TE MANA WHATU AHURU
CONTENTS

Letter of transmittal ................................................................. xiii

Preface ....................................................................................... xv

He Kupu Whakamārama i tēnei Pūrongo: Introduction to Part iv ................ xvii

CHAPTER 18: TE MANA WHAKAHAERE, KOIA TE WHĀINGA TŪTURU:
TE ROHE PŌTAE MĀORI AUTONOMY AND SELF-GOVERNMENT ............. 1

18.1 Introduction ................................................................. 1
   18.1.1 The purpose of this chapter ........................................... 2
   18.1.2 How this chapter is structured ....................................... 3

18.2 Issues ................................................................. 3
   18.2.1 What previous Tribunals have said .................................. 3
   18.2.2 Crown concessions ....................................................... 5
   18.2.3 Claimant and Crown arguments ..................................... 6
   18.2.4 Issues for discussion ..................................................... 8

18.3 Māori demands for autonomy and Te Ōhāki Tapu .................................. 8
   18.3.1 Te Ōhāki Tapu and political autonomy ............................ 8

18.4 Opportunities for autonomy and self-government, 1883–1940 ............... 11
   18.4.1 Section 71 of the Constitution Act 1852 .......................... 11
   18.4.2 The rūnanga model ..................................................... 11
   18.4.3 The Kawhia Native Committee ...................................... 12
   18.4.4 Māori councils .......................................................... 18
       18.4.4.1 What Te Rohe Pōtae Māori had wanted from local
               self-government by 1900 ........................................... 18
       18.4.4.2 What the Crown provided .................................... 24
       18.4.4.3 The establishment of the Maniapoto Māori Council ... 29
       18.4.4.4 The operations of the Maniapoto Māori Council ... 31
       18.4.4.5 The other Māori councils relevant to this inquiry district ... 37
           18.4.4.5.1 Waikato ....................................................... 37
           18.4.4.5.2 Tongariro .................................................... 38
           18.4.4.5.3 Whanganui ................................................. 39
           18.4.4.5.4 Taranaki .................................................... 40
       18.4.4.6 The effectiveness of Māori councils in providing for
               Te Rohe Pōtae Māori autonomy .................................... 41

18.5 Opportunities for autonomy and self-government, 1940–62 ................ 42
   18.5.1 The Māori War Effort Organisation .................................. 43
   18.5.2 Māori Social and Economic Advancement Act 1945 ............... 46
Contents

18.5.2.1 Background to the MSEA Act ........................................... 47
18.5.2.2 The MSEA Act and Te Rohe Pōtae ............................... 48
   18.5.2.2.1 The Maniapoto Tribal Executive ............................ 48
   18.5.2.2.2 Other Tribal Executives ...................................... 50
       18.5.2.2.2.1 Opposition in the Waikato .......................... 50
       18.5.2.2.2.2 Waipā Tribal District ................................. 51
       18.5.2.2.2.3 Kāwhia Tribal District ................................. 52
       18.5.2.2.2.4 Taumarunui District Tribal Executive ............. 52
       18.5.2.2.2.5 Tribal executives in and around the district .... 52
18.5.3 The Māori Women's Welfare League ................................. 55
18.5.4 Māori trust boards ....................................................... 57
18.5.5 Changing political environment and reassessment of the MSEA Act 60
18.6 Autonomy and self-government from 1962 .................................. 61
   18.6.1 Māori Community Development Act 1962 ..................... 61
   18.6.2 The Ngati Maniapoto Marae Pact Trust ........................... 65
   18.6.3 The Maniapoto Māori Trust Board ................................. 66
   18.6.4 Opportunities for Te Rohe Pōtae Māori self-government and autonomy from 1962 .................................................. 69
18.7 Treaty analysis and findings .................................................. 69
18.8 Prejudice ............................................................................. 72

Chapter 18 Appendix: Ko Te Kawanata ............................................ 73

Chapter 19: He Kaunihera he Rēti, he Whenua ka Riro: Local Government and Rating in Te Rohe Pōtae ........................................... 85
19.1 Introduction ........................................................................... 85
   19.1.1 The purpose of this chapter ......................................... 85
   19.1.2 How this chapter is structured ..................................... 85
19.2 Issues .................................................................................. 86
   19.2.1 What other Tribunals have said .................................. 86
   19.2.2 Crown concessions ..................................................... 88
   19.2.3 Claimant and Crown arguments ................................. 88
   19.2.4 Issues for discussion .................................................. 92
19.3 The introduction of local government and Te Rohe Pōtae .......... 92
19.4 Rating and Te Rohe Pōtae land .............................................. 94
   19.4.1 Financing local government ....................................... 94
   19.4.2 Te Rohe Pōtae Māori protest rates being imposed ....... 95
   19.4.3 Pākehā and local body pressure to have Māori land included in rating ......................................................... 96
   19.4.4 Trying to collect 'native rates' ..................................... 98
19.5 Continuing efforts to collect rates, 1928–67 ............................. 100
### Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>19.5.1</td>
<td>The introduction of consolidation and rates compromise to Te Rohe Pōtae, 1928</td>
<td>100</td>
</tr>
<tr>
<td>19.5.1.1</td>
<td>Political responses to non-payment of Māori rates</td>
<td>100</td>
</tr>
<tr>
<td>19.5.1.2</td>
<td>Example of a vesting order and the 1928 rate compromise – Te Kūiti 2B1B</td>
<td>104</td>
</tr>
<tr>
<td>19.5.2</td>
<td>Using land classification to collect rates on Māori land</td>
<td>106</td>
</tr>
<tr>
<td>19.5.3</td>
<td>'Underperforming' land, noxious weeds and the 1950s legislation</td>
<td>109</td>
</tr>
<tr>
<td>19.6</td>
<td>Other 'solutions' for the non-payment of rates, 1967–88</td>
<td>115</td>
</tr>
<tr>
<td>19.6.1</td>
<td>The Rating Act 1967</td>
<td>115</td>
</tr>
<tr>
<td>19.6.2</td>
<td>The ability to remit rates</td>
<td>118</td>
</tr>
<tr>
<td>19.7</td>
<td>Consultation, Māori representation, and participation</td>
<td>121</td>
</tr>
<tr>
<td>19.8</td>
<td>Outcomes for Te Rohe Pōtae Māori in terms of services such as sanitation, roading, and rating issues</td>
<td>122</td>
</tr>
<tr>
<td>19.9</td>
<td>Treaty analysis and findings</td>
<td>126</td>
</tr>
<tr>
<td>19.9.1</td>
<td>Participation in local government</td>
<td>126</td>
</tr>
<tr>
<td>19.9.2</td>
<td>Introduction of the rating system into Te Rohe Pōtae</td>
<td>127</td>
</tr>
<tr>
<td>19.10</td>
<td>The effect of the 1989 local government restructuring and later legislation on Te Rohe Pōtae Māori</td>
<td>129</td>
</tr>
<tr>
<td>19.11</td>
<td>Current issues concerning rating</td>
<td>132</td>
</tr>
<tr>
<td>19.11.1</td>
<td>The Local Government (Rating) Act 2002</td>
<td>132</td>
</tr>
<tr>
<td>19.11.2</td>
<td>Local council policies on remission, postponement, and exemption of rates</td>
<td>133</td>
</tr>
<tr>
<td>19.11.3</td>
<td>Local Government Rates Inquiry, 2007</td>
<td>136</td>
</tr>
<tr>
<td>19.12</td>
<td>Treaty analysis and findings</td>
<td>138</td>
</tr>
<tr>
<td>19.13</td>
<td>Prejudice</td>
<td>140</td>
</tr>
<tr>
<td>19.14</td>
<td>Summary of findings</td>
<td>140</td>
</tr>
<tr>
<td>19.15</td>
<td>Recommendation</td>
<td>141</td>
</tr>
<tr>
<td>19</td>
<td>Selection of Te Rohe Pōtae Māori</td>
<td>122</td>
</tr>
<tr>
<td>Chapter 20: Ngā Tango Whenua i Raro i te Ture Muru Whenua: Public Works Takings in Te Rohe Pōtae</td>
<td>143</td>
<td></td>
</tr>
<tr>
<td>20.1</td>
<td>Introduction</td>
<td>143</td>
</tr>
<tr>
<td>20.1.1</td>
<td>The purpose of this chapter</td>
<td>144</td>
</tr>
<tr>
<td>20.1.2</td>
<td>How this chapter is structured</td>
<td>144</td>
</tr>
<tr>
<td>20.2</td>
<td>Issues</td>
<td>145</td>
</tr>
<tr>
<td>20.2.1</td>
<td>What other Tribunals have said</td>
<td>145</td>
</tr>
<tr>
<td>20.2.2</td>
<td>Summary of the Tribunal view relevant to this inquiry district</td>
<td>152</td>
</tr>
<tr>
<td>20.2.3</td>
<td>Crown concessions</td>
<td>155</td>
</tr>
<tr>
<td>20.2.4</td>
<td>Claimant and Crown arguments</td>
<td>156</td>
</tr>
<tr>
<td>20.2.5</td>
<td>Issues for discussion</td>
<td>160</td>
</tr>
<tr>
<td>20.3</td>
<td>The public works legislative regime</td>
<td>161</td>
</tr>
<tr>
<td>20.3.1</td>
<td>The legislative regime, 1880s–1927</td>
<td>161</td>
</tr>
<tr>
<td>20.3.1.1</td>
<td>The 5 per cent rule</td>
<td>169</td>
</tr>
<tr>
<td>20.3.1.2</td>
<td>Vesting a public route in the Crown without compensation</td>
<td>170</td>
</tr>
</tbody>
</table>

