth century, flooding and erosion—in part a consequence of the ecological changes described in Chapter One—became a major concern of land owners in the area. However, the Crown regarded the management of the Waikanae riverbed as being the responsibility of private land owners, and were thus reluctant to become involved in flood protection works. The view that central government should not be involved in the management and control of the Waikanae river shifted after the 1940s, however. From this point onwards, the Crown began to assume authority and control rights through legislation. Moreover, in the 1960s, the Crown began compulsorily taking sections of the Waikanae riverbed and land alongside the river for soil conservation and flood management purposes, including land owned by Maori.¹⁰⁸ As far as the documentary record reveals, Te Atiawa/Ngati Awa ki Kapiti were rarely involved or consulted over the management and control of the Waikanae river. Despite a few mentions by officials and Pakeha locals about the ‘native owners’, the documentary record tells us little about Te Atiawa/Ngati Awa ki Kapiti responses to issues of management and control. Te Atiawa/Ngati Awa ki Kapiti were consulted or involved in these matters only in so far as they were impacted as private landowners and held title to the riverbed and riparian land.

3.2 Early twentieth-century concerns about flood damage

In the early twentieth century, concerns about flooding were largely addressed in an ad hoc manner through local boards, such as River Boards, financed by local rate-payers and private landowners. This remained the mechanism to address major flooding events until the mid-twentieth century. These mechanisms were also open to Maori land owners, but as this chapter

¹⁰⁸ These takings are discussed briefly in both Heather Bassett’s Te Atiawa/Ngati Awa ki Kapiti Public Works Case Studies report and the district wide Inland Waterways Historical report. These reports give a brief overview of the cases, though do not consider the events leading up to the taking of land in terms of riverbed ownership, or the implications for ownership of the riverbed. Potter *et al.*, ‘Porirua Ki Manawatū Inland Waterways Historical Report’, Wai 2200 #A197; Bassett and Kay ‘Preliminary Report on Public Works Case Studies’, Wai 2200 #A202, pp184-186.

explains, there were limitations regarding their ability to address Maori concerns and Maori land owners' ability or willingness to fund such bodies.

In 1903, local land owners, such as William Field (Member of Parliament for Otaki at the time), expressed concerns about flood damage on the Waikanae river. In July of that year, Field raised the issue in Parliament and asked the Minister of Public Works whether the government would assist in flood protection. 'Owing to felling of timber in the upper reaches', Field stated, 'the water had come down the Waikanae river with greater suddenness and in greater volume than heretofore, and the result was that in many cases the adjoining valuable lands which included beautiful forest reserves were washed away'. The Minister, Hall-Jones, simply replied that as it 'seemed to him to be more a matter for private enterprise', but, as it appeared that the public property was likely to be affected by the floods, he would 'endeavour to arrange for an officer to visit the district and report'.¹⁰⁹ The following month, a report from an engineer G.F. Robinson stated the following:

The damage is chiefly to the North bank, and is all below the railway and road bridges. The first part is confined to Native Land, large patches of ornamental bush being scoured away, and this will continue unless stopped, if allowed to go much further it may result in the river leaving its present bed and taking its old one, which would result in considerable loss of land, and damage to beach road.¹¹⁰

Robinson suggested that if granted money, he would arrange with the Road Board to do the work on the river.¹¹¹ Another report two years later, in 1905, claimed that 'if the owners of the land abutting the river don't do something to protect themselves it seems to me they will have very little land left in a short time'.¹¹² In this case, Robinson said that the Road Board would not be in a position to raise sufficient funds and requested that the Government grant money for work on the river.¹¹³ Many were concerned that another flood event might change the course of the river and wash away sections of the roads. In 1909, an application was made to the Department of Roads to grant £200 for Waikanae river protection works.¹¹⁴ In 1912, the Minister of Public Works, W. Fraser wrote that since the protective works were 'principally required to protect private property', he was of the opinion that 'it is not a case where

¹⁰⁹ NZPD, 1903, Vol.124, p52.

¹¹⁰ G.G Robinson to Chief Engineer of Road, 'Waikanae river Protection Works', 1903, SC [Soil Conservation] and RC [River Control]: Waikanae river, Part 1, 1903 - 1955 AATE 889 W3404 33/96/315000, ANZ Wellington.

¹¹¹ Ibid.

¹¹² Letter to Chairman, Te Horo Road Board, 4 July, 1905, SC [Soil Conservation] and RC [River Control]: Waikanae river, Part 1, 1903 - 1955 AATE 889 W3404 33/96/315000, ANZ Wellington.

¹¹³ G.G Robinson to Chief Engineer of Road, 13 July 1905, SC [Soil Conservation] and RC [River Control]: Waikanae river, Part 1, 1903 - 1955 AATE 889 W3404 33/96/315000, ANZ Wellington.

¹¹⁴ Department of Roads, October 11 1909, SC [Soil Conservation] and RC [River Control]: Waikanae river, Part 1, 1903 - 1955 AATE 889 W3404 33/96/315000, ANZ Wellington.

Government assistance should be granted'.¹¹⁵ Soon afterwards, Prime Minister William F. Massey wrote to the Under Secretary of Lands after meeting with members of the Horowhenua County Council. Massey wrote that the removal of timber from the hillsides could cause future flooding which might 'cut away the road and also damage adjoining land held by natives and small owners'. Massey continued:

This comprises some of the most valuable property in the district. So far the natives have not taken any steps to assist in the protection of their land. The owners of the areas affected are prepared to form themselves into a special rating district with the object of raising funds for river protection works.¹¹⁶

Massey added that he promised to inquire about whether the government could subsidise the flood protection works.¹¹⁷ However, a few months later, the Under Secretary for Lands John Strauchon wrote to the Chairman of the Horowhenua Council that he was 'very sorry, but [the] Department cannot interfere about private property'.¹¹⁸ Once again, in early 1913, the Horowhenua County Council appealed to the Prime Minister to ask for assistance in flood protection works, which would do 'damage to valuable property, [and] will in the near future carry away portions of a public road'.¹¹⁹ A deputation from the County Council met with the Prime Minister and the Minister of Public Works and stated that the responses received from the Minister had been inadequate. 'It had been said', members of the deputation claimed, 'that the Government could not contribute towards protection of private property, but it was contended that the river being allowed to remain unprotected would seriously damage other property including Crown lands'.¹²⁰

¹¹⁵ W. Fraser, 'Waikanae river Protective Works, 30 September 1912, SC [Soil Conservation] and RC [River Control]: Waikanae river, Part 1, 1903 - 1955 AATE 889 W3404 33/96/315000, ANZ Wellington.

¹¹⁶ Massey to Under Secretary of Lands, 31 October 1912, SC [Soil Conservation] and RC [River Control]: Waikanae river, Part 1, 1903 - 1955 AATE 889 W3404 33/96/315000, ANZ Wellington.

¹¹⁷ Ibid.

¹¹⁸ Under Secretary Lands John Strauchon to Chairman Horowhenua County Council, 17 December 1912, SC [Soil Conservation] and RC [River Control]: Waikanae river, Part 1, 1903 - 1955 AATE 889 W3404 33/96/315000, ANZ Wellington.

¹¹⁹ Horowhenua County Clerk to Prime Minister, 1 February 1913, SC [Soil Conservation] and RC [River Control]: Waikanae river, Part 1, 1903 - 1955 AATE 889 W3404 33/96/315000, ANZ Wellington.

¹²⁰ 'Deputation', 15 April 1913, SC [Soil Conservation] and RC [River Control]: Waikanae river, Part 1, 1903 - 1955 AATE 889 W3404 33/96/315000, ANZ Wellington.

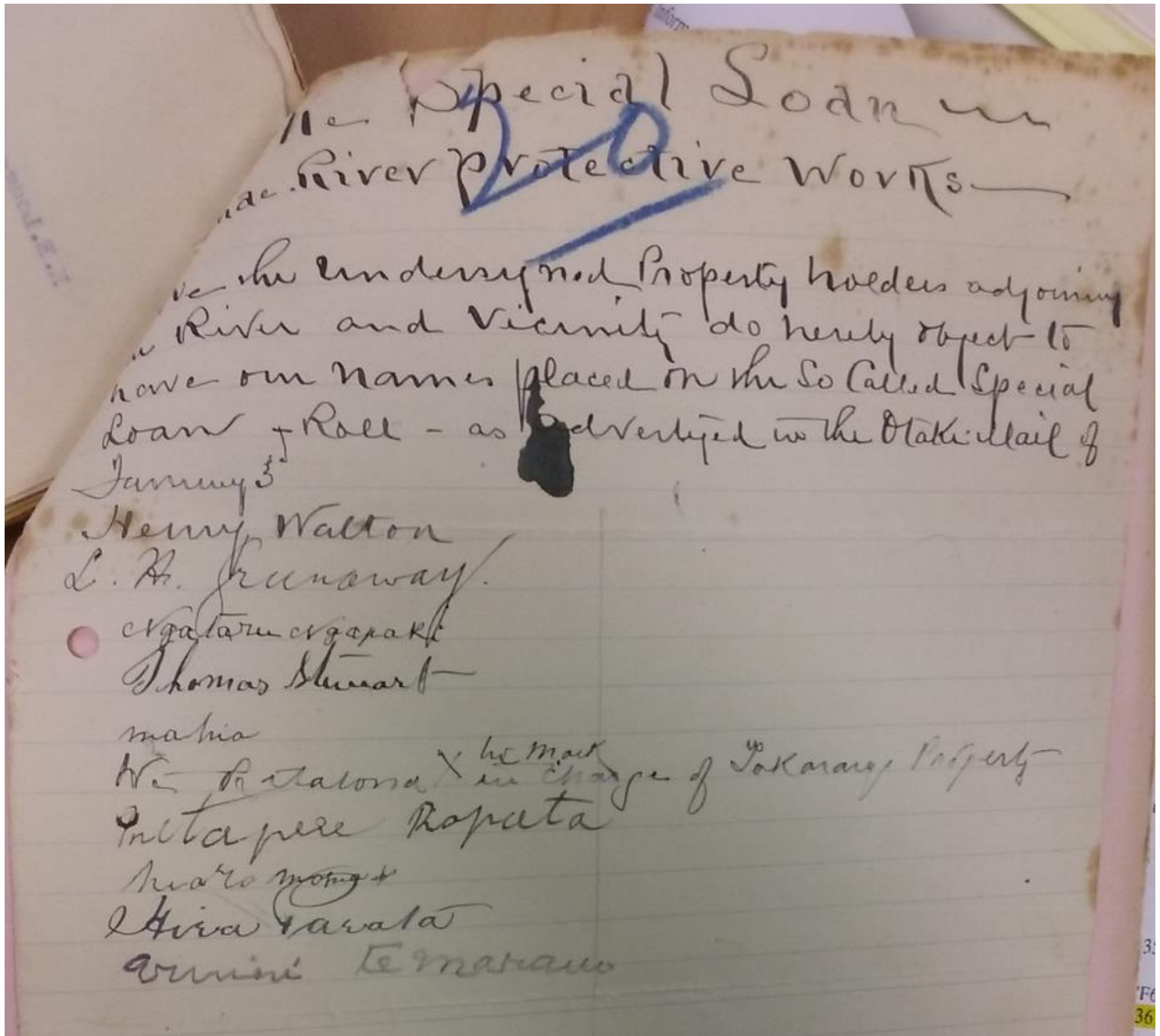


Figure 9 Petition from a number of landowners, most of whom were Maori, against their names being included on 'the so called Special loan and Roll'. January 1913. Waikanae river, 1912-1978, CF1361, Series 4/15, Kapiti Coast District Council Archives.

The file notes include a list of the ratepayers of the 'Waikanae river Special district' upon which a loan of £500 was being raised was provided to the Minister of Public Works, Fraser. It notes that the total rateable value was £11,915, 'and of that the Natives own £5473 worth, leaving a balance of European land at £6442'.¹²¹ The government eventually granted £150 for flood protection work along the river.¹²² The names on the list included: Hira Parata (Ngarara West part of A78), Eruini Te Marau (part of A3) H.W Udy (part of A3) W.M Smith (A35), S. Spencer-Moore (A23) Ngarongoa Tamati (part of A22), Ngarua Taupoki (part A22), Rameka

¹²¹ Letter to Fraser, 10 March 1913, SC [Soil Conservation] and RC [River Control]: Waikanae river, Part 1, 1903 - 1955 AATE 889 W3404 33/96/315000, ANZ Wellington.

¹²² W.S Short, 'Waikanae river Protective Works, July 22 1913, SC [Soil Conservation] and RC [River Control]: Waikanae river, Part 1, 1903 - 1955 AATE 889 W3404 33/96/315000, ANZ Wellington.

Watene (A21), W.H. Field (A29, A33, part of A31), I.J. Field (parts of A37, A39, A40), W.H. Karsten (A19, A20), Henry Walton (A18, A28), J. Askew (A25), Metapere Ropata (A32), Hoana Ropata Ngapaki (A31), Takarangi Te Puke (A30), M. Luckie (A27, A34), Rangiwihata (A44).¹²³ Following the creation of the list, however, a number of landowners, most of whom were Maori, petitioned against their names being included on the list and advertised in the *Otaki Mail*. The petition, reproduced above, reads: ‘We the undersigned property holders adjoining the River and vicinity do hereby object to have our names placed on the so called Special loan and Roll – as advertised in the Otaki Mail of January 5’.¹²⁴ The nature of the opposition to being placed on this list remains unclear, as the petition was located within the documentary record without wider context. But it is possible—as Field suggests below—they were protesting the payment of rates.

Flooding encroaching on land along the course of the river was reported again in April 1915.¹²⁵ Another call for action by Field to the Minister for Public Works two months later stated that ‘if it continued it will not only ruin Mr. Kemsley’s land but it will probably wash away half the area of the adjoining lands which unfortunately belong to some Natives, who are without means, and who cannot therefore contribute towards the undertaking’.¹²⁶ Around the same time, the Engineer in Chief of the Public Works Department wrote to the Minister of Public Works suggesting that the locals should form ‘a River Board with rating powers to enable sufficient money to be raised for construction and maintenance purposes, and to apportion the cost equitably over the whole of the lands along both sides of the river’, the ‘same as in other drainage and river protective works in the Dominion’.¹²⁷ William Field opposed the creation of a River Board and instead advocated for the ‘transfer of control of these rivers to council, with power under engineering advice to determine a permanent course, and to take such measures as may be necessary to confine a stream to that course’.¹²⁸ Fraser replied to Field that the prerequisite of a County Council being declared a River Board required the constitution of a River District, and no River District could be constituted under the River

¹²³ A list of the ratepayers of the ‘Waikanae river Special district’ .SC [Soil Conservation] and RC [River Control]: Waikanae river, Part 1, 1903 - 1955 AATE 889 W3404 33/96/315000, ANZ Wellington.

¹²⁴ Petition from Henry Walton and others, Waikanae river, 1912-1978, CF1361, Series 4/15, Kapiti Coast District Council Archives.

¹²⁵ Engineer in Chief, 7 April 1915, SC [Soil Conservation] and RC [River Control]: Waikanae river, Part 1, 1903 - 1955 AATE 889 W3404 33/96/315000, ANZ Wellington.

¹²⁶ Field to Minister of Public Works, 12 July, 1915, SC [Soil Conservation] and RC [River Control]: Waikanae river, Part 1, 1903 - 1955 AATE 889 W3404 33/96/315000, ANZ Wellington.

¹²⁷ Engineer in Chief to the Minister of Public Works 27 April 1915, SC [Soil Conservation] and RC [River Control]: Waikanae river, Part 1, 1903 - 1955 AATE 889 W3404 33/96/315000, ANZ Wellington.

¹²⁸ Field to Fraser, 2 May 1915, SC [Soil Conservation] and RC [River Control]: Waikanae river, Part 1, 1903 - 1955 AATE 889 W3404 33/96/315000, ANZ Wellington.

Board Act until a petition was presented, signed by ‘not less than the majority of ratepayers within the area of the proposed River District’.¹²⁹

The calls for government action on erosion in the Waikanae river would continue in the following decades. William Field, in particular, would continue to call for action of erosion into the 1920s and 1930s.¹³⁰ When Field raised issues of cattle access to waterways in 1921, an official advised the Minister of Public Works stating that without the formation of a River Board, the river bed ‘is simply waste land’ with no one to administer or regulate cattle access.¹³¹ Field would continue to express frustration about his inability to form a River Board and his view that because much of the land was ‘native land, it was therefore ‘impossible to get the owners to contribute anything towards river protection’.¹³² In 1931, Field appealed to the Minister of Native Affairs and also wrote to the Minister of Public Works. ‘A large areas of fine alluvial river flat land belonging to Natives has been washed away’, Field wrote. ‘[S]everal Native habitations are threatened.... I write to invoke your sympathy and assistance in the interest of the Natives’.¹³³ The Native Minister Apirana Ngata responded in early July stating that he would make inquiries into the matter.¹³⁴ Before Ngata could inquire, however, the Minister of Public Works responded to Field, suggesting the formation of a River Board. No further correspondence from Ngata has been located, though a news report later in the decade did state that in relation to Waikanae erosion, ‘the Native Department was willing to give some assistance’.¹³⁵ A search of the relevant Native Department files has found no further correspondence on this matter.

In July 1931, the district engineer wrote that ‘little or no attempt is being made by the owners to protect the banks, also the majority of land affected, which is good land, belongs to the Maoris who do not pay any rates’. The engineer added that ‘until a River Board is formed and a scheme of protection adopted the Government should not be called upon to assist’.¹³⁶

¹²⁹ Fraser to Field, undated (June 1915), SC [Soil Conservation] and RC [River Control]: Waikanae river, Part 1, 1903 - 1955 AATE 889 W3404 33/96/315000, ANZ Wellington.

¹³⁰ Received: 3rd July 1931. - From: W.H. Field, Member of Parliament, Wellington. - Subject: As to erosion of Waikanae river threatening Native lands and habitations, ACIH 16036 MA1 1931/269, ANZ, Wellington.

¹³¹ [Author’s name eligible] to the Minister of Public Works, 28 September 1921, SC [Soil Conservation] and RC [River Control]: Waikanae river, Part 1, 1903 - 1955 AATE 889 W3404 33/96/315000, ANZ Wellington.

¹³² Field to Chairman of Horowhenua County Council, 6 February 1925, Waikanae river, 1912-1978, CF1361, Series 4/15, Kapiti Coast District Council Archives.

¹³³ Field to Native Minister, 23 June 1931, SC [Soil Conservation] and RC [River Control]: Waikanae river, Part 1, 1903 - 1955 AATE 889 W3404 33/96/315000, ANZ Wellington.

¹³⁴ Ngata to Field, 6 July, 1931, Received: 3rd July 1931. - From: W.H. Field, Member of Parliament, Wellington. - Subject: As to erosion of Waikanae river threatening Native lands and habitations, ACIH 16036 MA1 1931/269, ANZ, Wellington.

¹³⁵ *Evening Post*, 14 October 1939.

¹³⁶ District Engineer, ‘Waikanae river Erosion’, 13 July 1931, SC [Soil Conservation] and RC [River Control]: Waikanae river, Part 1, 1903 - 1955 AATE 889 W3404 33/96/315000, ANZ Wellington.

Officials continued to state that the government should not be called upon 'to assist in the protection of private or Native land'.¹³⁷ Erosion and flooding continued to concern locals in the area and reports suggests that the north bank of the river at sections Ngarara West sections A21 (25 acres) and A22 (10 acres) were at most risk. This included Maori land, owned by Rameka Watene and Ngarongoa Tamati. In November 1938, Field again wrote to the Chairman of the Horowhenua County Council:

Erosion in the Waikanae river, about half way between the Railway and the Beach is assuming alarming proportions. The section immediately affected and threatened are sections 21, 25 acres, owned by Rameka Watene and 22, 10 acres, half of the other half to Ngarongoa Tamati and others. My section has thus native owners on each side, and it is of course difficult under present circumstances to obtain any contribution from them towards river protection works.¹³⁸

Again, in 1940, engineers and the Minister for Public Works, Robert Semple, continued to state that private owners should be responsible for flood protection, and that it was not a matter for state assistance.¹³⁹ This position would change, however, as the state began to pay more attention nationally to the issue of soil erosion and flood control; this is discussed further below. The rivermouth in particular caused anxiety among early settlers because of its movements. As the *Horowhenua Chronicle* described in 1936:

For a considerable time past the Waikanae river has been causing anxiety to holders of land on the south end side of the river where it entered the sea. The river has been making steadily toward the south, eating greedily into the light sandhill, lupin and scrub-covered country on its landward and southern side. The position became such that a gang of workmen was put on to endeavour to turn the river from its adopted course (southward, parallel with the coast-line) direct into the sea and so check the inroads it was making on the land to the south. The effort was a failure, but what man was unable to do after many days' labour, nature accomplished in a few hours during the flood in the river last week. Some time on Tuesday night the river changed its course at a spot a few chains inland from the beach, and, eating its way northward into a high lupin-covered sand bluff, forced a new passage practically straight through to the sea near the spot where the workmen had previously endeavoured to make a cut through, and fully half a mile to the north of the old rivermouth. If the new entrance remains there all concerned will be satisfied, but settlers who know the vagaries of the Waikanae in this area, are of opinion that unless a stable groin is built, the natural trend of the river will be again to eat its way southward along the coast, although they consider it will be a decade before it has again worked as far south as it was before last Tuesday's flood.¹⁴⁰

¹³⁷ Waikanae river Erosion, 21 July 1931, SC [Soil Conservation] and RC [River Control]: Waikanae river, Part 1, 1903 - 1955 AATE 889 W3404 33/96/315000, ANZ Wellington.

¹³⁸ Field to Chairman Horowhenua County Council, November 1938, Waikanae river, 1912-1978, CF1361, Series 4/15, Kapiti Coast District Council Archives.

¹³⁹ R Semple to L.G Lowry, 6 February 1940, SC [Soil Conservation] and RC [River Control]: Waikanae river, Part 1, 1903 - 1955 AATE 889 W3404 33/96/315000, ANZ Wellington.

¹⁴⁰ *Horowhenua Chronicle*, 29 December 1936

The idea that the river mouth should be straightened to prevent flooding continued in the decades afterwards. Minister of Works in 1947, Robert Semple, wrote that ‘a new mouth should be opened up by means of a cut across the narrow neck of beach to the north’.¹⁴¹ This did not eventuate, though discussions about such work occurring continued in the following decades and is discussed below.



Figure 10 ‘Waikanae river on the rampage’ in 1923. Creamery building partly submerged by flood water, Waikanae. Ref: 1/2-150350-F. Alexander Turnbull Library, Wellington, New Zealand. /records/22773561

Erosion of the riverbanks also had an impact on legal boundaries of the land and river. In the late 1920s, the Chief Surveyor wrote that the middle-lines of the Waikanae river, as defined by a survey of Ngarara West A63A and A63B, differed ‘considerably from that to which titles are already issued’. Before new titles could be issued, he wrote, it would be necessary for the owners to prove that the alteration was due to gradual accretion and erosion by the river (a similar concern to that expressed by the Chief Surveyor in the previous chapter).¹⁴²

¹⁴¹ Robert Semple to D.F. Watson, 17 September 1947, SC [Soil Conservation] and RC [River Control]: Waikanae river, Part 1, 1903 - 1955 AATE 889 W3404 33/96/315000, ANZ Wellington.

¹⁴² Chief Surveyor to R.F Mackenzie, Licensed Surveyor, 8 October 1928, Wellington - Ngarara West, 1915-1938, AMA 619 W3150 9/20/27, Part 1, ANZ, Wellington.

Similarly, flood protection works pitted adjoining landowners against one another when work interfered with their side of the riverbed. D.K. Buchannan wrote to the Chairman of the Hutt County Council in 1932 claiming that the creation of a groin in the Waikanae river for G. Mowbray was built ‘considerably more than half way over the stream’. ‘Now’, Buchannan continued, ‘as the centre of the river is my boundary and I strongly objected to this groin before it was constructed I would be glad if you would use your influence to try and persuade Horowhenua Council to do something to counteract this menace to my property’.¹⁴³

3.3 Soil Conservation and river control, 1941-1968

In 1941, the Crown passed the Soil Conservation and Rivers Control Act with the aim to unify the administration of soil conservation, river control and drainage. Under the Act, local catchment boards could be established to minimise and prevent damage from floods and erosion and to promote soil conservation. These catchment boards were given a number of powers to address these issues, including the exclusive control of certain watercourses, the power to divert, deepen or alter any watercourse, and to pass bylaws concerning watercourses. The boards were given the ability to construct and maintain any necessary works and to take land required for catchment work. The passing of the 1941 Act reflected a broader shift in Crown policy towards environmental management. The consequences of earlier decisions regarding the environment were better recognised; each problem was now to be treated not simply as a local one to be tackled by local councils and river boards, but something that required national direction and a new effort to address the consequences of erosion and flooding. As we will see, this also had consequences for waterways ownership and control.

The Waikanae river catchment fell within the Manawatu Catchment Board district.¹⁴⁴ Following its creation, the Board started to undertake works on flood protection. One of the early works was the realignment of the river mouth. In 1947, one local, D.F. Watson, wrote, ‘[t]hat a new mouth must be cut out at an early date goes without saying, if we are to retain our homes’.¹⁴⁵ In the same year, D.F. Watson and others appealed to Robert Semple as Minister of Public Works to ‘help us retain our homes (which are our own lifetimes savings), and are in eminent danger of being lost to us because of the serious erosion in the Waikanae river’.¹⁴⁶ As before, Semple replied that engineers had suggested that dwellings were not under threat, but

¹⁴³ D.K. Buchannan to the Chairman of the Hutt County Council, 19 September 1932, Waikanae river, 1912-1978, CF1361, Series 4/15, Kapiti Coast District Council Archives.

¹⁴⁴ Easther, ‘Waikanae river Archive’, 1991, p6.

¹⁴⁵ D.F. Watson to Mr. Acheson, 9 August 1947, SC [Soil Conservation] and RC [River Control]: Waikanae river, Part 1, 1903 - 1955 AATE 889 W3404 33/96/315000, ANZ Wellington.

¹⁴⁶ D.F. Watson and others to Semple, 27 July 1947, SC [Soil Conservation] and RC [River Control]: Waikanae river, Part 1, 1903 - 1955 AATE 889 W3404 33/96/315000, ANZ Wellington.

was prepared to support works as long as other landholders were willing to pay one-third of the cost.¹⁴⁷

It was in the mid-1950s, however, that the Manawatu Catchment Board started to take a more comprehensive approach to erosion and flood damage on the Waikanae river. In 1955, the Board submitted a scheme 'for controlling and improving 5 miles of the Waikanae river and adjacent streams at an estimated cost of £13,200'.¹⁴⁸ The scheme would address flooding in the river by building stop banks, reopening abandoned courses, improving adjacent streams, including the Waimea stream, and the maintenance of the mouth of the river. A newspaper report in the *Dominion* in 1956 outlined the proposal for the scheme and raised the issue of revenue and rates. It stated that there were three parties involved in the control of the river: the catchment board, the State, and the individual ratepayers 'who has to foot a portion of the cost', but said that rates cannot be imposed on the latter without their having some say in the matter.¹⁴⁹

But while the Catchment Board held numerous powers in relation to the management of waterways, the ownership of the Waikanae riverbed remained with the adjoining landowners. The question of riverbed ownership along the Waikanae was raised around this time in response to a complaint about stock access to waterways. Chairman of the Soil Conservation and Rivers Control Council, W.L. Newnham, wrote the following.

[I] greatly regret that nothing can be done about it at present. The owner of the cattle is within his legal rights in allowing them to wander on that part of the river bed which belongs to him. I understand that the boundary between sections on either side of the Waikanae river is a surveyed line which was the centre of the river at the time of the survey. Changes of course have occurred since the line was fixed and now the true boundary is in some places on one side of the river and in other cases on the opposite side.

The question of wandering stock in rivers is a difficult one. It occurs in many of the longer settled parts of the Dominion where rivers have been used as boundaries. There are other places where a boundary has been fixed along each bank and then a property owner can legally be required to fence. It is not practicable to fence boundaries in river beds nor can a farmer be prevented from enjoying the amenities of his property such as access to water for his stock.¹⁵⁰

¹⁴⁷ Semple to Watson, 17 September 1947, SC [Soil Conservation] and RC [River Control]: Waikanae river, Part 1, 1903 - 1955 AATE 889 W3404 33/96/315000, ANZ Wellington.

¹⁴⁸ 'Waikanae river Control Scheme, 16 August 1955, SC [Soil Conservation] and RC [River Control]: Waikanae river, Part 1, 1903 - 1955 AATE 889 W3404 33/96/315000, ANZ Wellington.

¹⁴⁹ *Dominion*, 3 May 1956, newspaper clipping in: SC [Soil Conservation] and RC [River Control]: Waikanae river, Part 2, 1955-1973, AATE 889 W3404 33/96/315000, ANZ Wellington.

¹⁵⁰ Chairman of the Soil Conservation and Rivers Control Council, W.L. Newnham, to J. Hill, 17 November 1955, SC [Soil Conservation] and RC [River Control]: Waikanae river, Part 1, 1903 - 1955 AATE 889 W3404 33/96/315000, ANZ Wellington.

In some cases, Newnham added, ‘public-spirited and co-operative’ farmers might fence the banks by agreement. ‘However, as in your case, one man can wreck the whole scheme’.

The only remedy then is for the Catchment Board to acquire the river bed by purchase. For this to be done the riparian landowners would have to agree to the setting up of a special rating district or to other means of raising the necessary finance.... When comprehensive river control schemes are undertaken, river beds and banks are purchased as river control reserves.¹⁵¹

However, Newnham explained, where there was ‘failing agreement amongst riparian owners’, in his view, ‘there is no alternative to acquisition’.¹⁵²

The urgency of flood protection work was made more apparent in the early 1960s, when the Waikanae river experienced the largest flood since the creation of the Waikanae river scheme.¹⁵³ As discussed above, however, the Catchment Board had to deal with the legacy of riparian and riverbed ownership, and, as was suggested above by Newnham, the answer was compulsory taking, especially where flood control works such as stopbanks might be constructed on riverbed land. In the previous decade, there had been some progress towards land takings for flood protection. In 1955, a company called ‘Real Properties Limited’ with land adjacent to the Waikanae river claimed for loss of riparian rights, but offered to accept in lieu of compensation ‘an easement over the land to be taken to give access for stock and to allow for drawing of water’ and ‘the right to discharge water to the river through present and future drains’. A hand-written note on the letter states ‘this would defeat the whole object of acquisition’. The Land Purchase Officer involved, L.C.E. Malt, wrote that the land was:

zoned rural but has some sub-divisional potential. All-subdivision owners would be required to set apart a strip as river bank reserve. This reserve would be a public reserve through which future sections owners would have free and uninterrupted access to the river.

Malt added that the value of the land as claimed includes ‘something for the loss of this access’.

¹⁵⁴ The land and riverbed in question had been the site of a gravel crushing plant. Malt wrote:

¹⁵¹ Ibid.

¹⁵² Ibid.

¹⁵³ Fancourt to District Commissioner of Works, 8 February 1962, SC [Soil Conservation] and RC [River Control]: Waikanae river, Part 2, 1955-1973, AATE 889 W3404 33/96/315000, ANZ Wellington.

¹⁵⁴ L.C.E Malt to Manawatu Catchment Board, ‘Waikanae river Scheme: Land Acquisition “Real Properties Limited”’, 4 December 1959, SC [Soil Conservation] and RC [River Control]: Waikanae river, Part 2, 1955-1973, AATE 889 W3404 33/96/315000, ANZ Wellington.

Gravel may be taken from this river only with the consent of Manawatu Catchment Board. It is understood that this consent would be withheld unless the river were endangered... A gravel crushing plant existed on the property some years ago but operations ceased when supplies ran short... It is claimed that 20,000 cubic yards were sold on royalty basis last year.¹⁵⁵

Malt recommended the company be 'granted the right to cross Catchment Board land, together with an exclusive right to take and sell gravel from that portion of the river now fronting its property'. Malt continued that the 'exclusive right to the river would be required in order to prevent exhaustion of gravel supplies, particularly by unauthorised persons entering from Greenaway Road'.¹⁵⁶ The Chief Engineer of the Manawatu Catchment Board requested from the council a figure of £5,000 to increase the funds for land takings and wrote:

The acquisition of land along this river is desirable particularly as titles in this area originally extended to the centre of the river and were not variable according to the accretion as they are in many rivers. It is also desirable, from the point of view of controlling the removal of shingle from the river and for the revenue which can be obtained from this source. The main object, however, is to ensure that stock do not damage our work and that trees are planted along the river are under the control of the Board and able to be felled and used as we wish.

The legal position, when the land does not belong to the Board, is far from satisfactory and we are unable to force our requirements in many cases.¹⁵⁷

Thus, because title extended to the mid-point of the river, this appears to have given the Crown the added incentive to pursue acquisition, both to acquire riverbank land in order to extinguish or acquire riparian rights presumption and to solidify catchment board control of riverbeds.

In response, the Chief Soil Conservation and Rivers Control Engineer wrote to the Manawatu Catchment Board that the 'inclusion of river bed in land titles, particularly where there is a river control scheme, is most undesirable'. He agreed to the £5000, claiming that it would enable most of the land to be acquired and left 'only a few owners to be dealt with by other means'.¹⁵⁸ In January 1960, an official from the Catchment Board created a list of the landowners adjoining parts of the river and included their position on land takings. It noted that to date six property owners had agreed to the takings without compensation. It noted, too, that the portions of land where 'fairly heavy compensation will be claimed' by three

¹⁵⁵ Ibid.

¹⁵⁶ Ibid.

¹⁵⁷ Chief Engineer Manawatu Catchment Board to Soil Conservation and Rivers Control Council. 22 February, 1960, SC [Soil Conservation] and RC [River Control]: Waikanae river, Part 2, 1955-1973, AATE 889 W3404 33/96/315000, ANZ Wellington.

¹⁵⁸ Chief Soil Conservation and Rivers Control Engineer to Chief Engineer Manawatu Catchment Board, 10 March 1960, SC [Soil Conservation] and RC [River Control]: Waikanae river, Part 2, 1955-1973, AATE 889 W3404 33/96/315000, ANZ Wellington.

landowners. This included the 'Maori Owners' of Part Ngarara West A3C (8a 2r 11p). The owners, the official explained, were prepared to claim compensation for shingle rights, 'as this area is immediately below the Board's land on which the shingle company is operating'. 'In respect of the taking of this land', the report noted, 'which is urban and mostly in river bed, it should be remembered that the Board has indicated to the shingle company that if and when these lands are taken the company will be able to operate upon them' (this is discussed in further detail below).¹⁵⁹

The issues of stock access were raised again later in 1960 and added to the case for compulsory land takings. The Chief Soil Conservation and River Control Engineer, A.R. Acheson, wrote that '[a]t present the centre of the river is the legal boundary between properties and wandering cattle cause a great deal of damage'. As a result, he said, the Manawatu Catchment Board 'wants to buy up as much of the riverbed as it can acquire at reasonable cost'. He added:

This is desirable even if some landowners hold out for more than the Board is prepared to pay them. Purchases will be by negotiation and most of the land will be obtained at reasonable prices.¹⁶⁰

In January 1962, Engineer M.S. Goddard wrote to the District Commissioner of Works, reminding them of the ownership of the Waikanae riverbed:

As you are no doubt aware, the bed of the Waikanae river is included in the titles of the various adjoining landowners and this makes it very difficult for the Catchment Board to protect from stock its willows and poplars which have been planted to quantify control of erosion and reduce flood damage. Some owners have proved co-operative and permitted the erection of protective fending; others have not. To give the Board undisputed control over the River bed, it has embarked on a programme which it is steadily pursuing of land acquisition. The areas now under review form part of that programme.