vii
## Contents

20.3.2 The legislative regime, 1928–81 .......................................... 170
20.4 The practical implementation of compulsory public works takings of Māori land in Te Rohe Pōtāe, 1889–1927 ........................................... 175
  20.4.1 Road and railway takings to 1927 ........................................ 176
    20.4.1.1 Waiteti, Waimihia, and Maramataha railway quarries, 1903–12 ........................................ 182
    20.4.1.2 Ōngarue township, 1902 ........................................ 189
  20.4.2 Ōpārau and Piopio Schools, 1917–60 ........................................ 193
    20.4.2.1 Oparau School, 1918, 1942, 1960 ........................................ 194
    20.4.2.2 Piopio schools, 1922, 1958 ........................................ 198
  20.4.3 Tokanui Hospital and Waikeria Prison, 1910–11 ................. 205
  20.4.4 Scenery preservation, 1903–27 ........................................ 226
    20.4.4.1 Mōkau River scenic reserves ........................................ 232
    20.4.4.2 Mangaokewa Gorge scenic reserve ........................................ 240
    20.4.4.3 Kāwhia Harbour scenic reserves, 1913–24 .................. 244
  20.5 The practical implementation of compulsory public works takings of Māori land in Te Rohe Pōtāe, 1928–2009 ........................................ 254
  20.5.1 Roads and railways takings, 1928–90 ........................................ 255
  20.5.2 Ōtorohanga flood protection works, 1965–74 ...................... 267
  20.5.3 Te Kūiti and Raglan aerodromes ........................................ 272
    20.5.3.1 Te Kūiti Aerodrome, 1936 ........................................ 276
    20.5.3.2 Raglan Aerodrome, 1941 ........................................ 282
  20.6 Treaty analysis and findings ........................................ 298
  20.7 Prejudice ........................................ 311
  20.8 Recommendations ........................................ 313
  20.9 Summary of findings ........................................ 314

## Chapter 21: Te Taiao – Ko te Whenua te Toto o te Tangata:
Environment and Heritage in Te Rohe Pōtāe ........................................ 315
21.1 Introduction ........................................ 315
  21.1.1 The purpose of this chapter ........................................ 316
  21.1.2 How this chapter is structured ........................................ 316
21.2 Issues ........................................ 316
  21.2.1 What other Tribunals have said ........................................ 316
  21.2.2 Crown concessions ........................................ 324
  21.2.3 Claimant and Crown arguments ........................................ 324
  21.2.4 Issues for discussion ........................................ 331
21.3 Environmental management ........................................ 331
  21.3.1 The impact of the land alienation and Pākehā settlement in Te Rohe Pōtāe ........................................ 337
  21.3.2 Impact of early Crown regulation of the environment on Māori, 1880–1900 ........................................ 340
  21.3.3 Provision for Māori in environmental decision making, 1900–91 ........................................ 341
    21.3.3.1 Regulation of forestry ........................................ 341
<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>21.3.3.2</td>
<td>Regulation of drainage schemes</td>
<td>342</td>
</tr>
<tr>
<td>21.3.3.3</td>
<td>Regulation of waterways and fisheries</td>
<td>343</td>
</tr>
<tr>
<td>21.3.3.4</td>
<td>Regulation of land use</td>
<td>344</td>
</tr>
<tr>
<td>21.3.3.5</td>
<td>Regulation of wāhi tapu, important sites, and taonga tuturu</td>
<td>346</td>
</tr>
<tr>
<td>21.3.3.5.1</td>
<td>Rewi's Reserve</td>
<td>355</td>
</tr>
<tr>
<td>21.3.3.5.2</td>
<td>Ngāti Maniapoto Trust Board list</td>
<td>363</td>
</tr>
<tr>
<td>21.3.3.5.3</td>
<td>The protection of taonga tuturu</td>
<td>364</td>
</tr>
<tr>
<td>21.3.3.6</td>
<td>The regulation of reserves</td>
<td>365</td>
</tr>
<tr>
<td>21.3.3.7</td>
<td>Regulatory control of protected wildlife</td>
<td>373</td>
</tr>
<tr>
<td>21.3.4</td>
<td>Overview of regulatory reforms, 1980–91</td>
<td>376</td>
</tr>
<tr>
<td>21.3.4.1</td>
<td>The Environment Act 1986</td>
<td>377</td>
</tr>
<tr>
<td>21.3.4.2</td>
<td>The Conservation Act 1987</td>
<td>377</td>
</tr>
<tr>
<td>21.3.4.3</td>
<td>The Resource Management Act 1991</td>
<td>383</td>
</tr>
<tr>
<td>21.3.5</td>
<td>The impact of the current environmental management</td>
<td>386</td>
</tr>
<tr>
<td></td>
<td>regulatory regime on Māori</td>
<td></td>
</tr>
<tr>
<td>21.3.6</td>
<td>Treaty analysis and findings</td>
<td>391</td>
</tr>
<tr>
<td>21.4</td>
<td>Te Nehenehenui</td>
<td>396</td>
</tr>
<tr>
<td>21.4.1</td>
<td>The forests as taonga</td>
<td>396</td>
</tr>
<tr>
<td>21.4.2</td>
<td>The regulation of indigenous forestry</td>
<td>399</td>
</tr>
<tr>
<td>21.4.3</td>
<td>Deforestation in Te Rohe Pōtæ</td>
<td>405</td>
</tr>
<tr>
<td>21.4.4</td>
<td>Impacts of the loss of forests lands on Te Rohe Pōtæ Māori</td>
<td>412</td>
</tr>
<tr>
<td>21.4.5</td>
<td>Crown exotic forest management in Te Rohe Pōtæ</td>
<td>414</td>
</tr>
<tr>
<td>21.4.6</td>
<td>The remnants of Te Nehenehenui and other forests</td>
<td>416</td>
</tr>
<tr>
<td>21.4.6.1</td>
<td>Karioi to Whareorino Place – the Pirongia Forest Park</td>
<td>417</td>
</tr>
<tr>
<td>21.4.6.2</td>
<td>Waitomo Place – Matakana Conservation Area</td>
<td>418</td>
</tr>
<tr>
<td>21.4.6.3</td>
<td>Pureora Place – Pureora Forest Park</td>
<td>422</td>
</tr>
<tr>
<td>21.4.7</td>
<td>Treaty analysis and findings</td>
<td>428</td>
</tr>
<tr>
<td>21.5</td>
<td>Land use and the environment in Te Rohe Pōtæ</td>
<td>432</td>
</tr>
<tr>
<td>21.5.1</td>
<td>Development for farmland in Te Rohe Pōtæ</td>
<td>432</td>
</tr>
<tr>
<td>21.5.1.1</td>
<td>The regulation of land use for farmland, 1880s–1991</td>
<td>433</td>
</tr>
<tr>
<td>21.5.1.2</td>
<td>Impact of the regulation of land use for farmland on Te Rohe Pōtæ Māori</td>
<td>437</td>
</tr>
<tr>
<td>21.5.1.2.1</td>
<td>The town and country planning legislation of the 1970s</td>
<td>438</td>
</tr>
<tr>
<td>21.5.1.2.2</td>
<td>The protection of important sites and other taonga</td>
<td>440</td>
</tr>
<tr>
<td>21.5.1.2.2.1</td>
<td>Te Naunau</td>
<td>440</td>
</tr>
<tr>
<td>21.5.1.2.2.2</td>
<td>Maukutea</td>
<td>445</td>
</tr>
<tr>
<td>21.5.1.2.2.3</td>
<td>Te Ana-uriuri</td>
<td>450</td>
</tr>
<tr>
<td>21.5.2</td>
<td>Mining in Te Rohe Pōtæ</td>
<td>455</td>
</tr>
<tr>
<td>21.5.2.1</td>
<td>The regulation of mining and quarrying in the inquiry district</td>
<td>455</td>
</tr>
<tr>
<td>21.5.2.1.1</td>
<td>Tahāroa taonga</td>
<td>459</td>
</tr>
<tr>
<td>21.5.2.1.2</td>
<td>Tahāroa ironsands</td>
<td>460</td>
</tr>
</tbody>
</table>
22.3.8 Treaty analysis and findings ................................................. 554
22.4 Crown regulation and environmental effects ............................ 558
  22.4.1 Crown regulation of pollution since 1991 ............................ 563
  22.4.2 Sewage ........................................................................... 566
    22.4.2.1 Raglan sewerage scheme ........................................... 567
    22.4.2.2 Ōtorohanga sewerage scheme .................................... 571
    22.4.2.3 Te Kūiti sewerage scheme .......................................... 574
    22.4.2.4 Piopio sewerage scheme ............................................. 582
  22.4.3 Treaty analysis and findings ............................................. 587
22.5 Harbours, Takutai Moana, estuaries, and lagoons ...................... 591
  22.5.1 Crown concessions .......................................................... 591
  22.5.2 Claimant and Crown arguments ........................................ 591
  22.5.3 Harbours, Takutai Moana, estuaries, lagoons as taonga ......... 593
  22.5.4 The common law and the Crown's regulation of harbours ..... 594
  22.5.5 The Crown's regulation of harbours in Te Rohe Pōtae ........... 599
    22.5.5.1 Kāwhia and Aotea .................................................. 601
    22.5.5.2 Whāingaroa/Raglan ............................................... 615
  22.5.6 Tribunal analysis and findings .......................................... 623
22.6 Customary non-commercial fisheries ....................................... 625
  22.6.1 Tribunal jurisdiction concerning customary non-commercial fisheries ................................................. 625
  22.6.2 Crown concessions .......................................................... 626
  22.6.3 Claimant and Crown arguments ........................................ 626
  22.6.4 Fisheries and their value as taonga .................................... 630
  22.6.5 The common law and the Crown's regulation of fisheries ..... 633
  22.6.6 Non-commercial fisheries ................................................ 634
  22.6.7 Trout and salmon – a case study in Crown regulation .......... 639
    22.6.7.1 The values associated with trout and salmon ............... 639
    22.6.7.2 The Crown's management regime for trout and salmon . 639
  22.6.8 Tuna – a case study in Crown regulation ............................ 643
    22.6.8.1 Tuna and their value as taonga .................................. 643
    22.6.8.2 Tuna in Western science .......................................... 649
    22.6.8.3 Crown's management regime for tuna .......................... 650
    22.6.8.4 Pressures on the tuna population ............................... 652
  22.6.9 Whitebait – a case study in Crown regulation ...................... 661
    22.6.9.1 Whitebait and their value as taonga ............................ 661
    22.6.9.2 The Crown's management regime for whitebait .......... 662
  22.6.10 Tribunal analysis and findings ....................................... 665
22.7 Prejudice ............................................................................. 668
22.8 Summary of findings ............................................................. 669

Chapter 22 Appendix: Ngā Wai o Maniapoto (Waipā River) Act 2012 Preamble ......................................................... 673
LIST OF MAPS

Map 18.1: Maniapoto Māori Council district boundary as compared with the inquiry boundary ................. 26
Map 20.1: Ongarue township, the branch railway, and associated public works takings ........................................ 191
Map 20.2: Public works takings for Piopio schools .......................................................... 200
Map 20.3: Public works takings for the Mōkau scenic reserves ....................................... 233
Map 20.4: Public works takings for the Mangaokewa Gorge scenic reserve ............. 241
Map 20.5: Kāwhia scenic reserve takings, 1913–24 ......................................................... 247
Map 20.6: Location of Morrison Rd .......................................................... 259
Map 20.7: Public works takings for the Ōtorohanga flood protection works ....... 270
Map 20.8: Public works takings for the Te Kūiti aerodrome ........................................ 275
Map 20.9: Raglan Aerodrome .............................................................................. 284
Map 21.1: Te Nehenehenui, 1885 ........................................................................ 397
Map 21.2: Coalfields within the Te Rohe Pōtae inquiry district .................................. 456
Map 21.3: Ironsand mining at Tahāroa .................................................................. 466
Map 22.1: Te Rohe Pōtae waterways and water bodies ........................................... 512
Map 22.2: Sketch plan of the Mōkau block, 1854 .................................................. 545
Map 22.3: Rating area of the Mōkau Harbour Board, 1912 ..................................... 547
Map 22.4: Sketch of the Mōkau Spit .................................................................... 549
Map 22.5: Archaeological sites identified around Aotea Harbour ...................... 603
E ngā Minita, tēnā koutou

Tihē mauri ora e ngā Minita. Anei rā te tuatoru o ngā pūrongo mō Te Rohe Pōtae. Nō mātau o Te Rōpū Whakamana i te Tiriti o Waitangi te ngākau āwherangi ki te whakapuaki i tēnei wāhanga o te Whatu Ahuru ki te marea.