Goddard added that one area under review (not identified) belonged 'to Native owners' and that compensation would be determined by the Maori Land Court.¹⁶¹

¹⁵⁹ 'Waikanae Scheme Land Acquisition', 13 January, 1960, SC [Soil Conservation] and RC [River Control]: Waikanae river, Part 2, 1955-1973, AATE 889 W3404 33/96/315000, ANZ Wellington.

¹⁶⁰ A. R. Acheson, 'Waikanae river Scheme: Acquisition of Riverbed', 20 June, 1960, SC [Soil Conservation] and RC [River Control]: Waikanae river, Part 2, 1955-1973, AATE 889 W3404 33/96/315000, ANZ Wellington.

¹⁶¹ M.S. Goddard, Resident Engineer to District Commissioner of Works, 16 January, 1962, SC [Soil Conservation] and RC [River Control]: Waikanae river, Part 2, 1955-1973, AATE 889 W3404 33/96/315000, ANZ Wellington.

3.4 Compulsory takings for soil conservation

In June 1960, the Soil Conservation and Rivers Control Council gave approval to the Manawatu Catchment Board to ‘acquire all the river bed at reasonable prices’.¹⁶² Two years later, in 1962, the Manawatu Catchment Board acquired land along the Waikanae river for soil conservation and river control, ‘pursuant to the provisions of the Public Works Act 1928 and its amendments and the Soil Conservation and Rivers Control Act 1941, and its amendments’ (exactly which blocks were Maori owned and were adjoining the river is outlined below in a table and are identified in plans).¹⁶³ In May 1964, an Engineer M.S. Goddard wrote to the District Commissioner of Works repeating the comments above about the bed of the Waikanae river being included in the titles of various adjoining owners, and that the Manawatu Catchment Board was undertaking a program of land acquisition for ‘undisputed control’. Goddard added:

The land is not occupied by any buildings, yard, garden, orchard, vineyard, ornamental park, pleasure ground, cemetery or burial ground. It is mainly shingle river bed of little value for farming.... I recommend that its acquisition be proceeded with.¹⁶⁴

Soon afterwards, further land along the Waikanae riverbed and bank was taken by proclamation for soil conservation and river control purposes.¹⁶⁵ Areas of the river were vested in the board for the nominal figure of one shilling, while Maori land was acquired by proclamation under the Public Works Act, with compensation determined through the Maori Land Court. Maori land (including parts of the title that were riverbed) compulsorily acquired is detailed in this the table, on the maps provided, and is discussed below.

| Land acquired | Listed owners |
|---|---|
| Ngarara West A3C (8a 2r 11p) ¹⁶⁶ | ‘Maori owners’ Patrick Paddon, Hau Tamite and others |
| Ngarara West A21D (6a 1r 36p) ¹⁶⁷ | ‘The Estate of Rameka Watene’ |
| Ngarara West A22A1 (1r 21.4p) and Ngarara West A22A2 (2r 39.7p) ¹⁶⁸ | Hoiani Tamati, Ngarutapuke and Matai Kanaway |

Figure 11 Maori land acquired for soil conservation along the Waikanae river.

¹⁶²Secretary A.T Brown to District Commissioner of Works, 14 June 1962, Soil Conservation/River Control - Manawatu Catchment Board - Waikanae river - Claim: Maori Owners, AATE W3392 76/96/315000/0/3, ANZ, Wellington.

¹⁶³ NZG 26 April 1962, No.27, p663.

¹⁶⁴ M.S. Goddard, Resident Engineer to District Commissioner of Works, 6 May 1964, Soil Conservation/River Control - Manawatu Catchment Board - Waikanae river (Legalisation), AATE W3392 76/96/315000/0, ANZ, Wellington.

¹⁶⁵ NZG, 28 May 1964, p872.

¹⁶⁶ NZG, 30 April 1962, p663.

¹⁶⁷ NZG, 18 March 1963, p327.

¹⁶⁸ NZG, 28 May 1964, p872.

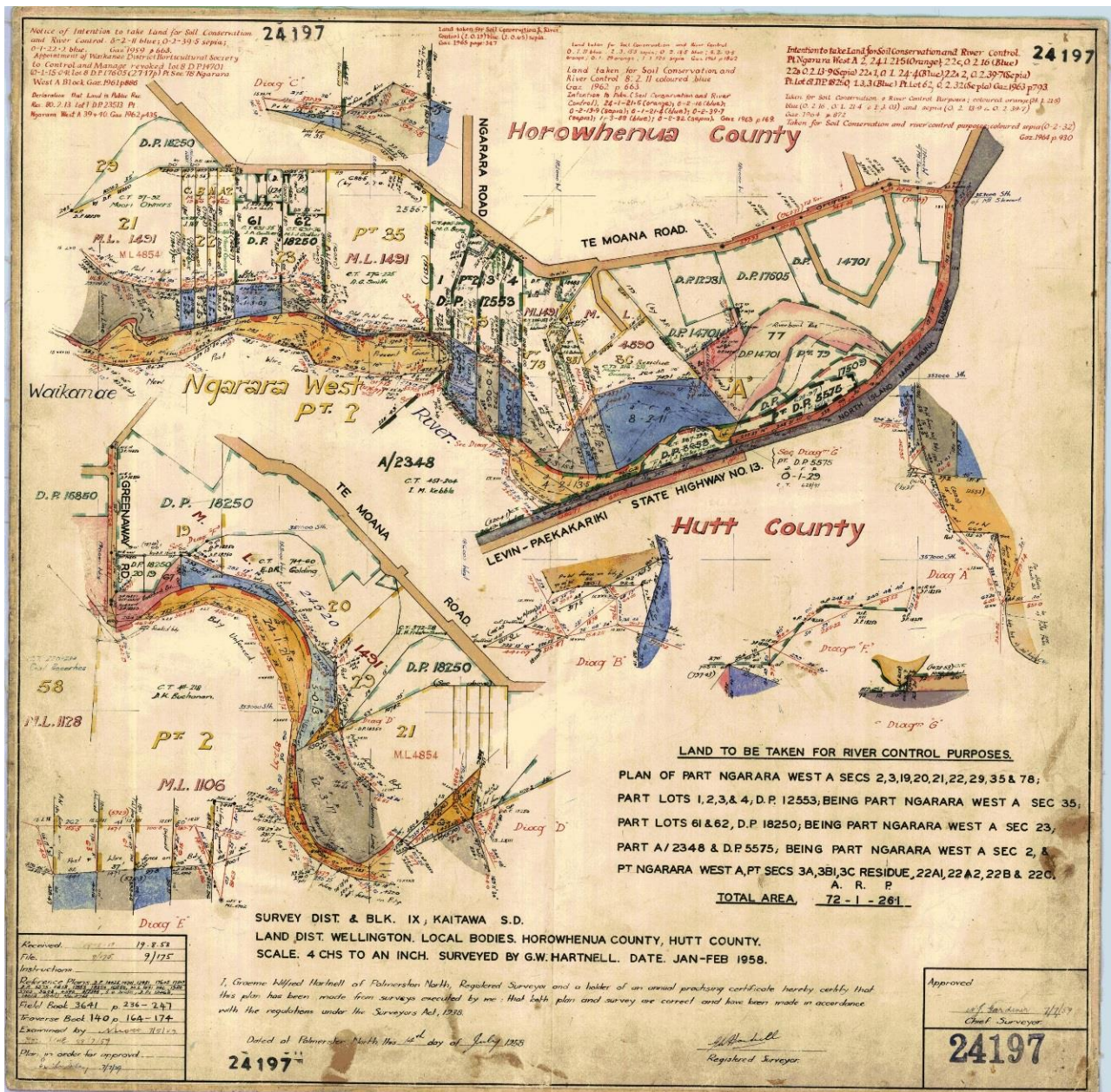


Figure 12 Land taken for river control purposes in the early 1960s, Wellington Plan SO 24197 (Source: Quick Map)

3.4.1 Ngarara West A3C

In June 1962, the Secretary of the Manawatu Catchment wrote to the District Commissioner of Works at the Ministry of Works, explaining that a number of blocks of land were transferred to the Board for the consideration of one shilling. However, he pointed out that ‘the area shown on the attached proclamation is Maori land required by the Board and is thus to be taken by Proclamation’. The Secretary continued:

I should be pleased if you could enter into negotiations via the Maori Land Court for compensation to be paid to the Maori owners. As far as I know, the Maori owners are

Mrs. H Jenkins and seven others, and Messrs. Phillips, Hollings, and Shayle-George, Barristers and Solicitors, Raumati Beach, act for these owners. The area of land in question adjoins the areas vested with the Board and on which the Waikanae Shingle Company have their shingle plant.¹⁶⁹

Later, in October 1962, E.L. Staples asked the Valuation Department to supply the Ministry of Works with ‘a special land valuation of this land based on market value for placing before the Maori Land Court’.¹⁷⁰ In the Valuation Department report, the owners of the block were listed as: Patrick Paddon, Hau Tamite and others. The land was located off Te Moana Road, and included land on both sides of the river.¹⁷¹ Lawyers assessing the case at the time wrote that the case involved ‘assessing compensation for a small area of land which includes the bed of the Waikanae stream from which a more or less constant supply of shingle is available’.¹⁷² An application for assessment of compensation was addressed by the Maori Land Court on 24 July 1963, and the award ordered at the hearing. While two separate valuers valued the land at £215 and £225 respectively, it was agreed in the Maori Land Court that while the sum of £225 would be reasonable, there was also value in the metal on the site that had not been taken into account. The Waikanae Shingle Company had removed 10,094 yards of metal just prior to the proclamation ‘with the permission of the Catchment Board and by arrangement with the Maori owners to pay 9d. per yard royalty’. As a result, a total sum of £480.16 compensation was ordered by the Court.¹⁷³ In the Maori Land Court, an engineer for the Catchment Board explained:

I have had discussions with Waikanae Shingle Coy. They took – letter from Coy 10,094 yds up to Proclamation. I understood they willing pay 9d yd – arranged with Maori owners. They are holding the royalties - £378.10.6

The river is under the control of the Board – anyone has to obtain consent there is a plant above this property – this can take out roughly all that comes down – under licence from Board. they had shortage of shingle – [Ministry of Works] put in a weir in order to prevent river undermining bridge pier. That weir – until bridge completed. Shingle coy asked permission to take from lower area...

¹⁶⁹ Secretary A.T Brown to District Commissioner of Works, 14 June, 1962, Soil Conservation/River Control - Manawatu Catchment Board - Waikanae river - Claim: Maori Owners, AATE W3392 76/96/315000/0/3, ANZ, Wellington.

¹⁷⁰ E.L Staples to Branch Manager, Valuations Department, 12 October 1962, Soil Conservation/River Control - Manawatu Catchment Board - Waikanae river - Claim: Maori Owners, AATE W3392 76/96/315000/0/3, ANZ, Wellington.

¹⁷¹ ‘Valuation Department, Urban Valuation and Report’, 12 October 1962; Sketch of Ngarara West AC3, Soil Conservation/River Control - Manawatu Catchment Board - Waikanae river - Claim: Maori Owners, AATE W3392 76/96/315000/0/3, ANZ, Wellington.

¹⁷² Blenkhorn Todd and Whitehouse to F.G Opie, 2 April, 1963, Soil Conservation/River Control - Manawatu Catchment Board - Waikanae river - Claim: Maori Owners, AATE W3392 76/96/315000/0/3, ANZ, Wellington.

¹⁷³ ‘Manawatu Catchment Board – Waikanae river: Maori Owners’, 1 August 1963, Soil Conservation/River Control - Manawatu Catchment Board - Waikanae river - Claim: Maori Owners, AATE W3392 76/96/315000/0/3, ANZ, Wellington.

From the catchment point of view I would not allow indiscriminate taking – we would not give another Shingle Coy a license. What license would be granted would depend on the changes in the river. I would not say that no more metal could be taken from the 8ac.

I estimate that 5,000yds could still come out that is widening the bed.... In these shingle rivers nearly always advantageous to remove shingle and keep bed low.¹⁷⁴

Maori were not listed as being in attendance at the Maori Land Court hearings to determine compensation.

3.4.2 Ngarara West A21D

In March 1963, a proclamation was gazetted taking further land for soil conservation for land in Section 21 of the Ngarara West A block, marked on plan SO24520, listed as the Rameka Watene Estate. (See Figure 13).¹⁷⁵ The land had been subject to a Maori Land Court partition Order in 1960, with Teera Collins and June Erica Moewaru Ngaia awarded the area known as Ngarara West A21D.¹⁷⁶ The land taken was described as ‘rough growth, which would be subject to flooding, river shingle and part of the river bed’. Compensation of £329.17.9 was ordered by the court for the taking of land.¹⁷⁷ It is unclear if the value of the shingle was taken into account in this case. The extent of the Maori landowner’s involvement is unclear.

3.4.3 Ngarara West A22A1 and A22A2

In June 1964, parts of Ngarara A22A1 and A22A2 were acquired for soil conservation.¹⁷⁸ A District Officer of the Department of Maori Affairs wrote to the District Commissioner of Works in June 1968:

We are still considering your offer of \$90 and our authority to negotiate on behalf of the owners of Ngarara West A22A2. We have this authority in respect of A22A1.

At this moment, we consider the offer of \$90 far too low and will obtain a further valuation...

Admittedly, portion of the take was river and shingly river terrace but, from plans available and, unfortunately, not a personal inspection of the property, it would seem the owners have lost their riparian rights and possibly some right in respect of the taking of shingle, if not royalty. Possibly you could advise us whether the owners had any rights to this shingle both at the time of the take and at the present time.

¹⁷⁴ Extract from Otaki Minute Book 70, pp179-184, in Soil Conservation/River Control - Manawatu Catchment Board - Waikanae river - Claim: Maori Owners, AATE W3392 76/96/315000/0/3, ANZ, Wellington.

¹⁷⁵ NZG 14 March 1963, p327.

¹⁷⁶ District Land Purchase Officer to Valuations Department 16 September 1963. Soil Conservation/River Control - Manawatu Catchment Board - Waikanae river - Claim: Rameka Watene Estate, AATE W3392 76/96/315000/0/4, ANZ, Wellington.

¹⁷⁷ Assistant Land Purchase Officer and District Land Purchase Officer to District Commissioner of Works, 24 March 1966, Soil Conservation/River Control - Manawatu Catchment Board - Waikanae river - Claim: Rameka Watene Estate, AATE W3392 76/96/315000/0/4, ANZ, Wellington.

¹⁷⁸ NZG, 28 May 1964, p872.

We cannot but consider the offer low when over one quarter of the combined blocks have been taken. The paddock value of the piece taken would be over \$500. Possibly the Manawatu Catchment Board would also be prepared to waive outstanding rates.¹⁷⁹

The District Commissioner of Works replied that the figure of \$90 was based on amounts already paid by the Crown for similar land and that riparian rights and shingle protection had been part of the valuation. However, they were willing to raise the compensation to \$100.¹⁸⁰ A handwritten note on the letter suggest that the \$100 was ‘a bit miserable’, while another suggests that it was ‘far too little’.¹⁸¹ The following year, the District Officer for the Department of Maori Affairs wrote back to the Ministry of Works, explaining that the Maori Trustee had had a valuation of the land done and had discussed a settlement with the Catchment Board. The basis of the settlement was \$535 for Ngarara West A22A1 (land at \$60 and ‘water rights’ at \$140) and A22A2 (land at \$160 and water rights at \$140). They recommended that the settlement include a ‘write off’ of rates owed.¹⁸² A report produced by the Land Purchase Officers stated the following:

The land in the owner’s title is shown as being bounded by the Waikanae river, and prior to entry being made this small farmlot had access to the river... the taking of the above land, and the erection of a fence on the new boundary by the Catchment Board in 1957 has cut off practical and legal access to the river and the owner is entitled therefore to a contribution towards the cost of an alternative water supply.¹⁸³

The settlement was made in late November. Again, the extent of the Maori landowner’s involvement is unclear.

¹⁷⁹ K. Morrill to District Commissioner of Works, 14 June, 1968, Soil Conservation/River Control - Manawatu Catchment Board - Waikanae river - Claim: Honai Tamati and others, AATE W3392 76/96/315000/0/7, ANZ, Wellington.

¹⁸⁰ District Commissioner of Works to Morrill, 5 July 1968, Soil Conservation/River Control - Manawatu Catchment Board - Waikanae river - Claim: Honai Tamati and others, AATE W3392 76/96/315000/0/7, ANZ, Wellington (22)

¹⁸¹ Assistant District Officer to Department of Maori Affairs, 13 November 1968, Land taken for river control purposes, ACIH 16036, MA1 763/ 54/19/63, ANZ, Wellington.

¹⁸² This included \$35 for costs. District Offer to District Commissioner of Works, 5 February 1969, Soil Conservation/River Control - Manawatu Catchment Board - Waikanae river - Claim: Honai Tamati and others, AATE W3392 76/96/315000/0/7, ANZ, Wellington.