We present to you the third release of chapters (part IV) of our report on claims submitted under the Treaty of Waitangi Act 1975 in respect of the Te Rohe Pōtae inquiry district. This district extends from Whāingaroa Harbour to northern Taranaki, and inland to the Waikato River and Taumarunui.

The report addresses 277 claims that have been brought to the Waitangi Tribunal on behalf of iwi, hapū, and whānau, people representing their tupuna, and current-day entities such as trusts, boards, incorporations, and owners of certain land blocks.

This part of the report follows the release of parts I and II in September 2018, and part III in June 2019. These chapters address the impact of Crown actions, omissions, policy, and legislation on the ability of Te Rohe Pōtae Māori to exercise mana whakahaere and tino rangatiratanga over the district and its inhabitants.

The Tribunal reserves the right to make further recommendations.
Nāku noa, nā

Deputy Chief Judge Caren Fox
Presiding Officer
Nā te Rōpū Whakamana i te Tiriti o Waitangi
PREFACE

This is a pre-publication version of part IV of the Waitangi Tribunal’s *Te Mana Whatu Ahuru: Report on Te Rohe Pōtae Claims*. As such, all parties should expect that in the published version, headings and formatting may be adjusted, typographical errors rectified, and footnotes checked and corrected where necessary. Maps, photographs, and additional illustrative material may be inserted. The Tribunal reserves the right to amend the text of these parts in its final report, although its main findings will not change. It also reserves the right not to address certain issues in these parts of the report, and further parts, until the final report is released. The Tribunal reserves the right to make further recommendations on the matters addressed in part IV up to and including in the final published report. The Tribunal reserves the right to refuse any applications to exercise its resumptive powers based on this pre-publication report until the final report is released.

In preparing this pre-publication report, the Tribunal has noted variation in spelling and in the use of macrons for a number of words and phrases referred to in evidence on the record of inquiry, particularly in regard to the names of people and places. Parties are therefore invited to submit corrections to these, or any other words and phrases used in the report. Parties must indicate where in the report the term is used, their desired spelling or macron use, and any relevant explanation or evidence. The Tribunal will consider parties’ submissions and incorporate any resulting changes into the final published version of the report.
In parts I, II, and III of this report, we discussed the character of the relationship between Te Rohe Pōtae Māori and the Crown following the signing of the Treaty of Waitangi in 1840. We focused particularly on the declaration known to Māori as Te Ōhākī Tapu (1883–85), and associated agreements with the Crown. These agreements promised to give local effect to the Crown’s Treaty guarantee to preserve Māori authority (rangatiratanga) and control over their lands and affairs (their mana whakahaere), in exchange for the extension of the North Island main trunk railway through the inquiry district.

Despite these agreements, the evidence received in this inquiry demonstrates that the Crown did little to prevent, and in many circumstances encouraged through its actions and omissions, an erosion of the ability of Te Rohe Pōtae Māori to give practical effect to their mana whakahaere and tino rangatiratanga. The alienation of whenua triggered this erosion. From the 1880s and throughout the twentieth century, the Crown legislated for and implemented a range of institutions, mechanisms, and practices that either allowed lands to be removed from Te Rohe Pōtae Māori possession, or prevented owners from using lands as they wished. The result was a stark transition in land ownership. In 1909, Te Rohe Pōtae Māori retained 934,367 acres, or roughly half of the inquiry district. By 1966, the tribal estate had shrunk to just 342,722 acres, around 18 per cent of the district.

As we emphasised in part III, this rapid loss of whenua severely impacted the tribal authority of Te Rohe Pōtae Māori. In this part of the report, we discuss how the alienation of land reflected, and itself fuelled, an ongoing diminishment of tribal authority over the way the district and its inhabitants were managed. As the Crown’s presence and influence in the rohe increased in the late nineteenth and twentieth centuries, Te Rohe Pōtae Māori progressively lost leverage with which to demand that the Crown honour its obligations under the Treaty, as well as Te Ōhākī Tapu and associated agreements. Areas affected included the governance and management of Māori communities, the impact of local government and public works legislation on remaining land, and the Crown’s regulation of the natural environment, heritage, conservation, and waterways. In these areas, the Crown’s increasing predominance enabled it to marginalise Treaty guarantees to Te Rohe Pōtae Māori given expression through Te Ōhākī Tapu and associated agreements.

The chapters in this part address these issues and are organised as follows:

- Chapter 18: Te Mana Whakahaere, Koia te Whāinga Tūturu: Te Rohe Pōtae Māori Autonomy and Self-Government.
- Chapter 19: He Kaunihera he Rēti, he Whenua ka Riro: Local Government and Rating in Te Rohe Pōtae.

1. Part III of this report, p xix.
In essence, as the pace of land alienation reached its peak and shifted the balance of power in the district, the Crown's interest in developing the region for Pākehā settlement became increasingly acute. The Crown's settlement policies had deep and enduring impacts for Te Rohe Pōtae and its people. These policies continued eroding the promises of the Treaty and the Te Ōhākī Tapu agreements, particularly their exercise of mana whakahaere. Te Rohe Pōtae Māori instead had to compromise and participate in a succession of representative structures and institutions to exercise at least a form of mana whakahaere. However, these spheres of influence were limited, and many did not prove enduring. The increasing presence and imposition of Pākehā local government and local authorities in the district further complicated the struggle of Te Rohe Pōtae Māori to exercise mana whakahaere.

Although a relatively new presence in the region, local authorities and special purpose bodies quickly became effective vehicles for the Crown's continued interest in facilitating settlement. A flurry of public works development occurred in Te Rohe Pōtae, particularly in the first 30 years of the twentieth century. The alienation of Te Rohe Pōtae Māori land for the construction of the North Island main trunk railway (discussed in part II) precipitated further land takings for public works purposes. Māori expected the Crown to engage in considered discussions with them over public works takings, as it had done with the main trunk railway. This did not come to pass. Without meaningful consultation and without meeting tests of last resort, the Crown undertook the largest individual takings for public works in New Zealand history in the inquiry district during the twentieth century.

The twentieth century saw increasing regulation by the Crown and local authorities of natural resources and the environment, including water bodies. Regulation and management policies largely wrested tribal authority over many taonga and sites of significance not already extinguished by land alienation. While this diminishing of tribal authority is problematic in and of itself, the Crown's regulation of the natural environment also had a severe impact on taonga sites and species. Claimants emphasised that the wairua of many important sites has been severely damaged and continues to suffer as the result of Crown actions and omissions.

In all, the evidence traversed in these chapters confirms Te Rohe Pōtae Māori's undiminished expectation to sustain mana whakahaere. That expectation is still alive today.

Based on our deliberations in this part of the report, we have made recommendations about the Crown's actions, omissions, policies, and legislation in relation to autonomy, local government, public works, the environment, and waterways and water bodies.
In relation to our findings on autonomy, our previous recommendations apply. Regarding our findings on local government, we recommend that sections 19ZA to 19ZG of the Local Electoral Act 2001 are removed, in order to enable greater Māori participation in local government.