¹⁸³ Land Purchase Officer to District Commissioner of Land, ‘Manawatu Catchment Board, Waikanae river Maori Owners’, 25 March 1969, Soil Conservation/River Control - Manawatu Catchment Board - Waikanae river - Claim: Honai Tamati and others, AATE W3392 76/96/315000/0/7, ANZ, Wellington. (doc 26)

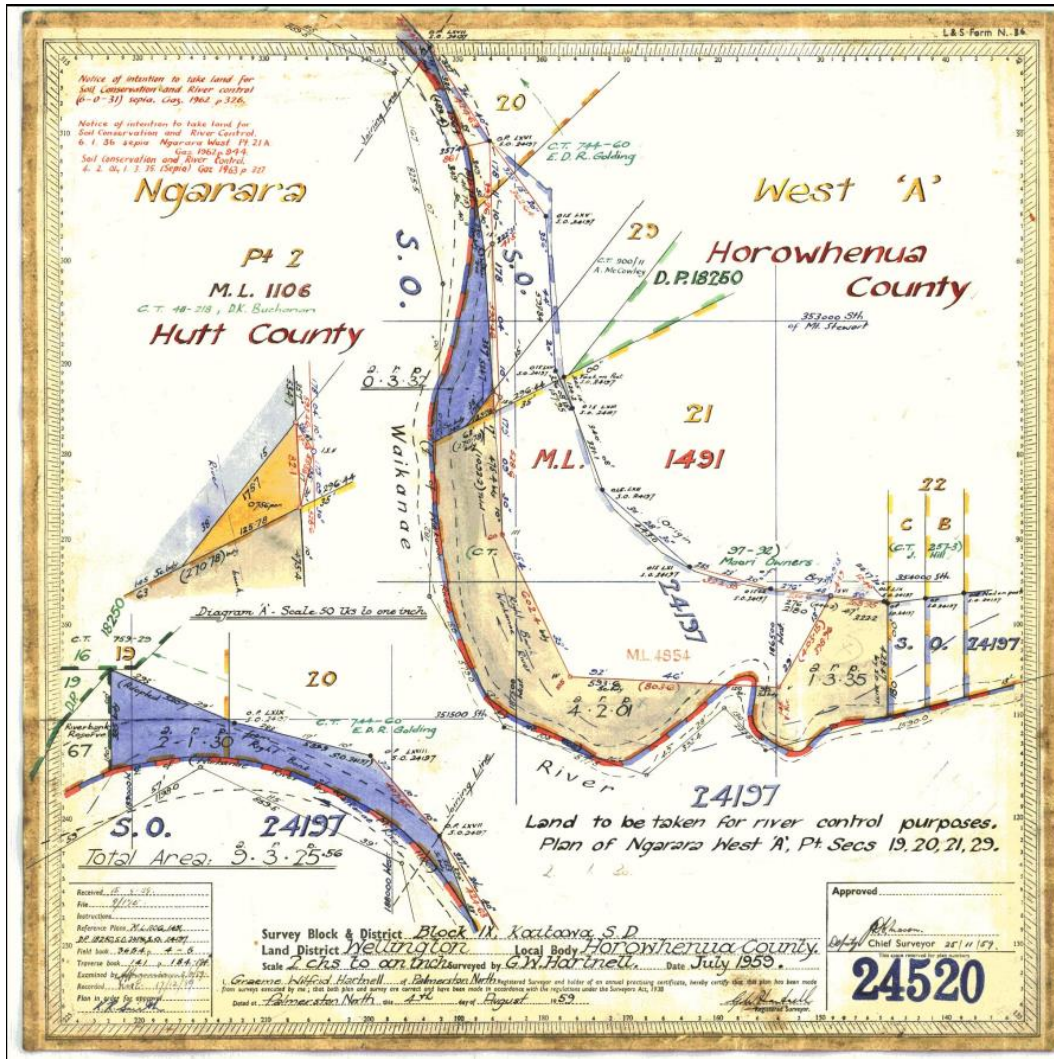


Figure 13 Land taken for river control purposes, Wellington Plan SO 24520, (Source: Quick Map)

3.5 Further areas along the Waikanae river acquired as reserves

Before concluding this chapter, it is important to note that while area of the riverbed and bank were acquired compulsorily for soil conservation, other areas were acquired under domain and reserve legislation. Increasingly in the twentieth century, the Crown has increased its control of riparian land through such means. For example, in 1952, parts Ngarara West A6, A15B, A16, and A59B were declared reserves under the Public Reserves, Domains and National Parks Act 1928, to be known as Otaihangā Domain. In 1962, the Council endeavoured by acquire a further area of 10 acres recently bought by Mr. Weggery from Maori and again in 1968, the Hutt County Council proposed purchasing areas of the Weggery Estate with a view to incorporating it into the Otaihangā Domain. Following the acquisition, the Council intended to vest the area in the Crown as a public domain and have it declared part of the Otaihangā Domain which was controlled by the Council. The land that encompasses Otaihangā Domain on the north side of the river, Ngarara West A15 B2, (9a, 37p), was acquired from the Weggery

Estate and was vested in the Crown for recreation purposes and subject to the Reserves and Domains Act 1953.¹⁸⁴ As displayed in Figure 14, the reserve extended to the mid-point of the river, as it was in the 1890s. This process made the Crown a significant riparian landowner in the area (as discussed in later chapters, this was also the case for the Waikanae river mouth and lakes and lagoons in the area).

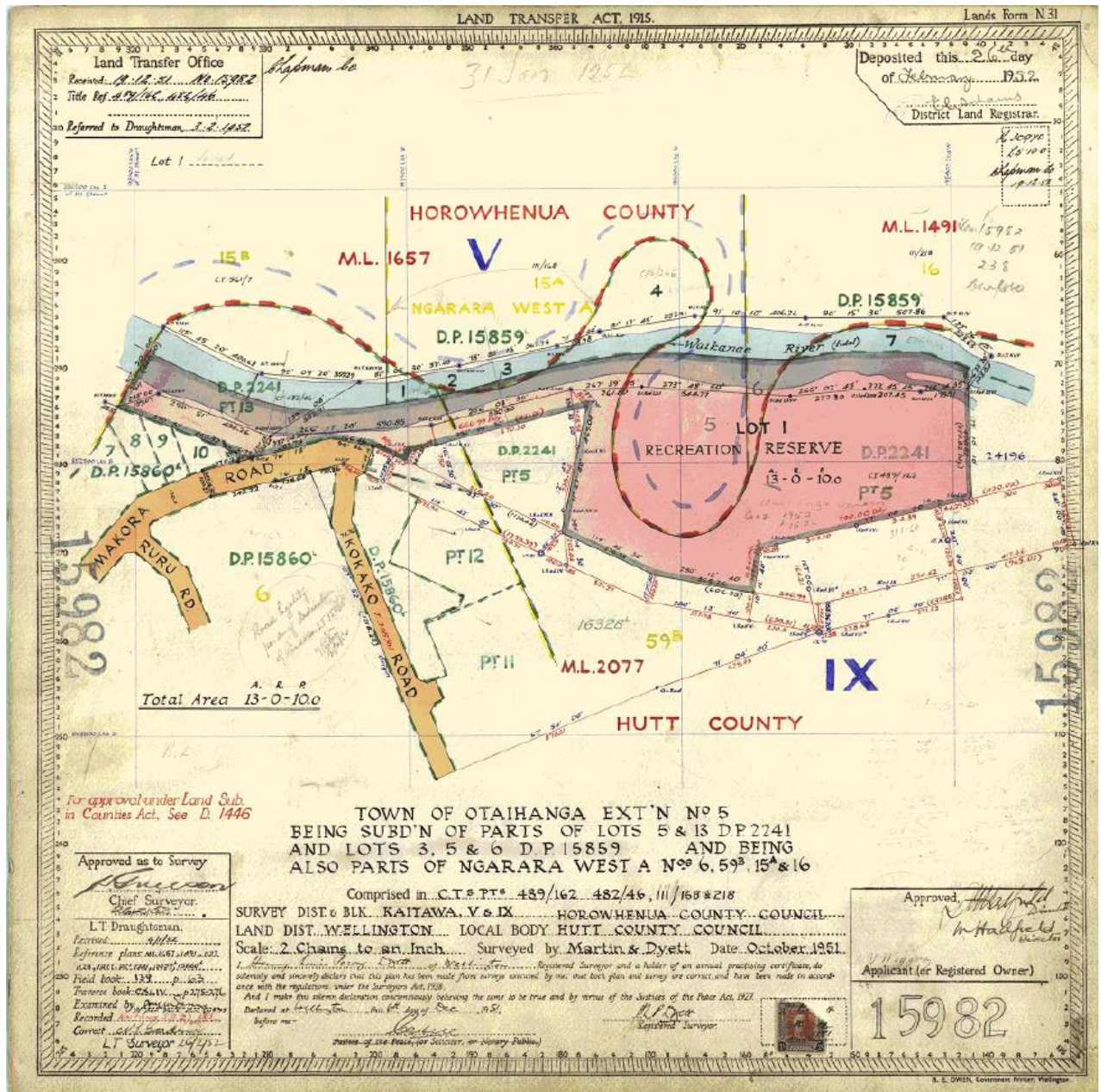


Figure 14 The Otaihangha Reserve Wellington Plan SO 15982 (Source: Quickmaps)

¹⁸⁴ Weggery Riverbank Reserve, 1971-1990, Horowhenua County Council, 26/3/14, Kapiti Coast District Council Archives.

Chapter Four

The Waikanae river mouth and estuary

This chapter focuses on the Waikanae river mouth and estuary. This section begins with a brief discussion of early twentieth century debates over fishing rights and access. These debates were in some ways the legacy of the application of private ownership to the middle-line of the river mouth in the area, a development that was unusual in that under common law assumptions, the tidal reach of river was assumed to be in the ownership of the Crown. This is followed by a discussion on the period after 1968, following the purchase of much of the land that encompasses the river mouth by the Waikanae Land Company for the purposes of development. It concludes with a discussion of the Crown purchase in the late 1970s of the river mouth and estuary as a scientific reserve. As discussed above and outlined in other reports, the Waikanae river mouth was a key area of early Te Atiawa/Ngati Awa ki Kapiti settlement since the early nineteenth century. While early Te Atiawa/Ngati Awa ki Kapiti ki Kapiti moved inland in the later nineteenth century following the creation of the railroad, the blocks directly adjoining the river mouth (Ngarara West A64 and A65 and A14) remained in Maori ownership until at least the 1950s. By 1975, this land had been privately purchased.¹⁸⁵

4.1 Early application of common law assumptions

Under common law, the Crown was generally held to have authority over foreshore areas and arms of the sea. This included inlets, the tidal parts of rivers and (in some cases) lagoons.¹⁸⁶ While the general presumption under common law was that the bed of a tidal river was regarded as an arm of the sea (i.e. seabed), and thus the rule of *ad medium filum* did not apply, the Waikanae river mouth and estuary was included within land titles. Helen Potter *et al.* include a 1952 map in their report (reproduced here in Figure 15) and, drawing on Maclean and Maclean, claim that it shows the ‘encroachment of town planning to reclaim an area of the river mouth and sand flat and turn it into private land’.¹⁸⁷ This suggests that town planning in later years aimed to ‘turn’ the river mouth and estuary into privately owned land. However, the maps cited does not show the ‘encroachment’ of private title, but rather a continuation of the way in which title was set in the late-nineteenth century that included in the rivermouth and estuary within Ngarara West A14 and Ngarara West A64 and A65. In 1951, the titles of

¹⁸⁵ Walzl, ‘Block Research Narratives: Ngatiawa Edition’, Wai 2200 #A203, pp29-30.

¹⁸⁶ Cathy Marr, ‘Crown-Maori Relations in Te Tau Ihu: Foreshoers, Inland Waterways and associated Mahinga kai’, (Treaty of Waitangi Resaerch Unit), Wai 785, #A61, p33; Marr, Hodge, and White, Crown Laws, ‘Policies, and Practices in Relation to Flora and Fauna, 1840 – 1912’, Wai 262 #K5, p336.

¹⁸⁷ Potter *et al.*, ‘Porirua Ki Manawatū Inland Waterways Historical Report’, Wai 2200 #A197, p92; Maclean and Maclean, *Waikanae: Past and Present*, p192.

Ngarara West A63A, A63B, A64, A65, and A66 were amalgamated and repartitioned as A80A, A80B, A80C, A80D, A80E, A80F (as presented in the 1952 plan in Figure 15).¹⁸⁸ A survey of the Maori Land Court minutes suggest that this was not a major matter of concern during the partitioning.



Figure 15 Plan of Ngarara West A Sections near the river mouth, showing land titles extending into the tidal reaches of the Waikanae river. Wellington Plan ML 4533 (Source: Quick maps)

Debates about title, access and ownership of the river mouth and estuary located while researching this report largely relate to issues of access for fishing, debates that were largely among Pakeha and the Crown officials. For example, during a dispute between fishermen about access to the river mouth. In August 1913, a man named J.W. Anderson, who was

¹⁸⁸ Walghan Partners, 'Block Research Narratives: Ngatiawa Edition', Wai 2200 #A203, p84

concerned about access rights for fishing around the mouth of the Waikanae river, wrote a letter to the Marine Department asking if there was a 'chain reserve' along the bank of the Waikanae river. The question was passed onto the Under Secretary for the Lands Department, who responded:

I am advised by the Chief Surveyor, Wellington, that searches of the lithos for three miles above the mouth of the Waikanae river and for six miles below show the boundaries as extending to high water mark whilst some dealings and topographical maps show the coach route as being on the beach below high-water mark. Whilst this is on the case it is also a fact that in 1907 Mr Climie fixed the position of the H.W.M as being a chain from the foot of the sandhills, and that on subsequent private dealings lodged with the District Land Registrar the plans show this strip as being the old coach route and a public road.

The Chief Surveyor is of the opinion from his investigation that in law private ownership extends to the [high water mark] and that it would need proof of public use under section 101 of the Public Works Act 1908 to establish the legality of a road above that mark.¹⁸⁹



Figure 16 Plan showing proposed Road access to a Fishermen's reserve at the Waikanae river Mouth (Source: Waikanae river Erosion., 1913-1926, M1 519, 4/422, ANZ, Wellington)

¹⁸⁹ Under-Secretary to Marine Department, 26 September 1913, Waikanae river Erosion., 1913-1926, M1 519, 4/422, ANZ, Wellington.

The following year, a P.G. Hunt from Paraparaumu wrote to the secretary of the Marine Department asking what rights fishers had at the Waikanae river. He claimed that the land abutting the beach and the river was in private ownership. 'I always understood', Hunt wrote, 'that the marine department held a chain above the high-water mark where the crown held land on the foreshore and where land held by natives was sold by them, belonged to the buyer just down to the water's edge'.¹⁹⁰ The secretary provided the same reply as above that the Chief Surveyor was of the opinion that 'in law private ownership extended to the high water mark and that it would need proof of public use under Section 101 of the "The Public Works Act 1908" to establish the legality of a road above the mark'.¹⁹¹ Another resident T. Fletcher also wrote to the Marine Department asking whether he was able to close off the south side of the Waikanae river 'against fishermen landing there' and causing damage to the bank. The Secretary of the Marine replied that Fletcher 'of course [has] the right to prevent fishermen or other persons unlawfully crossing property'.¹⁹² William Field also entered the debate in 1915, writing:

For a long time past there has been serious wrangling as to the rights of persons whose land abuts on the sea coast near the mouth of the river Waikanae river and as a result obstacles have been placed in the way of fishermen taking their fish to market.¹⁹³

Following Field's complaints, the Marine Department Secretary George Allport replied again to Fletcher, who had placed a fence over the Waikanae river, that the 'foreshore and tidal land belongs to the Crown, and as I understand the fence is on such land, you had no authority to erect it'. Allport added that the necessary steps were underway to take land under the Public Works Act to provide a landing place for the fishermen and a road to give access.¹⁹⁴ This particularly assertive position of Crown ownership appears to have been unique to the Marine Department, as far as research for this report has found.

The debates between fishermen regarding access continued over the following decade, though by 1926, the new Marine Department Secretary G.C. Godfrey claimed that the Department 'really does not feel itself much concerned in this matter' and that if landowners objected to the few

¹⁹⁰ Hunt to Marine Department, date unclear, 1914, Waikanae river Erosion, 1913-1926, M1 519, 4/422, ANZ, Wellington.

¹⁹¹ Secretary to Hunt, 14 June 1914, Waikanae river Erosion., 1913-1926, M1 519, 4/422, ANZ, Wellington.

¹⁹² Letter to Mr. T Fletcher, 3 May 1915, Waikanae river Erosion., 1913-1926, M1 519, 4/422, ANZ, Wellington.

¹⁹³ Field to Minister for the Marine, 25 May 1915, Waikanae river Erosion., 1913-1926, M1 519, 4/422, ANZ, Wellington.

¹⁹⁴ Five years later, the Crown gave notice of its intention to take land included within sections Ngarara West B8 (6a 0r 27p), A13 (0a 2r 23p), A73 and A74 (4a, 2r, 4p) under the Public Works Act 1908 for the purpose of constructing a road. None of the blocks were in Maori ownership at this stage, and the public works appears to have never been followed through. Secretary for Marine to Fletcher, 8 June 1915, Waikanae river Erosion., 1913-1926, M1 519, 4/422, ANZ, Wellington; Extract from NZG, No.95, 25 November 1920, (no page number) Waikanae river Erosion., 1913-1926, M1 519, 4/422, ANZ, Wellington.

fishermen in the locality crossing their land ‘then they have their remedy by taking action for trespass’. The legacy of private ownership on the Waikanae river mouth and estuary are discussed in more detail below in relation to proposed developments in the 1970s.¹⁹⁵ However, no sources have been located relating to issues of access of the river mouth for Te Atiawa/Ngatiawa ki Kapiti communities. In his Nga Korero Tuku Iho evidence before the Waitangi Tribunal, Chris Webber does provide some insights into the issue of access, stating:

Can you access the river mouth anymore? We used to load our sheep from Waikanae river to make the farming operation sustainable. The reason why they left the farm in the ‘30s or so was because it became unsustainable. We had our people turning up to river mouth getting prosecuted, being trespassed, not being able to pass on the land. We had our boat owners being taken to Court for not having the appropriate licenses for their boats.¹⁹⁶

That such concerns were not considered by Crown officials is clearly apparent in the documentary record. The impacts on Te Atiawa/Ngatiawa ki Kapiti communities are rarely if ever discussed.