With respect to our findings on the Crown's public works legislation, we recommend:

- An urgent review and reform of current public works legislation.
- The reform to adopt the recommendations already set out by the Wairarapa ki Tararua Tribunal, including a Treaty clause, requiring direct consultation with Māori over the regime and over each proposal to use compulsory provisions to take Māori land for a public work.
- Revised legislation to clearly set out a general guide to what needs to be considered for a last resort in the national interest, including such matters as requiring the consideration of feasible alternatives, the importance of the land to Māori, the impact of the taking on the state of remaining Māori landholding, sites of significance to Māori on the land, whakapapa, and ancestral connections to the land, and the impact of any land taking for Treaty development rights for Māori owners.
- Revised legislation to clearly require equitable protections for Māori concerns and interests and ancestral links with their land when considering any proposed compulsory taking, and the timely restoration of any taken land with the least cost and inconvenience to the former owners and their whānau.
- The Crown urgently takes responsibility for healing relationships between central and local government and Te Rohe Pōtai Māori communities as a result of compulsory takings of their land and the continuing impacts and grievances held by those communities from those takings.
- The Crown factor in the considerable financial impact of compulsory public works takings for any redress and financial compensation package offered to Māori claimants.
- The Crown, in consultation with claimants, urgently work towards establishing co-governance arrangements for Māori land subject to compulsory takings that is now held as scenic reserves or domains by non-Crown entities and by Crown agencies.
- The Crown instruct all of its landholding agencies to commence an urgent process, in consultation with claimants, to return taken Māori lands in Crown ownership as quickly as possible to the former owners or their whānau at least cost and inconvenience for them.

Regarding our findings on the environment and heritage, we recommend:

- That the Crown acts, in conjunction with Te Rohe Pōtai Māori or the mandated settling group or groups in question, to put in place means to give effect to their rangatiratanga in environmental management. For Ngāti Maniapoto or their mandated representatives, this will require the Crown to take into account and give practical effect to Te Ōhākī Tapu. How this might be achieved will be for the parties to decide in negotiations; however, the
Tribunal considers that for the Crown to relieve the prejudice suffered by Te Rohe Pōtae Māori, the following minimum conditions must be met.

- First, that the rangatiratanga of Te Rohe Pōtae Māori (or the settling group or groups in question) be enacted in legislation in a manner which recognises and affirms their rights of autonomy and self-determination within their rohe, and imposes a positive obligation on the Crown and all agencies acting under Crown statutory authority to give effect to those rights. For Ngāti Maniapoto or their mandated representatives, this will require legislation that recognises and affirms Te Ōhākī Tapu, and imposes an obligation on the Crown and its agencies and regional and local authorities to give effect to the right to mana whakahaere. The brief of evidence of Steven Wilson (Manahautū Whanake Taiao – Group Manager Environment for the Maniapoto Trust Board) dated 28 April 2014 could provide a sound basis for negotiations on this issue.²

- Secondly, subject to negotiations between the parties, that the legislation makes appropriate provision for the practical exercise of rangatiratanga by Te Rohe Pōtae Māori (or the settling group or groups in question) in environmental management. For Ngāti Maniapoto or their mandated representatives, this will require legislation that gives practical effect to Te Ōhākī Tapu, and provides for the practical exercise of mana whakahaere.

- Thirdly, and for other iwi in the district, co-management regimes could be chosen from the existing suite of options under the Resource Management Act 1991 or through the enactment of legislation for a different form of co-management. The iwi concerned should have a real mandate to represent hapū, and whānau. They should also reflect this through constituting representative structures that elevate the voices of hapū and whānau in the decision-making process. These co-management bodies, and the relationship they reflect, should be established on the basis that the environment is a taonga of Te Rohe Pōtae Māori. The Crown, as part of this recognition and the development of these co-management regimes, should proactively look to restore taonga sites where practicable. These sites should be identified in conjunction with Te Rohe Pōtae Māori and may include wetlands, forests, wāhi tapu, or any other sites of environmental or heritage value.

- Fourthly, that the Crown contracts an independent valuer to determine the value of the timber not paid for when it purchased the bulk of Ngāti Maniapoto land during the period 1890 to 1912 to aid the Treaty settlement process, if this has not already taken place.

- That section 8 be amended to require that nothing must be done under the Resource Management Act 1991 in a manner inconsistent with the principles of the Treaty of Waitangi. Alternatively, the Treaty principles should

---

be integrated into the meaning of sustainable management in section 5 of the Resource Management Act.

- That section 6 of the Conservation Act 1987 be amended to make it clarify the full extent of the Department of Conservation’s responsibility to adhere to and implement the principles of the Treaty of Waitangi with respect to functions under the Conservation Act 1987 and all the other statutes administered by the department.

Regarding our findings on waterways and water bodies, we recommend:

- The Ngā Wai o Maniapoto (Waipā River) Act 2012 be amended to cover all the waterways and river mouths and harbours of Ngāti Maniapoto. This legislation is to include co-management with the Department of Conservation of customary freshwater fisheries species, particularly eels and marine species found in river mouths and harbours.

- That in relation to other Iwi of the district, that the Crown consider special legislation to address their Treaty claims with respect to waterways, river mouths, and harbours.

- That a mataitai be constituted with respect to Whāingaroa Harbour.

We reserve the right to make further findings and recommendations with respect to these chapters at the conclusion of our report. We also reserve the right to refuse any applications to exercise our resumptive powers based upon this pre-publication report until the final part of our report is released.

We note that in this part of the report we refer to a number of Waitangi Tribunal reports that were not published at the time that closing submissions were received from counsel. Our references to such reports are merely for contextual purposes and do not form the basis of any of our findings.

The remaining chapters of our report will address issues of education and health, as well as claims relating to particular takiwā.
### ABBREVIATIONS

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>AJHR</td>
<td>Appendix to the Journals of the House of Representatives</td>
</tr>
<tr>
<td>app</td>
<td>appendix</td>
</tr>
<tr>
<td>AUC</td>
<td>Auckland Crown purchase deed</td>
</tr>
<tr>
<td>CA</td>
<td>Court of Appeal</td>
</tr>
<tr>
<td>ch</td>
<td>chapter</td>
</tr>
<tr>
<td>cl</td>
<td>clause</td>
</tr>
<tr>
<td>CMS</td>
<td>Church Missionary Society</td>
</tr>
<tr>
<td>comp</td>
<td>compiler</td>
</tr>
<tr>
<td>doc</td>
<td>document</td>
</tr>
<tr>
<td>ed</td>
<td>edition, editor</td>
</tr>
<tr>
<td>GIS</td>
<td>geographic information system</td>
</tr>
<tr>
<td>GNA</td>
<td>got no address</td>
</tr>
<tr>
<td>ltd</td>
<td>limited</td>
</tr>
<tr>
<td>MB</td>
<td>minute book</td>
</tr>
<tr>
<td>memo</td>
<td>memorandum</td>
</tr>
<tr>
<td>MWEO</td>
<td>Māori War Effort Organisation</td>
</tr>
<tr>
<td>n</td>
<td>note</td>
</tr>
<tr>
<td>no</td>
<td>number</td>
</tr>
<tr>
<td>NIMTR</td>
<td>North Island main trunk railway</td>
</tr>
<tr>
<td>NZCA</td>
<td>New Zealand Court of Appeal</td>
</tr>
<tr>
<td>NZLR</td>
<td>New Zealand Law Reports</td>
</tr>
<tr>
<td>NZTPA</td>
<td>New Zealand Town Planning Appeals</td>
</tr>
<tr>
<td>OLC</td>
<td>old land claim</td>
</tr>
<tr>
<td>p, pp</td>
<td>page, pages</td>
</tr>
<tr>
<td>para</td>
<td>paragraph</td>
</tr>
<tr>
<td>pt</td>
<td>part</td>
</tr>
<tr>
<td>PWD</td>
<td>Public Works Department</td>
</tr>
<tr>
<td>ROI</td>
<td>record of inquiry</td>
</tr>
<tr>
<td>RUP</td>
<td>recorded under parent</td>
</tr>
<tr>
<td>s, ss</td>
<td>section, sections (of an Act of Parliament)</td>
</tr>
<tr>
<td>SC</td>
<td>Supreme Court</td>
</tr>
<tr>
<td>v</td>
<td>and</td>
</tr>
<tr>
<td>vol</td>
<td>volume</td>
</tr>
<tr>
<td>Wai</td>
<td>Waitangi Tribunal claim</td>
</tr>
<tr>
<td>WMS</td>
<td>Wesleyan Missionary Society</td>
</tr>
</tbody>
</table>

Unless otherwise stated, footnote references to briefs, claims, documents, memoranda, papers, submissions, and transcripts are to the Wai 898 record of inquiry. A copy of the index to the record is available on request from the Waitangi Tribunal.
[O]ur lands are still under our customs, and so are the people; therefore, we say, leave the management of our lands to us . . .