4.2 The Waikanae Land Company purchase and water rights application

In 1968, the Waikanae Land Company purchased Maori land at the Waikanae river mouth with the aim of creating a marina and subdivision. This brought an end to Maori land ownership at the Waikanae river mouth. The Waikanae Land Company purchased two blocks from Maori: Ngarara West A14B2B3 (95 acres 3 roods 23 perches) in 1967 and the adjacent A14B1 (20 acres) in 1969. The Company’s purchase of the 120 acres of estuary of the land raised questions about tidal and riverbed ownership.¹⁹⁷ The Minister for the Environment, Duncan MacIntyre wrote to a local Waikanae resident Mrs M.P. Scott who had complained about the Company’s proposed activities in 1972. He wrote:

The Company holds a rather unique land title which extends to the centre of the Waikanae river as it was in 1894; this was well to the south of the present river mouth. The Company owns all the land to which you refer but it does not own the water which covers the riverbed or tidal land.¹⁹⁸

The land purchased by the Company in 1967 was based on the original boundary from the 1890s on the north of the river, but due to changes in the river mouth, 35 acres was on the

¹⁹⁵ Godfrey to Under Secretary for Public Works Department, 11 June 1926, Waikanae river Erosion., 1913-1926, M1 519, 4/422, ANZ, Wellington.

¹⁹⁶ Wai 2200, 4.1.10, p131.

¹⁹⁷ According to Maclean and Maclean, the purchase included freehold title to the bed of the Waikanae river. Maclean and Maclean continue that this ‘unusual situation’ arose because of the tendency of the rivermouth to work southwards. Maclean and Maclean, *Waikanae: Past and Present*, p191.

¹⁹⁸ Duncan MacIntyre to M.P. Scott, 17 November 1972, [Soil Conservation] and RC [River Control]: Waikanae river, Part 2, 1955-1973, AATE 889 W3404 33/96/315000, ANZ Wellington.

south side. Furthermore, because the Company had bought most of the swampland, the Company owned most of the freehold title to the estuary including the bed of the river.¹⁹⁹ MacIntyre explained, however, that the Company would need to seek a water right under the Water and Soil Conservation Act 1967 to divert the Waikanae river into a permanent channel outlet, and that although the period to make formal objections had closed, Scott's objections would 'be given full consideration by any tribunal that is set up to hear the matter'.²⁰⁰

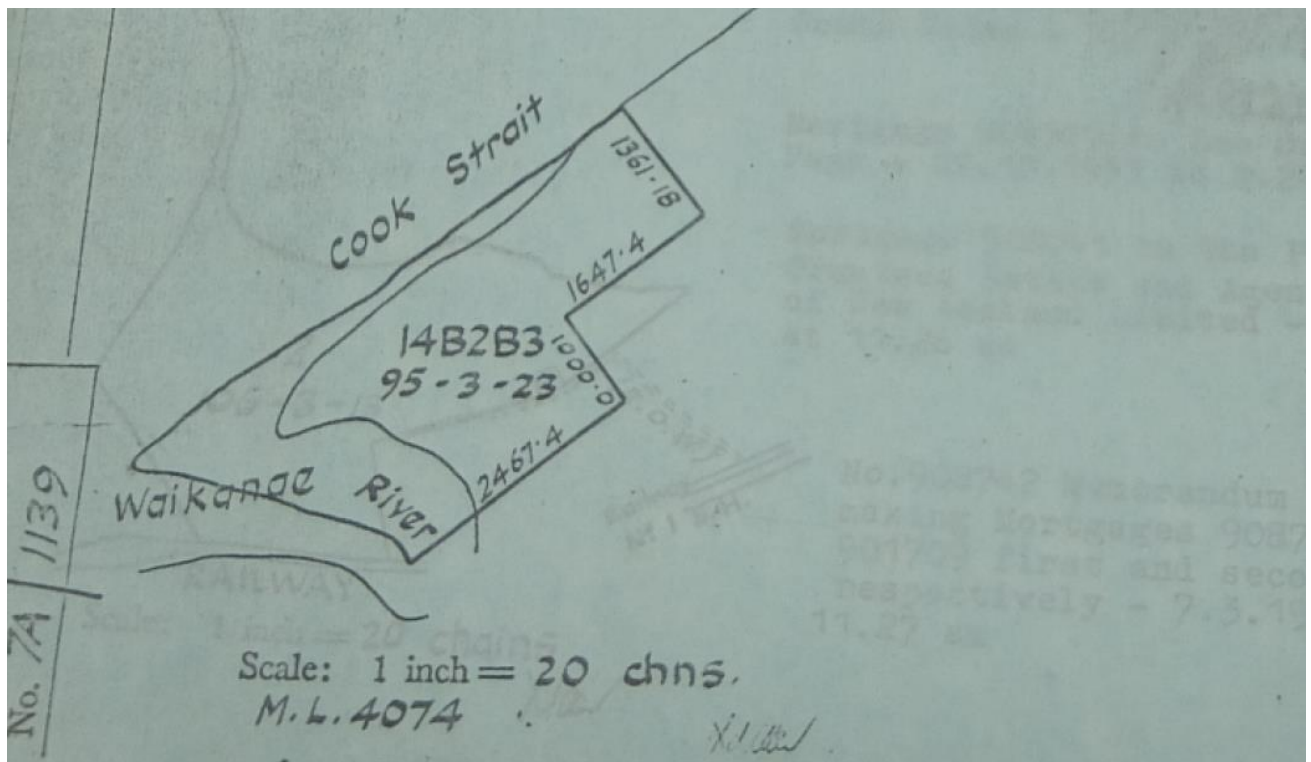


Figure 17 The Waikanae Land Company's Certificate of Title plan (Source: Property Titles adjoining State Highway No.1, Waikanae, 2/52-53, 2/1/3, Kapiti Coast District Council)

As mentioned above, the Water and Soil Conservation Act 1967 instituted a permit system administered by the Regional Water Boards for the acquisition of a water right, a precursor to the contemporary resource consent process.²⁰¹ The notice of application for Water Rights to the Manawatu Catchment Board and Regional Water Board No.72/66 by the Waikanae Land Company Limited was published on 4 October 1972. The application sought a right to 'divert the Waikanae river into a permanent channel outlet immediately south of the sand dune area north bank and to maintain a stabilised mouth opening by rock protection work'.²⁰²

¹⁹⁹ Ibid., p191.

²⁰⁰ Duncan McIntyre to M.P. Scott, 17 November 1972, [Soil Conservation] and RC [River Control]: Waikanae river, Part 2, 1955-1973, AATE 889 W3404 33/96/315000, ANZ Wellington.

²⁰¹ Roche, *Land and Water*, p 105.

²⁰² Clipping in file ANZ Wellington 3 Waikanae river: Water Right 1973-1981, AAZU W3619 Box 16 48/2/7, ANZ, Wellington.

In a letter from the Catchment Board and Wellington Regional Water Board to the Director of the National Water and Soil Conservation dated 20 January 1971, the Company was described as owning 100 acres of land on the north bank of the Waikanae river near the mouth. They wanted to carry out experimental stabilisation of the river mouth and Hutt County Council, Ministry of Works, and the National Water and Soil Conservation Organisation (NWSCO) and Marine Departments were ‘fully conversant’ and interested in the outcome. The Catchment Board were agreeable to the plans and wanted the NWSCO Director to give their opinion of any conditions that should be imposed. The Director N.C. McLeod was cautiously supportive but pointed out that a discussion of who would pay for future maintenance was required.²⁰³ In a description of an ‘informal’ meeting about the Company’s plans, a landowner named Mr McKinley ‘was against the land owners being deprived of the use of the water and was concerned that they will lose their riparian rights’. Another landowner, Mr Terriss, felt that compensation should be payable to his company which also intended to ‘produce a marina similar to those in Florida, U.S.A., where a river or stream was made to pass the end of properties so that the property owner had direct access to a waterway’.²⁰⁴

There were also environmental issues raised in relation to the work of the Company. The naturalist and geologist Charles Fleming raised concerns that the Company used ‘quarried greywacke rock, railway lines, fuel drums, discarded vehicles and macrocarpa trees at the river mouth and along its embankments in an attempt to stabilise the course’.²⁰⁵ Similarly, Honorary Lecturer at Victoria University of Wellington Dr Kazimierz Wodzicki wrote to both the County Clerk of Hutt and Horowhenua County Councils raising concerns about the impact on the environment of the work of the Company. He had undertaken ecological surveys in the early 1940s of the birds of the Waikanae river Estuary and in returning to the estuary on 29 July 1972 observed ‘a freshly discharged truck load of Gibraltar boards, bricks and stones. In addition to the ugly sight of a car wreck dumped some time ago, there were two old tractors, a number of old oil barrels and tin scattered on both the south and north side of the estuary’.²⁰⁶ In response, the Horowhenua County Council clerk J.H. Hudson stated that an inspection of the river found ‘no sign of any rubbish or refuse’, bar ‘one old drum some 30 feet or more

²⁰³ ‘Waikanae Land Co Limited Waikanae river 315000’, 20 January 1971, SC [Soil Conservation] and RC [River Control]: Waikanae river, Part 2, 1955-1973, AATE 889 W3404 33/96/315000, ANZ Wellington.

²⁰⁴ This memo is addressed to The Chairman, Manawatu Regional Water Board re Waikanae river Diversion, and signed H.A. Bodell, Chairman, dated 27 April 1971. SC [Soil Conservation] and RC [River Control]: Waikanae river, Part 2, 1955-1973, AATE 889 W3404 33/96/315000, ANZ Wellington.

²⁰⁵ Office of the Ombudsman to Mr O’Donoghue, Secretary National Water and Conservation Authority, 9 November 1972, SC [Soil Conservation] and RC [River Control]: Waikanae river, Part 2, 1955-1973, AATE 889 W3404 33/96/315000, ANZ Wellington, (153).

²⁰⁶ Kazimierz Wodzicki to The County Clerk, Hutt County Council, 9 August 1972, Waikanae river: Water Right 1973-1981, AAZU W3619 Box 16 48/2/73 ANZ Wellington.

from the water's edge on land owned by the Waikanae Land Company'. He spoke to Mr J. Andrews, director of the Company who said, 'his Company is as keen as anyone to keep the area tidy'. In conclusion, the letter stated that there was 'no justification for the comments in the letter referring to the north side of the estuary'.²⁰⁷ However, in September 1972, the Hutt County Council followed this letter to Dr Wodsicki with further correspondence, stating that because the Waikanae river is the boundary between the Hutt and Horowhenua County Councils, 'therefore we have jurisdiction only on the south side of the river'. In addition,

this land to which you refer is privately owned and providing the owners do not contravene the operative District Planning Scheme then they are entitled to use their land as they wish with it...I can appreciate your concern over the preservation of birds but there does not appear to be anything that the Hutt County can do to preserve conditions as they existed at the time of your original survey.²⁰⁸

Meanwhile, the Company's application for the water right to divert the river mouth continued to cause issues. The Catchment Board and Wellington Regional Water Board wrote to the Director of the National Water and Soil Conservation Organisation on 14 November 1972, stating that despite the Catchment Board omitting to notify the Regional Water Board of the reopening of the river mouth and diversion under the terms of the Water and Soil Conservation Act 1967, the Company had since applied for a right to divert the river mouth, and objections were received from C.F. Terris, the Wellington Acclimatisation Society and the Manawatu Catchment Board. Following various meetings, the Acclimatisation Society withdrew their objection, and on 13 July 1971, 'the Company through its solicitors, advised that agreement had been reached with Mr Terris, which allowed the Company to go ahead with exploratory works'.²⁰⁹ The letter went on to note that the Company had commenced work prior to the issuing of the right, which had been reported to the Catchment Board by the Marine Department. 'The Board considered the question of a prosecution in view of the Company starting work prior to the issue of a right'.²¹⁰ Sources viewed do not state why they chose not to pursue prosecution.

Sustained protest from the residents and interested environmentalists led to a Special Tribunal being held on the 5 and 6 February 1973. The Tribunal found that the Company had carried out work well beyond the bounds of the exploratory permit provided by the Catchment Board,

²⁰⁷ J.H. Hudson to Dr. K. Wodzicki, 28 August 1972, Waikanae river: Water Right 1973-1981, AAZU W3619 Box 16 48/2/73 ANZ Wellington.

²⁰⁸ County Engineer, Hutt County Council, to Kasimierz Wodsicki, 4 September 1972, Waikanae river: Water Right 1973-1981, AAZU W3619 Box 16 48/2/73 ANZ Wellington.

²⁰⁹ MCB and Wellington Regional Water Board to Director, National Water and Soil Conservation Organisation, 14 November 1972, SC [Soil Conservation] and RC [River Control]: Waikanae river, Part 2, 1955-1973, AATE 889 W3404 33/96/315000, ANZ Wellington.

²¹⁰ Ibid.

and that the Board had not done enough to control or stop the work.²¹¹ Despite this, the Company was granted a right under the Water and Soil Conservation Act 1967 to stabilise the Waikanae river mouth.²¹² The Hutt and Horowhenua Councils objections related to financial liability. The Tribunal found that the spawning of whitebait would not be effected by the work.²¹³ Maclean and Maclean claimed that the whitebait spawning grounds had already been destroyed by the Company during the dredging of the Waimeha lagoon for the Marina.²¹⁴ The Special Tribunal agreed unanimously that the lower Waikanae river environment was already altered significantly and therefore the Company would not do more damage which, they argued, would occur regardless because of further subdivision activity in the area.²¹⁵ An appeal was taken on this decision by Diana R. Ranger to the Town and Country Planning Appeal Board under the Town and Country Planning Act 1953 and the Water and Soil Conservation Act 1967 but was unsuccessful.²¹⁶ However, the Tribunal did add an extra condition to the Company's work by insisting 'that the tidal nature of the sandflats to the south of the river be maintained'.²¹⁷ The Waikanae Land Company was placed in receivership in August 1979 and works on the Waikanae operations ceased.²¹⁸ According to John Easter, it was the conditions laid down by the Wellington Regional Water Board which required the Waikanae Land Company to secure funds against future maintenance which 'killed the project'.²¹⁹

4.3 Crown purchase of River mouth and estuary

Much of the Waikanae river mouth and estuary remained in private ownership until the late 1970s. A Hutt County Council engineer wrote in 1972 that the land was 'privately owned' and added that as long as the owners did not contravene the operative district planning scheme they were 'entitled to use their land and do as they wish with it. None of the land referred to is Reserve'.²²⁰ In the early 1970s, the Crown began investigating the possibility of purchasing land around the river mouth following 'public outcry [over] the loss of it as a safe recreational

²¹¹ Copy of Tribunal recommendations re Waikanae Land Company Limited application for a right to natural water. SC [Soil Conservation] and RC [River Control]: Waikanae river, Part 2, 1955-1973, AATE 889 W3404 33/96/315000, ANZ Wellington, (183).

²¹² Ibid.

²¹³ Ibid.

²¹⁴ Maclean and Maclean, *Waikanae: Past and Present*, p 194.

²¹⁵ Copy of Tribunal recommendations re Waikanae Land Company Limited application for a right to natural water. SC [Soil Conservation] and RC [River Control]: Waikanae river, Part 2, 1955-1973, AATE 889 W3404 33/96/315000, ANZ Wellington.

²¹⁶ Three files in the Alexander Turnbull Library relate to this appeal and are useful background information regarding the environment at the time. ATL MS-Papers-9347 1, 2, and 3 Papers relating to diverting the mouth of Waikanae river. Ranger, Diana. F1 2009: Personal Papers, ATL, Wellington.

²¹⁷ Maclean and Maclean, p 196.

²¹⁸ Maclean and Maclean, *Waikanae: Past and Present*, p196.

²¹⁹ Easter, 'Waikanae river Archive', p21.

²²⁰ County Engineer to Kazimierz Wodsicki, 4 September 1972, Waikanae lagoon, Fleming, Charles Alexander (Sir), 1916-1987: Papers, 87-208-410, ATL, Wellington.

amenity'.²²¹ The Director General wrote that the Wildlife Division of the Department of Internal Affairs was concerned at the proposed commercial development of the area and recommended 'prompt action to be taken to preserve the estuary'.²²² In 1973, the Commissioner of Crown Lands, J.S. Maclean wrote that it was difficult to place a firm valuation of the river because of 'uncertainty of the actual title boundaries due to accretion'.²²³ A legal opinion with the file note advised the following:

Within the area required for Wildlife Reserve, is 18.71 hectares below the existing mean high-water mark. This land comes under the doctrines of accretion and erosion. A ruling on this has yet to be obtained. In simple terms, with any gradual advance by the sea over land, the land encroached upon becomes to property of the Crown. Accretion is treated the opposite way.

Conversely, with regard to reclamation, the boundary of properties fronting the sea stop at the mean high water mark (M.H.W.M.). Where reclamation shifts the M.H.W.M. the area reclaimed is vested in the Crown unless the title is alienated under the Harbours Act 1950, or by special legislation, or by Crown grant.