—Wahanui

The . . . idea . . . of providing a system of local government for the Maoris is an absurdity . . . Looking at the large and increasing European population and the small number of Maoris it is very evident that the best hope of the Native race is to frankly accept European institutions and laws.

—John Bryce, Native Minister

It states in the Treaty of Waitangi that the Maori chiefs should be treated in the same way as the people of England and given the same power . . . Give the government of the Maori race to the Maori chiefs. What harm is there in it? Has it ever been tried yet, to see whether evil will come of it or not?

—Te Wheoro at Whatiwhatihoe

18.1 Introduction
As discussed in chapter 3, the Treaty of Waitangi established a relationship between Te Rohe Pōtae Māori and the Crown ‘akin to a partnership’. This agreement required its partners to act reasonably and with the ‘utmost good faith’ towards each other. It recognised that the Treaty partners exercised authority in their respective spheres of kāwanatanga (the Crown’s right to make laws and govern), and tino rangatiratanga (the Māori right to autonomy and to manage the full range of their own affairs). As the Crown had a minimal presence in the inquiry district, however, the practical shape of this division remained undefined in 1840 and for many years afterward. Post-1863 events including war, raupatu, and the operation of the aukati, addressed in chapters 6, 7, 8, and 9, further delayed negotiation of how these spheres might coexist and interact. Thus, prior to the
1880s, Te Rohe Pōtae Māori regulated their lands and communities autonomously and according to tikanga, as they had for centuries. Not until the Te Ōhāki Tapu agreements (1883–1885), did substantive discussions regarding this relationship take place in the district.

As discussed in chapter 8, these agreements promised to give practical effect to the Treaty’s provisions for Māori autonomy and self-government. During negotiations, Te Rohe Pōtae leaders recognised the Crown’s kāwanatanga role and acceded to open the district to the North Island main trunk railway and the Native Land Court. In return, Te Rohe Pōtae Māori expected the Crown to advance their own right to continue exercising mana whakahaere, or political and administrative control, within their rohe. Self-government, as Te Rohe Pōtae leaders understood it through the concept of mana whakahaere, meant autonomy in decision-making for their communities distinct from, and equal to, the kāwanatanga functions of the Crown. This chapter uses the terms ‘Māori autonomy’, ‘local self-government’, and ‘self-government’ to refer to this core Te Rohe Pōtae Māori expectation.

Throughout the late nineteenth and the twentieth centuries, Te Rohe Pōtae Māori participated in a succession of representative structures and institutions appearing to provide a measure of the autonomy and self-government they expected. In this chapter, we assess the legislative framework, funding, and operation of these institutions and structures from a Treaty perspective.

18.1.1 The purpose of this chapter

As discussed in chapter 8, through the Te Ōhāki Tapu agreements the Crown gave specific effect to the Treaty guarantee that Te Rohe Pōtae Māori would be able to exercise self-government over their communities. This chapter considers whether the Crown fulfilled its duty to act in good faith toward Te Rohe Pōtae Māori (as Treaty partners) by protecting their Treaty right to autonomy and self-government. To make this assessment, we review institutions and opportunities that the Crown provided for Te Rohe Pōtae Māori to govern their own communities.

The chapter’s focus on Crown provisions for Māori autonomy prevents an exhaustive discussion of all aspects of Māori self-government and autonomy in Te Rohe Pōtae. Comprehensive treatment here is also unnecessary because parts I, II, and III of this report have already considered issues of autonomy and self-government related to the Treaty, Te Ōhāki Tapu, and various channels of land transfer and management in the inquiry district during the twentieth century. A forthcoming chapter in this report addressing health, housing, and alcohol control considers questions of autonomy specific to these issues. Chapter 19 will consider Māori representation within systems of local government and rating that became entrenched in the district during the twentieth century. These chapters should be read in conjunction, as they examine different sides of an overarching Te Rohe Pōtae Māori quest to exercise mana whakahaere following the introduction of European laws, infrastructure, and settlement to their district.

Where issues and events related to autonomy have been traversed earlier in the report, we provide cross-references to reduce repeat discussion. Nonetheless, some overlap with discussion in parts I and II is unavoidable, particularly at the outset.
of the chapter. Where recaps are necessary, however, they present only information relevant to this chapter’s distinct focus on the issues of self-government and autonomy. All claims concerning these issues will be covered in the Take a Takiwā chapters in a forthcoming volume of this report.

18.1.2 How this chapter is structured
This chapter opens by examining what the Tribunal has concluded previously concerning Māori autonomy and local self-government. Following this survey of Tribunal jurisprudence, we summarise the positions of the claimants and the Crown to distil, from the key points of divergence, issues for discussion in the chapter. The main historical analysis begins with a brief return to the Te Ōhākī Tapu agreements, in order to look closely at the expectations of the Crown and Māori concerning autonomy and local self-government. The chapter proceeds to consider the legislated powers of Māori self-government bodies in Te Rohe Pōtae, the resourcing of these bodies, and the experiences of those who participated in them. For clarity and to distinguish modes of local autonomy and self-government tied to legislation and historical circumstances, discussion is divided into three chronological sections: 1880 to 1940, 1940 to 1962, and 1962 onwards. Finally, we present overall findings and recommendations.

18.2 Issues
18.2.1 What previous Tribunals have said
Several other Tribunal inquiries have considered Māori autonomy and the introduction of self-government structures. The Taranaki Tribunal, in its discussion of ‘aboriginal autonomy’ and ‘aboriginal self-government’, defined these concepts as including the right of indigenous peoples to ‘manage their own policy, resources, and affairs, within minimum parameters necessary for the proper operation of the State’. Similarly, the Tūranga Tribunal described Māori autonomy as ‘the ability of tribal communities to govern themselves as they had for centuries, to determine their own internal political, economic, and social rights and objectives, and to act collectively in accordance with those determinants’. Echoing this interpretation, the Tauranga Moana Tribunal found ‘ample evidence’ within its district of ‘hapū and iwi seeking to have a measure of control over their own affairs’. The Central North Island Tribunal has engaged most deeply, however, with Māori self-government and autonomy. As that Tribunal noted, the right to exercise tino rangatiratanga was preserved, guaranteed, and protected, not only by the plain text of Treaty, but by the principles deriving from it. The three principles that

Tribunal cited in particular were those of partnership, autonomy, and equity. In sum:

- the principle of partnership, arising from the reciprocity in the Treaty, means Māori were guaranteed recognition and active protection of their tino rangatiratanga, in return for having agreed to the Queen’s kawanatanga;
- the principle of autonomy is consequent upon that partnership, in that it is ‘the full expression of that tino rangatiratanga’, while;
- the principle of equity ‘arises from the promise in article 3 of the rights and privileges of British citizenship’. On this point, the Tribunal added, equity does not mean that laws must be identical for settler and Māori populations, ‘but rather that they be equal’. It found that ‘decade after decade’, and at every level (local, regional, and national), Māori were denied representation comparable to that of Pākehā.