A ruling on land below M.H.W.M. is, therefore, required in this case. It may well be that much of the requirements is in fact now Crown land, and compensation would not, therefore, be payable.²²⁴

In September 1977, Commissioner of Crown Lands F.C. McMullan wrote that following an investigation, the Waikanae Estuary was identified as a 'highly desirable area for acquisition as reserve'.²²⁵ Two months later, another Commissioner of Crown Lands wrote that the 'ownership and state of the estuary is in dispute'.²²⁶

Nevertheless, in 1978, the Crown purchased the land on the south bank of the river, between the river mouth and the Kenakena subdivision and established the Waikanae Estuary Scenic Reserve. In 1979, the Acting Commissioner of Crown lands, C.A. McIlroy investigated the possibility of the Crown exchanging Crown land at Paraparaumu taken for aerodrome

²²¹ Director General to Minister of Lands, 2 August 1973, Scenic Reserves – Coastal Reserves - Waikanae river Mouth Area – Wellington Land District, 1972-1979, AANS, 6/13/6/3, part 1, ANZ, Wellington.

²²¹ Mclean and Mclean, *Waikanae: Past and Present*, p196.

²²² Director General to Minister of Lands, 2 August 1973, Scenic Reserves – Coastal Reserves - Waikanae river Mouth Area – Wellington Land District, 1972-1979, AANS, 6/13/6/3, part 1, ANZ, Wellington.

²²² Mclean and Mclean, *Waikanae: Past and Present*, p196.

²²³ Commissioner of Crown Lands to Director General of Lands, 27 July 1973, Scenic Reserves – Coastal Reserves - Waikanae river Mouth Area – Wellington Land District, 1972-1979, AANS, 6/13/6/3, part 1, ANZ, Wellington.

²²⁴ 'Legal Consideration', Scenic Reserves – Coastal Reserves - Waikanae river Mouth Area – Wellington Land District, 1972-1979, AANS, 6/13/6/3, part 1, ANZ, Wellington.

²²⁵ F.C McMullan to D. Ferrier, 18 September 1979, Waikanae river North Wildlife Reserve, L360, Kapiti Coast District Council Archives.

²²⁶ J.S Mclean to Director General of Lands, 14 December 1977, Waikanae river North Wildlife Reserve, L360, Kapiti Coast District Council Archives.

purposes for land owned by the Waikanae Land Company (Part Ngarara West A 14B2B3) on the north side of the Waikanae river in order to acquire 'the River mouth'.²²⁷

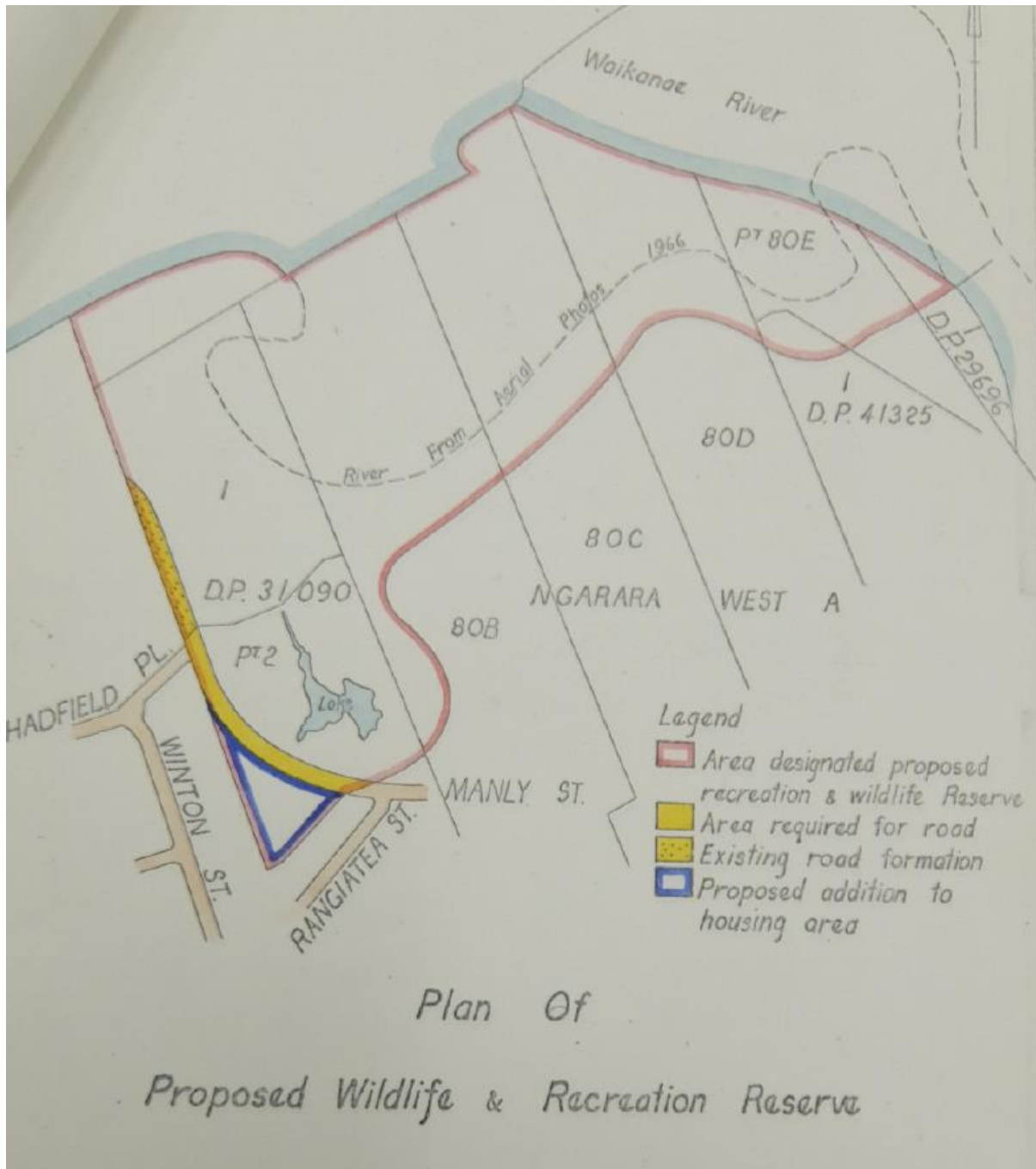


Figure 18 Waikanae river Mouth, 1972-1979, AANS, 6/13/6/3 ANZ Wellington.

²²⁷ C.A McIlroy to Messrs Killalea Buddle & Robinson, 16 November 1979, Local Purpose Reserves – Wellington Land District – Coastline Reserves: Waikanae river Mouth Area AANZ, 6/13/6/3, part 2, ANZ, Wellington.

It is unclear what came of this, but the Crown currently own the area on both sides of the river mouth and the riverbed. According to Maclean and Maclean, the focus of residential development shifted to the south side of the river in the 1980s and 1990s and while conservationists were concerned about residential development near the estuary, the benefit was that the owners gave up ecologically sensitive land, which included much of the actual estuary, as their reserves contribution. This extended the existing Waikanae Scenic Reserve, established in 1978 which, in turn, led to the creation in 1987 of the Waikanae Estuary Scientific Reserve.²²⁸ This brought the estuary under one single owners, the Crown, but only after Maori interests, which had been complete up to the 1890s, had been totally lost.

In their 2015 Waikanae river Environmental Strategy, the Greater Wellington Regional Council claimed that there was opportunity for further acquisitions of land around the area. The Strategy states:

The possible extension of the Scientific Reserve is the main land ownership opportunity in the estuary reach. Opportunities to further protect the estuary area from housing development have already been significantly reduced. There is very little extension possible given the adjacent residential development. However, there remains undeveloped land with ecological value along the south side of the river outside the Scientific Reserve. This includes a small area of estuarine vegetation. To date, sections at the south eastern end of the reserve have been purchased by DOC. This land is located in the River Corridor between river cross sections 45-70. Additionally, a smaller area has been purchased at the western end of the reserve. The Otaihanga oxbow is currently in private ownership. For consistent ecological management, it would make sense for all of the estuarine habitats to be included in the Scientific Reserve. The Otaihanga Oxbow is important as an overflow area for the river, is a probable whitebait spawning site and is habitat for some rare plants.²²⁹

²²⁸ Maclean and Maclean, *Waikanae: Past and Present*, p196.

²²⁹ Greater Wellington Regional Council, Waikanae river Environmental Strategy, 2015, URL: <http://www.gw.govt.nz/waikanae-river-environmental-strategy/> (accessed June 26 2018)

Chapter Five

Other waterways of significance to Te Atiawa/Ngati awa ki Kapiti

This section briefly details what the documentary record reveals about other waterways identified as significance to Te Atiawa/Ngati awa ki Kapiti. This includes the Waimeha river, the Waimeha and Waimanu lagoons, the Pirikawau springs, and lakes Totara and Kawhakahia. In general, however, where waterways other than the Waikanae river are discussed in the documentary record, such as lagoons or lakes, these sources largely relate to recreational use for settlers, and for conservation and reserve status. The documentary record reveals incredibly little about issues of ownership and control nor about the responses or protests from Te Atiawa/Ngati awa ki Kapiti in relation to Crown action. As far as research for this report has found, Te Atiawa/Ngati awa ki Kapiti were almost entirely absent from the debates and decisions regarding these waterways.



Figure 19 This 1872 Surveyors Map includes some of the waterways mentioned in this part of the report, including the old course of the Waimeha river, Lakes Totara and Kawakahia to the north of the river. It also identifies the location of an area called 'Parikawau'. Reproduced from Maclean and Maclean, *Waikanae: Past and Present*, p172.

5.1 Waimeha (Waimea) river and the Waimeha and Waimanu lagoons

There are difficulties in tracing the story of the Waimeha river and the Waimeha and Waimanu lagoons over the nineteenth- and twentieth-centuries. This is largely a result of ecological change, human intervention, and the changing names of the wetlands and lagoons over time. In early maps (see Figure 20 below), the Waimeha river diverts from the Waikanae river, reconnecting again just near the river mouth. Another map from 1896, however, shows only one river and the former course of the Waimeha is partially drawn and marked as a 'dry shingle bed'.²³⁰ Maclean and Maclean estimate that the Waimeha river must have significantly shrunk between 1890 and 1896. Exactly how is unclear, they claim, though the drainage of the coastal plain to the north of Waikanae for farming and flax gathering may have been the cause.²³¹ John Easter of the Wellington Regional Council explains that the most likely mechanisms that led to the 'closure' of the Waimeha river were the milling of the lowland and forest, the effect of the railway bridge northern approach embankment, and possible extreme flooding in 1893 and 1894. At the same time, the drying of the Waimeha may have already been occurring as a natural process, accelerated by the rapid changes on the coastal plain. Easter added that even with the aid of aerial contoured photography it is difficult to see where the old watercourse was, and it remains hidden beneath roading and private garden development.²³²

The Waimeha river was reduced to a local drain until 1921, when it was diverted directly to the sea along the line of Huiawa Street to permit the subdivision and the formation of the Waimeha Township. But as the Waimeha Township expanded, there were complaints of inadequate draining of the truncated section of the stream. In 1955, as part of the Waikanae river Control Scheme, it was recommended that the Waimeha lagoon, situated on private land owned by W.R. Harry as part of his Waikanae Motorcamp, be lowered. Debate in the community ensued, largely between those who wanted to preserve the lagoon as a bird sanctuary, and those who wanted improved drainage.²³³ According to an historical account produced by the Horowhenua County Council, by the late 1950s, the Weggery family (descendants of the farmer described above) proposed commencing the subdivision of their estate. The Waikanae County Town Committee wanted the subdividers' reserve contributions to be in the form of land adjacent to the eastern perimeter of the Waimeha lagoon, and for that area to be preserved as a scenic reserve. The lagoon and the borders to the north, south and west were owned by the Waikanae Beach Motor Camp and Store Company. In November 1959, the Council

²³⁰ Maclean and Maclean, *Waikanae: Past and Present*, p173.

²³¹ Ibid.

²³² John Easter, 'Waikanae river Archive', 1991, p18.

²³³ Ibid.

advised the subdividers that they would accept the area between Queens Road and the lagoon as reserve for subdivision, the area to be filled and grassed for approximately half a chain (about ten meters) from the road frontage.²³⁴ At the same time, in June 1959, W.R. Harry requested that the property occupied by him be declared a wildlife refuge, which contained the Waimeha lagoon. Later in the same year, the area described as Ngarara West A 14B2A2B and 14B2A1 was declared a Wildlife Refuge in the Wellington Acclimatisation District, declared under Section 14 of the Wildlife Act 1953.²³⁵ As suggested at the beginning of this chapter, Maori were not involved or consulted these debates.

By 1961, the Waikanae County Town Committee signalled its intention to take over the lagoon as reserve when the opportunity arose. The Pakeha owner of the land agreed that if they decided to subdivide, they would offer the area to the Crown as a Scenic Reserve, including one chain (of about twenty metres) around its perimeter.²³⁶ This occurred in 1964, and the owners entered negotiations with the Council for the purchase of the lagoon, but the subdivision did not proceed and negotiations were broken off. The following year, however, a chain wide strip around the lagoon was delineated as a proposed recreational reserve, and the lagoon was declared a Wildlife Refuge under Section 14 of the Wildlife Act 1953 with the consent of the property owners. In 1966, the Minister of Land wrote to Charles Fleming that the Commissioner of Crown in conjunction with the Department of Internal Affairs was ‘investigating the possibility of the acquisition of the lagoon’.²³⁷ In 1967, the Commissioner of Crown Lands wrote that the County Council’s stance on the purchase of the lagoon is that, ‘as the proposed reserve is for a purpose of national rather than local significance, its purchase is a matter for the Crown’, though the Horowhenua Council would be prepared to cooperate in the administering of the area.²³⁸

The owners again went into negotiation with the Crown in 1968. The following year, the Council agreed to accept an area of about one acre two rood (6070 square metres) adjoining

²³⁴ Horowhenua County Council, ‘The Waimeha and Waimanu Lagoons Waikanae: Ecological Survey and Management Plan’, December 1985-February, Fleming, Charles Alexander (Sir), 1916-1987: Papers, 87-208-621, ATL, Wellington.

²³⁵ *NZ Gazette*, 22 Oct. 1959, No.63, p1502, in: [Department Of] Lands And Survey - Head Office - Reserves - Wildlife - Waimeha Lagoon - [Previous File Number Res 7/6/13], 1959 – 1979, AANS 25421 W5951 237/REW – 0118, 1, ANZ, Wellington.

²³⁶ Horowhenua County Council, ‘The Waimeha and Waimanu Lagoons Waikanae: Ecological Survey and Management Plan’, December 1985-February, Fleming, Charles Alexander (Sir), 1916-1987: Papers, 87-208-621, ATL, Wellington.

²³⁷ Minister of Lands to Charles Fleming, 15 August 1966, in [Department Of] Lands And Survey - Head Office - Reserves - Wildlife - Waimeha Lagoon - [Previous File Number Res 7/6/13], 1959 – 1979, AANS 25421 W5951 237/REW – 0118, 1, ANZ, Wellington.

²³⁸ Department of Land and Survey, ‘Possible reservation of Waimeha Lagoon’, [Department Of] Lands And Survey - Head Office - Reserves - Wildlife - Waimeha Lagoon - [Previous File Number Res 7/6/13], 1959 – 1979, AANS 25421 W5951 237/REW – 0118, 1, ANZ, Wellington.

the Waimeha lagoon as reserve, and in June 1969, 15 acres 3 rood 32 perches (63,762 square metres), including the area of the Waimeha lagoon was bought by the Department of Crown Lands and the Department of Internal Affairs for \$6,400. At the time of Horowhenua County Council's Ecological Survey and Management Plan in 1985, the Waimeha lagoon was owned by the Department of Crown Lands and Department of Internal Affairs, it was administered by the Horowhenua County Council, and was a Wildlife Refuge.²³⁹ Over the next decade, improvements were made to the lagoon, with the support of individuals and organisations, such as Dr Charles Fleming and the Royal Forest and Bird Protection Society.²⁴⁰ The Waimeha lagoon was deepened in 1974 (before this, the lagoon would dry out each summer).

Today, the lagoon situated just north of the river, is called the Waimanu lagoon. It is an artificial lagoon, developed as part of a subdivision by the Waikanae Land Company in 1970.²⁴¹ By 1971 the Company argued that the Manawatu Catchment Board's regular reopening of the river mouth every five years due to littoral drift could be solved by stabilising the river mouth. By then they had already dug a large area to form a marina to take up to 450 boats and access to this is up the Waikanae river and the Waimea Stream.²⁴² In 1980, a road was built across the lagoon, separating it into two. According to the Department of Conservation, traditional whitebait spawning grounds were lost.²⁴³ According to a 1985 Ecological Survey and Management Plan created by the Horowhenua County Council, the lagoon was created on the sites of a Maori burial ground dating back to 1839 following the Battle of Kuititanga and 'was still regarded as a tapu site by the Maoris'.²⁴⁴

5.2 Pirikawau springs

The commission for this report directs an analysis of what the documentary record reveals about the Pirikawau ('Parikawau') Springs. The *Porirua Ki Manawatu Inland Waterways Historical Report* provides a 'case-study' on the springs, but makes no reference to the documentary record, except to provide some broad context about the creation of the railway bridge (built

²³⁹ Horowhenua County Council, 'The Waimeha and Waimanu Lagoons Waikanae: Ecological Survey and Management Plan', December 1985-February, Fleming, Charles Alexander (Sir), 1916-1987: Papers, 87-208-621, ATL, Wellington.

²⁴⁰ Ibid.

²⁴¹ Ibid.