As a result of the guarantee to recognise and protect tino rangatiratanga, the Central North Island Tribunal found that Māori were entitled to ‘autonomy and the right of self-government by representative institutions responsible to their communities.’ That autonomy included ‘control of their social and economic destinies’. The Tribunal added, however, that, because tribes were ‘affected by their partnership with the kawanatanga’, their exercising of tino rangatiratanga could not be exactly the same as it was before 1840. Up to that point, Māori self-government had been unquestioned. After the proclamation of British sovereignty, by contrast, a degree of accommodation would be necessary because: ‘There were two authorities, two systems of law, and two overlapping spheres of population and interest, as the settler State sought to establish itself alongside – and over the top of – Māori tribal polities.’

The Taranaki Tribunal, too, noted that with the advent of the Treaty, the two spheres of authority – Crown kawanatanga and Māori rangatiratanga – would inevitably need to interact and ‘the need to develop protocols for their mediation should have been foreseen’. Indeed, the recognition of ‘aboriginal autonomy’ should be regarded not as a barrier to national unity but an aid, because ‘conciliation requires a process of empowerment, not suppression’.

The Central North Island Tribunal stated that Māori were entitled to self-government ‘in whatever form chosen by their duly constituted representatives, and agreed with the Crown’. To illustrate that this was not an unrealistic proposition, the Tribunal outlined a number of ‘practical models of autonomy, self-government,
and even of divided sovereignty’ from around the world, which the Crown and Māori could have used as a basis for discussion about how that overlap would operate.\(^{17}\) The Central North Island Tribunal commented that the Te Ōhāki Tapu negotiations offered ‘potential for a genuine recognition and empowering (in the legal sense) of Māori authority in the Central North Island.’ It concluded, however, that this did not happen.\(^{18}\) The Tribunal found that ‘given the sheer breadth and number of lost opportunities [for Māori autonomy and self-government], the claimants’ assertions that the Crown committed ‘a sustained breach’ of the Treaty of Waitangi were well-founded.\(^{19}\)

As noted in chapter 8, in four separate reports – Pouākani, National Park, Central North Island, and Whanganui – the Tribunal has also considered aspects of the Te Ōhāki Tapu agreements. The Pouākani and National Park Tribunals further found that legislation the Crown enacted in response to its negotiations with Te Rohe Pōtae leaders failed to provide adequately for their self-determination and was not Treaty-compliant.\(^{20}\)

### 18.2.2 Crown concessions

The Crown described self-government as ‘the key criterion of a sovereign state’.\(^{21}\) It accepted that before the Treaty was signed, ‘the Māori tribes (including those of Te Rohe Pōtae) held *de jure* (legal) sovereignty over New Zealand.’ It noted that Lord Normanby, in 1839, had acknowledged New Zealand as ‘a sovereign and independent state’. However, it also noted Normanby’s caveat – namely that he saw Māori, as a people, to be ‘composed of numerous, dispersed and petty tribes’ who possessed ‘few political relations to each other’ and who were ‘incompetent to act, or even to deliberate in concert’.\(^{22}\) The Crown expressed no view on that description of Māori society and polity.

The Crown observed that through the Treaty, Māori ceded sovereignty but not their rangatiratanga. It pointed out that rangatiratanga, however, has to be ‘balanced by the Crown’s authority over all people and places in New Zealand’.\(^{23}\) As to the nature of the Crown’s authority, it accepted that *de jure* (legal) sovereignty did not always translate immediately into *de facto* (effective) sovereignty. In the case of Te Rohe Pōtae, it accepted that the Crown came to exercise effective sovereignty only ‘incrementally over time and in large part not before the mid-1880s’, when Te Rohe Pōtae Māori removed the aukati.\(^{24}\)

That said, the Crown made no concessions in this inquiry regarding either Māori self-government or autonomy. Indeed, it noted that, although the terms

---

17. Waitangi Tribunal, *He Maunga Rongo*, vol 1, p 207.
21. Statement 1.3.1, p 89.
22. Statement 1.3.1, pp 11, 18.
‘self-government’, ‘local self-government’, and ‘self-management’ appear in claimant submissions and also the statement of issues, their meanings have not been defined.\(^{25}\) As discussed in chapter 19, section 19.1.1, however, these terms are all broadly consistent with the concept of mana whakahaere, already defined in this report.

### 18.2.3 Claimant and Crown arguments

Numerous claims in this inquiry contain grievances related to Te Rohe Pōtae Māori autonomy, self-government, and rangatiratanga.\(^{26}\) The claimants contended that Te Rohe Pōtae rangatira expressed their continued expectation to exercise mana whakahaere in the rohe through the agreements forming Te Ōhākī Tapu.\(^{27}\) As claimant counsel put it, the agreements were ‘a promise by the Crown that this autonomy, this exercise of rangatiratanga, would be recognised and respected in all respects including within and through the laws passed by the Government’.\(^{28}\)

The claimants argued, however, that the structures for self-government the Crown provided – such as the native committees established under the Native Committees Act 1883, and the various Māori councils and boards established from 1900 onwards – ‘never received the levels of [Crown] support provided to those of Pakeha’. As a result, they said, these structures ‘lacked the teeth [to be effective]’ and ‘withered and declined’, and ‘the ability of hapu and iwi to exercise authority in the district was marginalised’.\(^{29}\) The claimants asserted that not long after the Te Ōhākī Tapu agreements, Te Rohe Pōtae leaders such as John Ormsby had already come to believe that the Crown neither intended to address the desire of Māori for political autonomy, nor to ‘conserve or enhance their interests’.\(^{30}\)

The claimants alleged that bodies for local self-government were unable to exert sufficient authority over their communities, due in significant part to limited statutory powers and a lack of funding for operations. They argued that this underdevelopment of Māori governance institutions ‘gradually stripped Rohe Pōtae Māori of their ability to exercise tino rangatiratanga, including the ability to self-manage their affairs’. Instead, in the view of the claimants, the Crown invested