²⁴² Letter from the Manawatu Catchment Board and Regional Water Board to Director National Water and Soil Conservation Organisation, SC [Soil Conservation] and RC [River Control]: Waikanae river, Part 2, 1955-1973, AATE 889 W3404 33/96/315000, ANZ Wellington.

²⁴³ Department of Conservation, The Waikanae Estuary, <https://www.doc.govt.nz/parks-and-recreation/places-to-go/wellington-Kapiti/places/waikanae-area/waikanae-estuary/> (accessed 29 June 2018)

²⁴⁴ Horowhenua County Council, 'The Waimeha and Waimanu Lagoons Waikanae: Ecological Survey and Management Plan', December 1985-February, Fleming, Charles Alexander (Sir), 1916-1987: Papers, 87-208-621, ATL, Wellington. This is covered in more detail by Suzanne Woodley, Wai 2200 #A193, pp622, 635-636

between 1885 and 1888) and the road bridge (built 1901).²⁴⁵ The Pirikawau springs is an issue that has been raised by Ngati Awa ki Kapiti claimants, who suggest that the springs are wahi tapu and taonga, that it is a healing puna, that the water comes from Muaūpoko Stream and that it has been desecrated by the Crown. Claimants suggest that the springs were taken under the Public Works Act when the North Island Main Trunkline (NIMT) Railway was constructed, and that it is now part of Otaraua Park, managed by the Kapiti Coast District Council (KCDC). Claimants further suggest that KCDC has further restricted access to the springs for everyone, including Ngatiawa ki Kapiti, that the spring is only accessible by foot which is problematic for some kaumatua. Furthermore they claim that the council placed gargoyles at the Springs, which they suggest is ‘both an insult and desecration of a Ngati Awa ki Kapiti wahi tapu’.²⁴⁶

Research for this report into the official documentary record has found no mention of the Springs, except for the rare inclusion of ‘Parikawau’ in early maps and plans. While claimants suggest that the Springs were located in the vicinity of what is now Otaraua Park which is West of the railway line and on the Southern bank of the Waikanae river, a map from 1870s and further maps from the 1930s and 1940s that include a location (spelt ‘Parikawau’) suggest that it was located to the East of the railway line. Outside of these references, the name ‘Parikawau’ or ‘Pirikawau’ is not used to describe either of these areas. Edgewater Park, located on the north bank of the river, to the west of the railway bridge, is sometimes referred to as ‘Parikawau/Edgewater Park’, though it is unclear whether this is related to the Springs.²⁴⁷ In its Reserve Management Plan for the Otaraua Park from December 2014, where claimants suggest the Springs are located, KCDC states the following about the park:

Management of Otaraua Park will recognise the values of tangata whenua. Te Atiawa ki Whakarongotai are mana whenua, in particular [of] Otaraua. This hapū has an on-going association with the park area, historically for mahinga kai. Otaraua have retained land holdings in the vicinity of Otaraua Park.

At this time, there are no recorded wahi tapu sites on Otaraua Park. A cultural impact assessment may disclose areas of interest and should be carried out prior to any development of the site. Management and development of Otaraua Park should include protection and enhancement of cultural values and any discovered iwi artefacts, features and values.²⁴⁸

²⁴⁵ Wai 2200, #A197, pp131-133.

²⁴⁶ Wai 1018, Amended Statement of Claim, 21 May 2018, p65. Also see Smith, ‘Inland Waterways Cultural Perspectives Technical Report’, Wai 2200 #A198, pp240.

²⁴⁷ Greater Wellington Regional Council, ‘Parikawau/Edgewater Park Reach from the Rail Bridge downstream to Walnut Grove (on the north bank)’, URL: <http://www.gw.govt.nz/assets/floodprotection/WRES-Part-C-Edgewater-Reach.pdf> (accessed May 28).

²⁴⁸ Kapiti Coast District Council, ‘Otaraua Park Reserve Management Plan’, December 2014, URL: https://www.kapiticoast.govt.nz/contentassets/4c8d38f429c24a21bb56b1496b54b4b4/otaraua_park_management_plan.pdf (accessed May 28).

The Otaraua Park area was purchased from private owners in two parts in 2011 and 2012 and it was declared a recreational reserve under the Reserves Act 1977 in 2012.

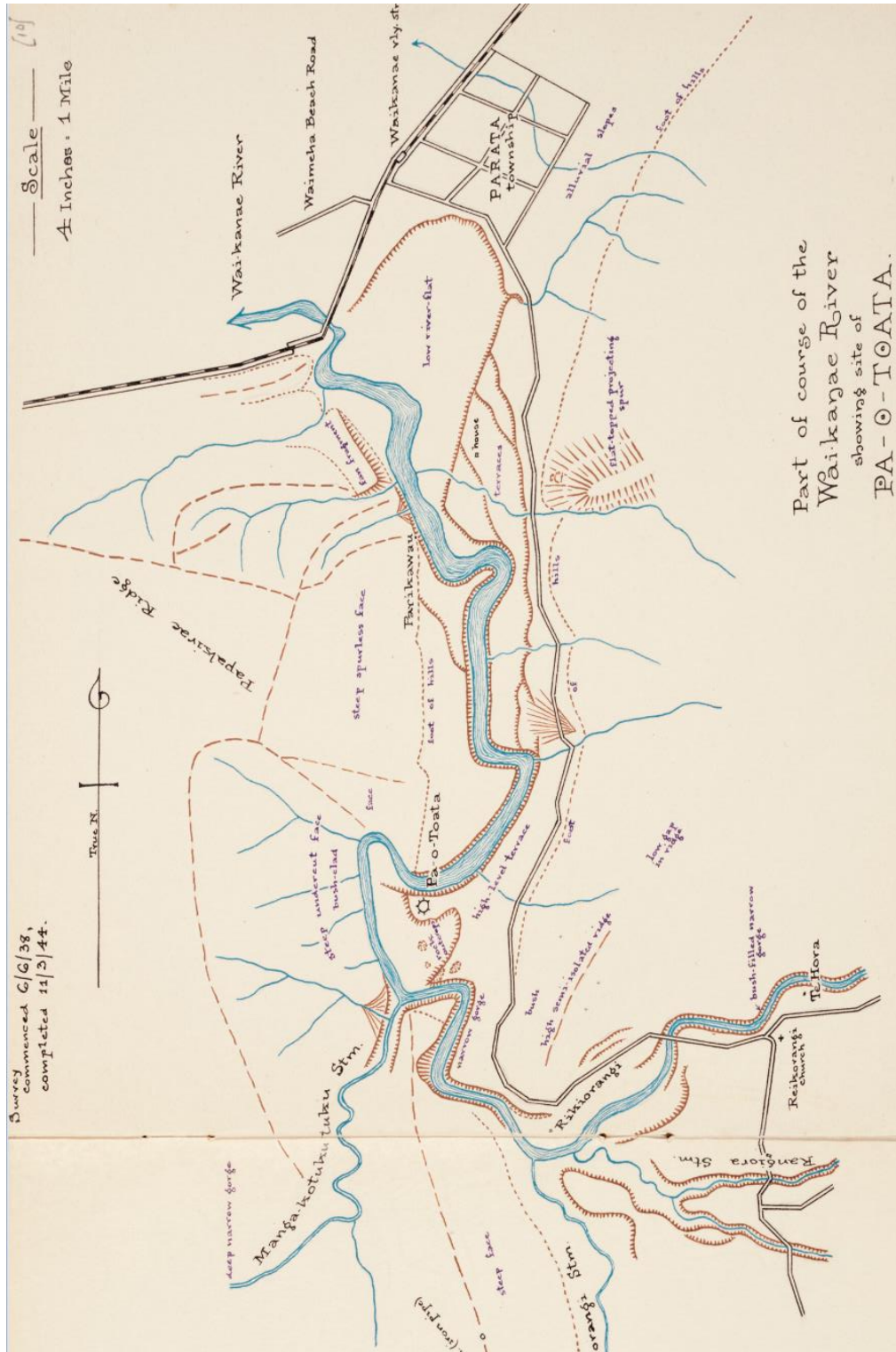


Figure 20 Details from 'Part of course of the Waikanae river showing site of Pa-o-toata' which lists Parikawau. Note: Ref: MS-Papers-6061-05-10. Alexander Turnbull Library, Wellington, New Zealand. /records/22712136

5.3 Lakes Totara and Kawhakahia

Two lakes north of Waikanae were included within the land titles in which they were contained. Lakes Totara and Kawhakahia (sometimes called or spelt Kawhahia) were both connected by the Waimeha river. As discussed in Chapter One, Wi Parata described tussles over eel weirs at Lake Totara in 1863. In 1908, W.H. Field wrote to the Colonial Secretary's Office asking if the property, Ngarara West Sections A36, A37 and A38, which contained a lake known as Totara and portions of a lake known as Kawhakahia, could be constituted as a reserve 'for ducks, swans, pukeko, and other water fowl game whether Native or imported'. The owners claimed that they intended to acquire the whole of the land around Kawhakahia lake, which was 'in the hands of Native owners'.²⁴⁹ Four years later in 1912, Field was informed that the whole of Lake Totara and Kawhakahia and an area of five chains surrounding the said lakes would be declared sanctuaries under the Animals Protections Act.²⁵⁰

The official record relating to these lakes drops off for another forty or so years until 1957 when the areas were declared wildlife refuges under the Wildlife Act 1953.²⁵¹ In 1964, following applications from two farmers whose land included the two lakes, the proclamation declaring the areas wildlife refuge was revoked.²⁵² R.J. MacLachlan of the Department of Lands and Survey wrote that the two lakes were 'included in the titles of the surrounding lands as if they were non-existent. They are not shown in the titles'. MacLachlan continued that it would 'therefore be correct' to state that the Lakes were owned by the farmers who owned the land adjoining the lake. In this case, Lake Totara was owned by Mr. M. Smith, while Lake Kawhakahia was owed partly by D.J. Cottle and partly by Mr. M. Smith.²⁵³ Soon afterwards, an official in the Department of Internal Affairs, J.S. Clenden, wrote to their Minister that because the Lakes were 'included in the titles of the surrounding land as if they were non-existent it is quite clear they form part of the two properties concerned'. Clenden added that while the Department of Internal Affairs were reluctant to see valuable areas of water fowl habitat passing from its control, he said that 'as the Crown has no claim to the land concerned it must be recommended that refuges be revoked'.²⁵⁴ The Kawahakia wetlands were dredged

²⁴⁹ Letter to Colonial Secretary's Office, 10 January 1908, Wildlife Service - Wildlife Refuge - Lakes Totara - Kawhahia [Kawhakahia] (Waikanae District), 1908-1964, AAAC W3179 17/46/29/180, ANZ, Wellington.

²⁵⁰ J. Hislop to Field, 16 April 1912; NZG, 25 April 1912, Wildlife Service - Wildlife Refuge - Lakes Totara - Kawhahia [Kawhakahia] (Waikanae District), 1908-1964, AAAC W3179 17/46/29/180, ANZ, Wellington.

²⁵¹ NZG, 12 September 1957, p1640.

²⁵² NZG, 22 October 1964, p1837.

²⁵³ R.J. MacLachlan to Secretary for Internal Affairs, 5 October 1964, Wildlife Service - Wildlife Refuge - Lakes Totara - Kawhahia [Kawhakahia] (Waikanae District), 1908-1964, AAAC W3179 17/46/29/180, ANZ, Wellington.

²⁵⁴ J.S. Clenden to Minister for Internal Affairs, 12 October 1964, Wildlife Service - Wildlife Refuge - Lakes Totara - Kawhahia [Kawhakahia] (Waikanae District), 1908-1964, AAAC W3179 17/46/29/180, ANZ, Wellington.

and contoured in the 1970s to create the Totara lagoon and two oxidation ponds for a sewage system.²⁵⁵ These oxidation ponds are no longer in use however and now form part of the Pharazyn Reserve.

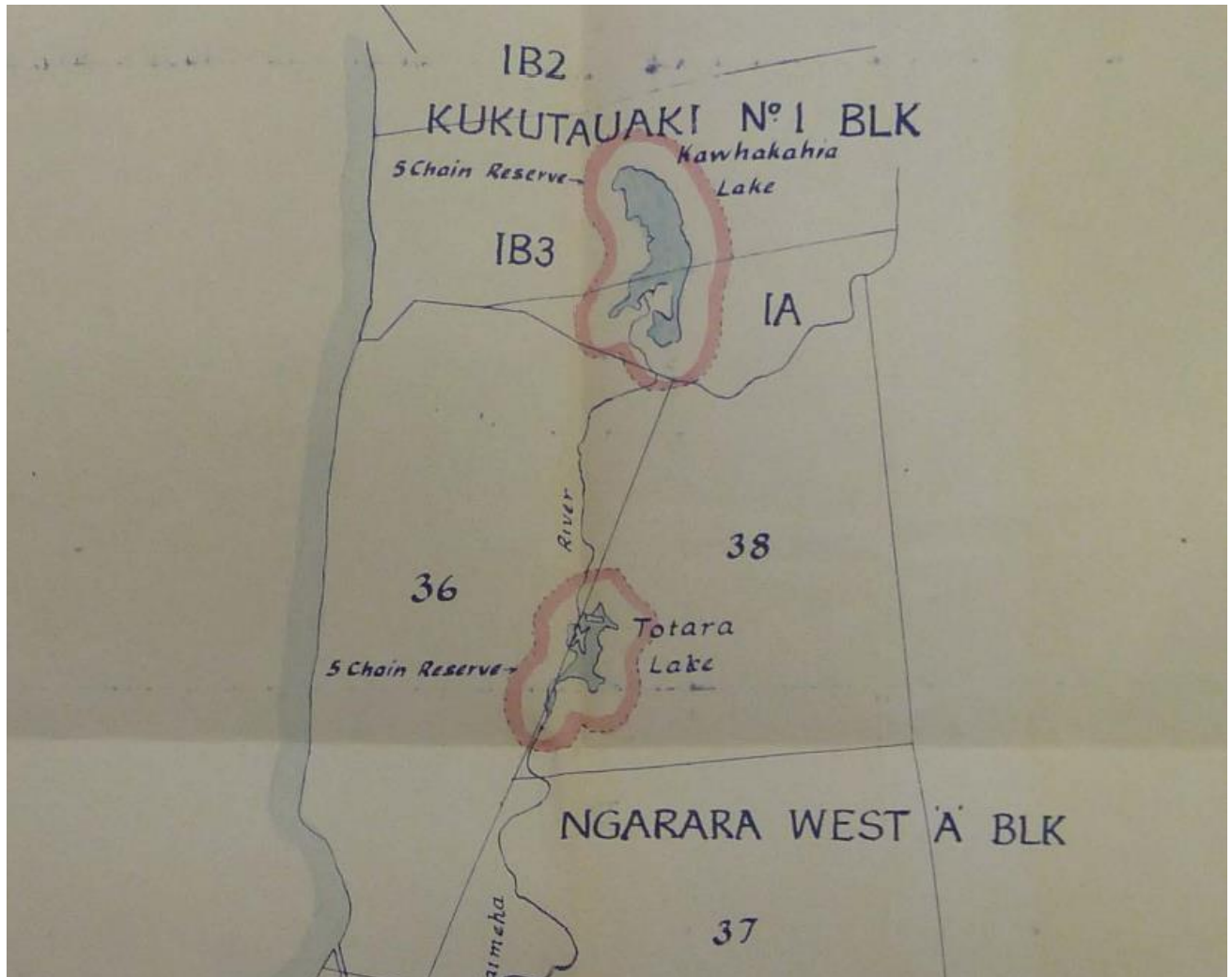


Figure 21 Lakes Totara and Kawhakahia, Source: Wildlife Service - Wildlife Refuge - Lakes Totara - Kawhahia [Kawhakahia] (Waikanae District), 1908-1964, AAAC W3179 17/46/29/180, ANZ, Wellington.

²⁵⁵ Wood *et al.*, 'Environmental and Natural Resource Issues Report', Wai 2200 #A196, p521.

Summary and Concluding Remarks

As outlined in the introduction, this report was commissioned for the purposes of analysing what the documentary record reveals over time about the issues of ownership and control of waterways of importance to Te Atiawa/Ngati Awa ki Kapiti. Chapter One of this report gives a brief overview of Te Atiawa/Ngati Awa ki Kapiti customary use, ownership and control of these waterways. In both Maori Land Court minute books and in present day kōrero before the Waitangi Tribunal, Te Atiawa/Ngati Awa ki Kapiti communities recall the numerous ways in which these waterways were important sites of pa, cultivation and food gathering sites. Te Atiawa/Ngati Awa ki Kapiti exercised their own forms of ownership and control of waterways. Te Atiawa/Ngati Awa ki Kapiti suggest that environmental changes have had a major impact on their ability to exercise their customary use, ownership and control of waterways. For example, forest clearance, drainage, gravel extraction, residential development, and other changes have put pressure on the waterways. An area once described as being inundated by water, streams and swamps and river tributaries teeming with fishery resources, has been modified beyond recognition through the transformation of a landscape in favour of pasture and residential development. These changes have had important consequences for control and ownership. Ecological changes were facilitated by the introduction of common law assumptions regarding private ownership and through loss of land.

Following the introduction of private title in the late nineteenth century, the ownership and control of waterways in the Te Atiawa/Ngati Awa ki Kapiti rohe has been individualised, fragmented, and divided up amongst adjoining land owners. When Maori maintained much of the land adjoining waterways of importance in the area, they too maintained ownership and control over waterways. However, as private and Crown purchasing increased in the late nineteenth century and into the twentieth century, Te Atiawa/Ngati Awa ki Kapiti land ownership declined. Chapter Two details the introduction of common law assumptions on the Waikanae river. When the title boundaries of the Ngarara block were set in the late nineteenth century, the centre line of the river was used as a boundary between partition blocks and the partition titles along much of the Waikanae river extended to the mid-point of the river; this had major implications for Te Atiawa/Ngati Awa ki Kapiti ownership and control of waterways. The inclusion of the riverbed in the title meant that as title passed out of Maori ownership, ownership of the riverbed portion passed out as well. As settlement increased in the area and European land ownership increased, settlers asserted their rights to private ownership of the Waikanae riverbed and waterway resources, even to the extent of attempting to control or restrict Te Atiawa/Ngati Awa ki Kapiti access to whitebait fisheries. At the same time, the application of the middle-line rule caused confusion and complication for settlers

and the Crown, and debate ensued regarding the definition of boundaries on the river. In areas subject to large scale Crown purchasing (such as in the Reikorangi area), the Crown also acquired the title to the riverbeds passing through the acquired block, but did not include private title to the riverbeds in the titles it issued to European settlers.

Crown waterway management regimes also had implications for ownership and control rights. Chapter Three focuses on the management of the Waikanae river, and specifically on flood protection, soil conservation and on compulsory takings of riparian and riverbed land for such purposes. As far as the documentary record reveals, Te Atiawa/Ngati Awa ki Kapiti were rarely involved or consulted over the management and control of the Waikanae river. While the Crown largely regarded flood protection as an issue for private land owners in the early twentieth century, by the 1940s it assumed management rights over the river with the Soil Conservation and Rivers Control Act 1941. Alongside legislating management rights, the Crown also progressively undertook to compulsorily take riparian and riverbed land for the purposes of soil conservation and river control. Chapter Four provides an overview of the ownership and management of the Waikanae river mouth and estuary, from early debates about access for fishers to the Waikanae Land Company's development in the 1970s and the Crown purchase of the area, while Chapter Five provided a brief summary of what the documentary record about other waterways identified as important to Te Atiawa/Ngati Awa ki Kapiti. The documentary record reveals little about waterways other than the Waikanae river, however, and this is reflected throughout the report.

While this report has documented some important aspects of the issue of ownership and control of waterways, research undertaken for this report has found little in the documentary record that provides insights into the experience, responses, protests, motivations and aspirations of Te Atiawa/Ngati Awa ki Kapiti communities. Te Atiawa/Ngati Awa ki Kapiti feature rarely in the documentary record and thus in this report which was directed to focus on what the documentary record reveals. Te Atiawa/Ngati Awa ki Kapiti are not discussed by officials as an iwi with interests in the waterways, but rather feature occasionally as individuals, affected by ownership and management of the river as property owners. That the archival record reveals little about Te Atiawa/Ngati Awa ki Kapiti communities is in itself revealing, and perhaps gives us some clue as to the Crown understanding of its responsibilities towards Te Atiawa/Ngati Awa ki Kapiti communities regarding the ownership and control of waterways. In other words, the absences in the record suggest that the Crown did not recognise or acknowledge Te Atiawa/Ngati Awa ki Kapiti continuing interests in these waterways. What is clear, however, is that Te Atiawa/Ngati Awa ki Kapiti progressively lost ownership and control rights to the river—and with that undoubtedly customary rights in fisheries and other

waterways resources—through the combined process of environmental change and the incorporation of the fate of the river into the land title paradigm introduced by the Crown in the late nineteenth century.

Bibliography

Primary Sources

Maps and plans (Wellington District) (accessible through Quickmaps)

Deposited (DP) Plans

DP 3432

DP 15859

Maori Land (ML) Plans

ML 1491

ML 4075

ML 4533

Survey Office (SO) Plans

SO 13529

SO 24197

SO 24520

SO 15982

Official publications

Appendices to the Journals of the House of Representatives

New Zealand Gazette

New Zealand Parliamentary Debates

Newspapers

Dominion Post

Evening Post

Horowhenua Chronicle

Archives New Zealand

Otaki Maori Land Court Minute books

Wellington Maori Land Court Minute books

Ministry of Works and Development Residual Management Unit, Head Office

SC [Soil Conservation] and RC [River Control]: Waikanae river, Part 1, 1903 - 1955 AATE 889 W3404 33/96/315000.

SC [Soil Conservation] and RC [River Control]: Waikanae river, Part 2, 1955-1973, AATE 889 W3404 33/96/315000.

Soil Conservation/River Control - Manawatu Catchment Board - Waikanae river (Legalisation), 1959-1967, AATE W3392 76/96/315000/0.

Soil Conservation/River Control - Manawatu Catchment Board - Waikanae river - Claim: Maori Owners Palmerston North, 1969, AATE W3392 76/96/315000/0/13.

Soil Conservation/River Control - Manawatu Catchment Board - Waikanae river - Claim: Maori Owners, AATE W3392 76/96/315000/0/3.

Soil Conservation/River Control - Manawatu Catchment Board - Waikanae river - Claim: Rameka Watene Estate, AATE W3392 76/96/315000/0/4.

Soil Conservation/River Control - Manawatu Catchment Board - Waikanae river - Claim: Honai Tamati and others, AATE W3392 76/96/315000/0/7.

Nature Conservation Council

Waikanae river: Water Right, AAZU W3619 16/48/2/73.

Department of Lands and Survey, Wellington District Office [record group]

Paetawa Swamp, Waekanae into Ngawhakangutu, 1900, ADXS 19483, LS-W1 397/20515.

Block Ngarara West C [Kaitawa District] Section 23, 1893, LS-W1 218 9354, 1-5.

Kaitawa Survey District Ngarara West A No. 59 Block; Sections 47, 48, 49 and 50, ADXS 19483 LS-W1 149/6520

New Zealand Railways District Office - Wellington [record group]

Waikanae river – Protective Works, ADRM 17614 R-W3 57/16267.

Department of Conservation, Head Office

[Department Of] Lands And Survey - Head Office - Reserves - Wildlife - Waimeha lagoon - [Previous File Number Res 7/6/13], 1959 – 1979, AANS 25421 W5951 237/REW – 0118, 1.

[Department Of Lands And Survey] - Reserves - Recreation - Waikanae Rec [Recreation] - [Wellington - Previous File Number Res 7/2/178, AANS 25421 W5951 334/RRC – 1108, 1.

Commissioner of Crown Land, Wellington - Ngarara West A 63 Block, ABWN 6095 W5021 253/7/825, 1.

Scenic Reserves – Coastal Reserves - Waikanae river Mouth Area – Wellington Land District, 1972-1979, AANS, 6/13/6/3, part 1.

Local Purpose Reserves – Wellington Land District – Coastline Reserves: Waikanae river Mouth Area AANS, 6/13/6/3, part 2.

[Crown Land – Unselected Crown Land – Horowhenua County – Bed of Waimeha Stream Situated in Blk [Block] V – Kaitawa Survey District (Lots 13, 14, 15, 16, 17 DP42411) Te Moana Road, AANS CL/13/32, 1.

Ministry of Works and Development Residual Management Unit, Head Office

Soil Conservation/River Control - Wharemauku Stream, 1979-1982, AATE W3392 76/96/314000.

Ministry of Economic Development, Head Office

Gravel Products Limited. Crushing Plant. KE Douglas Limited, Waikanae, AATJ 6090, W5152, 129/12/46/941, Part 1.

Waikanae Shingle Co Ltd, Dragline & Crushing Plants & Quarry, AATJ 6090 W5152 124/12/46/455, Part 1.

Public Works Department [record group]

Rivers Improvement and Protection - Paraparaumu Swamp – Drainage, ACHL, 19111, W1 1236/48/515, 1

Department of Internal Affairs, Head Office

Wildlife Service - Wildlife Refuge - Lakes Totara - Kawhahia [Kawhakahia] (Waikanae District), 1908-1964, AAAC W3179 17/46/29/180.

Department of Maori Affairs

Maori Trustee - Ngarara West A3C and A32C2 - Land taken for Public Works, 1965 -1966, ACIH 16036, MA1 762/54/19/29.

Land taken for river control purposes, ACIH 16036, MA1 763/ 54/19/63, ANZ, Wellington.

Received: 3rd July 1931. - From: W.H. Field, Member of Parliament, Wellington. - Subject: As to erosion of Waikanae river threatening Native lands and habitations, ACIH 16036 MA1 1563/1931/269.

Received: 13th July 1923. - From: H.H. Greenway, Waikanae. - Subject: As to extinguishment of Rights of Way. Ngarara west A 16, 17, 24A and 75, MA1 1325/1923/365.

Works and Development maps and plans

Wellington Regional Water Board Waikanae river Survey [12 sheets] 1975, ABKK 24411 W4258 410.

Wellington Land District registered files

Recreation Reserves - Lot 60 DP16850 - Waikanae Greenaway Road, 1954-1992, AANS 619 W5883 48/8/3/241.

Land Corporation Limited, Wellington District Office

Wellington - Ngarara West, 1915-1938, AMA 619 W3150 9/20/27, Part 1.

Wellington - Ngarara West, 1938-1953, AMA 619 W3150 9/20/27, Part 2.

Wellington - Ngarara West, 1953-1958, AMA 619 W3150 9/20/27, Part 3.

Wellington - Ngarara West, 1958-1961, AMA 619 W3150 9/20/27, Part 4.

Wellington - Ngarara West, 1961-1965, AMA 619 W3150 9/20/27, Part 5.

Alexander Turnbull

River Boards, etc., Hutt County Council: Records, MS-Papers-1293-146

Pollution – Waikanae river, Hutt County Council, 84-223-185/0/1/Pt1

Manawatu Catchment District – Waikanae river Control (54/105), Wellington Regional Planning Authority: Records, 75-156-104.

Strategy for restoring the Waikanae river Corridors' indigenous ecological values, MS-Papers-9392-093.

The Waimeha and Waimanu lagoons Waikanae – ecological survey and management plan, Fleming, Charles Alexander (Sir), 1916-1987: Papers, 87-208-621.

Waikanae lagoon, Fleming, Charles Alexander (Sir), 1916-1987: Papers, 87-208-410.

Proposed Waikanae estuary scientific reserve; Submission to caucus committee on national parks and reserves, Fleming, Charles Alexander (Sir), 1916-1987: Papers, 87-208-223.

Wellington City Council Archives

Water board - Waikanae river - 1959-1981, 52/132, Town Clerk's Files, 1926-1998

Wellington City and suburban water supply board - request to take over control of Ngatiawa catchment area for provision of water supply to area north of Paekakariki to Waikanae - 1946-1962, 52/118 Pt 1, Town Clerk's Files, 1926-1998

Ngatiawa catchment area - water supply to area north of Paekakariki to Waikanae, Wellington Regional Water Board - 1963-1979, 52/118 Pt 2, Town Clerk's Files, 1926-1998

Kapiti Coast District Council Archives

Waikanae river, 1912-1978, CF1361, Series 4/15.

Horowhenua County Council, Correspondence and Clippings CF641 3/1.

Waikanae Christian Holiday Park NPA 429 M365/10

Waikanae County Minutes 1966-1968, 1/6.

Waikanae County Minutes 1968-1969, 1/7.

Waikanae County Minutes 1969-1970, 1/8

Waikanae County Minutes 1970-1971, 1/9

Waikanae County Minutes 1970-1978, 1/9-1/11

Waikanae river North Wildlife Reserve, L360.

Waikanae Estuary Reserve, L361

Wild life Reserve Others L370

Bulk Water Supply Scheme, Wellington Regional Council, 15/13/1.

Property Titles adjoining Waimeha Stream Waikanae, Wellington Regional Water Board 2/86, 2/1/2.

Property Titles adjoining State Highway No.1, Waikanae, 2/52-53, 2/1/3.

Waikanae Catchment – Land Acquisition, 1978-1980, 2/67.

Waimeha lagoon – Queens Rd Reserve, Horowhenua County Council, 26/3/8.

Waimeha lagoon – Queens Rd Reserve, 1988-1990, Horowhenua County Council, M285/3, 1406.

Waimea Road Reserve, 1979-1990, Horowhenua County Council, M285/4

Waikanae Beach Area Misc. Reserves, Horowhenua County Council, 26/3/11.

Weggery Riverbank Reserve, 1971-1990, Horowhenua County Council, 26/3/14.

Secondary Sources

Books, Articles, and chapters

Maclean, C. & Maclean, J., *Waikanae: Past and Present* (Waikanae: Whitcombe Press, 1988).

Roche, Michael, *Land and Water: Water and Soil Conservation and Central Government in New Zealand 1941-1988* (Wellington: Historical Branch, Department of Internal Affairs, 1994).

Sharp, A., 'Recent juridical and constitutional histories of Maori', in Andrew Sharp and P.G. McHugh, eds., *Histories, Power and Loss: Uses of the Past – A New Zealand Commentary* (Wellington: Bridget Williams Books, 2001).

Strack, M., 'Watching the River Flow: The Law, Rights and Ownership of Rivers in New Zealand', *New Zealand Surveyor* No. 302 (Wellington: Journal of the New Zealand Institute of Surveyors, 2013).

Waitangi Tribunal Reports and Commission Research

Alexander, David, 'The Rangitikei River, its Tributary Waterways, and other Taihape Waterways: Scoping Report' (CFRT, February 2012), Wai 2180 #A4

Alexander, David, 'Rangitikei River and Its Tributaries Historical Report', (CFRT Commission), Wai 2180 #A40

Bassett, Heather and Richard Kay 'Preliminary Report on Public Works Case Studies for Te Atiawa/Ngati Awa ki Kapiti' (CFRT, 2018), Wai 2200 #A202.

Chase, Lou, 'Ngatiawa/Te Ati Awa Oral & Traditional History Report' (Waitangi Tribunal Commission, 2018), Wai 2200 #A195.

Marr, Cathy, Robin Hodge, and Ben White, Crown Laws, 'Policies, and Practices in Relation to Flora and Fauna, 1840 – 1912' (Waitangi Tribunal Publication, 2001), Wai 262 #K5.

Marr, Cathy, 'Crown Impacts on Customary Maori Authority over the Coast, Inland Waterways (other than the Whanganui River) and associated mahinga kai in the Whanganui Inquiry District (Waitangi Tribunal Commission) Wai 903 #A36

Marr, Cathy, 'Crown-Maori Relations in Te Tau Ihu: Foreshoers, Inland Waterways and associated Mahinga kai', (Treaty of Waitangi Research Unit), Wai 785, #A61

McClellan, Robert and Trecia Smith, 'The Crown and Flora and Fauna: legislation, policies and practices, 1983-98' (Waitangi Tribunal, 2001), Wai 262 #K2.

Potter, Helen, Aroha Spinks, Mike Joy, Mahina-a-rangi Baker, Moira Poutama, and Derrylea Hardy, 'Porirua Ki Manawatū Inland Waterways Historical Report', Te Rangitawhia Whakatupu Matauranga Ltd. (CFRT, 2017), Wai 2200 #A197.

Poutama, Moira, Aroha Spinks and Lynne Raumati, 'Inland Waterways Cultural Perspectives Collation of Oral Narrative Report', Te Rangitawhia Whakatupu Matauranga Ltd. (CFRT, 2017), Wai 2200 #A198(a).

Rigby, Barry and Leanne Boulton, 'Te Atiawa/Ngati Awa ki Kapiti ki Kapiti : Twentieth Century Land and Local Issues Gap-filling Report DRAFT' (Waitangi Tribunal Commission, August 2018).

Smith, Huhana, 'Inland Waterways Cultural Perspectives Technical Report', Te Rangitawhia Whakatupu Matauranga Ltd. (CFRT, 2017), Wai 2200 #A198.

Walzl, Tony, 'Block Research Narratives: Ngatiawa Edition' (Waitangi Tribunal Commission, 2018), Wai 2200 #A203.

Walzl, Tony, 'Ngatiawa: land and political engagement issues C. 1819-1900' (Waitangi Tribunal Commission, 2017), Wai 2200 #A194.

Walzl, Tony, 'Ngatiawa / Te Ati Awa Research Needs Scoping Report, (Waitangi Tribunal Commission) Wai 2200, #A186, p107.

Ward, Alan, 'National Overview, Volume I', *Waitangi Tribunal Rangahaua Whanui Series*, Waitangi Tribunal (GP Publications, 1997).

White, Ben, 'Rangahaua Whanui National Theme Q, Inland Waterways: Lakes', *Rangahaua Whanui Series* (Waitangi Tribunal, March 1998).

Wood, Vaughan, Garth Cant, Eileen Barrett-Whitehead, Michael Roche, Terry Hearn, Mark Derby, Bridget Hodgkinson, Greg Pryce, 'Environmental and Natural Resource Issues Report', (CFRT, 2017) Wai 2200 #A196.

Websites

Department of Conservation, *Waikanae Estuary Scientific Reserve* N.D., URL: <https://www.doc.govt.nz/waikanae-estuary> (accessed 19 May 2018).

Easther, John, 'Waikanae river Archive Kapiti Coast Floodplain Management Plans', Rivers Department Wellington Regional Council, 1991, URL: <http://www.gw.govt.nz/assets/council-publications/Waikanae%20River%20Archive.pdf> (accessed 27 June 2018).

Greater Wellington Regional Council, *Waikanae river Environmental Strategy*, 2015, URL: <http://www.gw.govt.nz/waikanae-river-environmental-strategy/> (accessed June 26 2018).

Greater Wellington Regional Council, *Parikawau/Edgewater Park Reach from the Rail Bridge downstream to Walnut Grove (on the north bank)*, N.D., URL: <http://www.gw.govt.nz/assets/floodprotection/WRES-Part-C-Edgewater-Reach.pdf> (accessed May 28).

Kapiti Coast District Council, *Otaraua Park Reserve Management Plan*, December 2014, URL: https://www.Kapiticoast.govt.nz/contentassets/4c8d38f429c24a21bb56b1496b54b4b4/otaraua_park_management_plan.pdf (accessed May 28).