---

25. Submission 1.3.1, p 309.
26. Wai 440 (submission 3.4.198); Wai 551, Wai 948 (submission 3.4.250); Wai 846 (submission 3.4.251); Wai 1944 (submission 3.4.233); Wai 587 (submission 3.4.177); Wai 1500 (submission 3.4.160); Wai 1823 (submission 3.4.178); Wai 729 (submission 3.4.240); Wai 1480 (submission 3.4.176); Wai 1812 (submission 3.4.184); Wai 833, Wai 965, Wai 1044, Wai 1605 (submission 3.4.227); Wai 1059, Wai 50 (submission 3.4.221); Wai 1230 (submission 3.4.168); Wai 1447 (submission 3.4.187); Wai 535 (submission 3.4.243(a)); Wai 827 (submission 3.4.245); Wai 1112, Wai 1113, Wai 1439, Wai 2351, Wai 2353 (submission 3.4.226); Wai 1410 (submission 3.4.216); Wai 1438 (submission 3.4.183); Wai 1448, Wai 1495, Wai 1501, Wai 1502, Wai 1592, Wai 1804, Wai 1899, Wai 1900, Wai 2125, Wai 2126, Wai 2135, Wai 2137, Wai 2183, Wai 2208, Wai 1900, Wai 2125, Wai 2126, Wai 2135, Wai 2137, Wai 2183, Wai 2208, Wai 1900, Wai 2125, Wai 2126, Wai 2135, Wai 2183, Wai 2208 (submission 3.4.237); Wai 1588, Wai 1589, Wai 1590, Wai 1591 (submission 3.4.143); Wai 2084 (submission 3.4.174); Wai 2087 (submission 3.4.218); Wai 125 (submission 3.4.210); Wai 537 (submission 3.4.179); Wai 775 (submission 3.4.244); Wai 1327 (submission 3.4.249); Wai 1967 (submission 3.4.162).
27. Submission 3.4.185, pp 14, 16.
29. Submission 3.4.185, pp 17–18, 30.
30. Submission 3.4.185, p 14.
powers and resources in local government structures that were by and large ‘a vehicle for Pakeha aspirations, often at the expense of Māori proprietary rights’. Māori were ‘required to abide by the edict of scattered local government policies’ that did not fit their needs. According to the claimants, when the promises of the Te Ōhāki Tapu agreements did not lead to meaningful Māori self-government, Te Rohe Pōtae Māori had little choice but to participate in a Euro-centric local government system. The claimants portrayed this system as flawed in principle and practice. On the one hand, the Crown formally delegated its powers in certain matters to local authorities; on the other, it failed to ensure that the relationship between local government and Māori was consistent with the Treaty of Waitangi. In the claimants’ assessment, the Crown’s lack of legislative provision to ensure Māori representation on local issues was a major component of this failure. As a result, the claimants noted that ‘calls for self-government became more limited as Māori came to the understanding that it would never be entertained’.

Early in its closing submissions, the Crown acknowledged the importance of local self-government for communities and commented that ‘it is preferable for decisions affecting the local community to be made by that community’. The Crown recognised that ‘there have been consistent, but not always unanimous, calls amongst Rohe Pōtae Māori for at least a degree of self-government (or local self-government or self-management); a wish to exercise control over key aspects of their affairs’. Here, the Crown described itself as facing a complex balancing exercise, weighing the ‘rangatiratanga rights of Māori’ against the Crown’s kāwanatanga responsibilities to govern on behalf of all New Zealanders.

The Crown maintained that any system of local government drawing ‘all citizens under the same institutions and rules is consistent with Treaty principles’ and this was its guiding approach. It added that it had nonetheless ‘at times sought to accommodate a degree of te tino rangatiratanga in relation to the governance or management by Rohe Pōtae Māori of their own affairs’. For example, it cited the rūnanga system introduced by Governor George Grey in 1861, the Kawhia Native Committee established under the Native Committees Act 1883, the Māori Councils established under the Māori Councils Act 1900, the Māori War Effort Organisation, and tribal bodies established under the Māori Social and Economic Advancement Act 1945. The Crown made no comment, however, on the degree to
which it perceived the enabling legislation of these structures as Treaty-compliant, or on the practical support it had lent to resulting bodies in Te Rohe Pōtæ.

**18.2.4 Issues for discussion**

Based on the arguments advanced by claimants and the Crown, the findings of previous Tribunals and the Tribunal’s Statement of Issues, we focus on the following questions in this chapter:

- What demands for autonomy and self-government did Te Rohe Pōtæ Māori make as European infrastructure and settlement took root in their district?
- In response to these demands, to what extent did the Crown develop models and systems (or support existing models and systems) for Māori self-government?
- In terms of practical, on-the-ground, local self-government for Te Rohe Pōtæ Māori, did the Crown miss (or actively reject) opportunities and requests to give effect to its Treaty guarantee of tino rangatiratanga?
- Did the Crown’s legislative provisions and practical support for self-government meet its Treaty obligations to Te Rohe Pōtæ Māori of kāwanatanga, rangatiratanga, reciprocity, and partnership?

**18.3 Māori Demands for Autonomy and Te Ōhākī Tapu**

**18.3.1 Te Ōhākī Tapu and political autonomy**

As set out in chapter 7, by the 1880s pressure associated with the legacies of war and European settlement on its borders had created tension within Te Rohe Pōtæ. Nonetheless, Te Rohe Pōtæ Māori continued to govern themselves within the aukati, as they had prior to the war. Hapū and iwi of the rohe still aligned under the mana of King Tāwhiao and looked to him for political and spiritual guidance as an important pan-tribal leader. In turn, Tāwhiao drew advisers from among their ranks. At the same time, the rangatira of the various hapū and iwi maintained their responsibilities to their people, nurturing inter-tribal relationships and interests important to them – including, after war and raupatu, close ties with Tainui-descended groups displaced by these events. Links formed through religious movements such as the Pao Miere and Pai Mārire faiths were also influential (see chapter 7, section 7.3.3.5). In their interactions with the Crown during this period, Te Rohe Pōtæ leaders made it clear that maintaining autonomy was of prime importance to them. Their quest to have the Crown recognise that autonomy met with mixed responses, however, from various agents and officials. Some key aspects of what transpired are discussed below.

In June 1883 the ‘four tribes’ – Ngāti Maniapoto, Ngāti Raukawa, Ngāti Tūwharetoa, and Whanganui iwi – presented their petition to Parliament (Ngāti Hikairo joined later that year to make the group the ‘five tribes’). The petition is discussed in chapter 8 (section 8.2.3.4) but revisited here in relation to autonomy. The appeal was primarily concerned with ensuring that the tribes’ lands be preserved for them and their descendants forever. They also asked that they themselves be allowed to set the external boundaries of their tribal interests, and noted...
that they wanted the Government to then appoint people ‘vested with power to confirm our arrangements and decisions in accordance with law’. In other words, as discussed in chapter 8, their land, their mana, and their exercising of tino rangatiratanga went hand in hand (see chapter 8, section 8.4.5.1). Nevertheless, Te Rohe Pōtae attempts to retain control did not mean excluding Europeans. ‘[I]f our petition is granted’, they went on, ‘we will strenuously endeavour to follow such a course as will conduce to the welfare of this Island.

Thus, the petition indicates that while seeking recognition of their tino rangatiratanga, Te Rohe Pōtae leaders were mindful of their Treaty responsibilities of partnership. As discussed in chapter 8, in September 1883, the Government passed two pieces of legislation: the Native Land Laws Amendment Act 1883, and the Native Committees Act 1883. The Crown has asserted that these Acts were an attempt to address the desire for self-government expressed in the 1883 petition to Parliament. As noted in chapter 8, however, both Acts were already before the House before the petition was presented (see chapter 8, section 8.4.7.2). Thus, while the legislation may have addressed some aspects of the petitioners’ concerns, neither Act was a response to the petition per se. We have also already expressed our view that the Native Committees Act gave very few powers to native committees, and it delivered almost nothing of what the petitioners had sought. It certainly did not give practical effect to their tino rangatiratanga (see chapter 8, section 8.4.7.2). As for the Native Land Laws Amendment Act, historians Cathy Marr and Donald Loveridge both used the term ‘minimalist’ to describe the reforms it ushered in (see chapter 8, section 8.4.6.1).

Following an election and the swearing in of a new government in August 1884, Te Rohe Pōtae Māori repeatedly stressed their understanding that they would receive a greater measure of self-government in exchange for allowing the North Island main trunk railway into their territory. This interpretation echoed what Rewi Maniapoto had said in January of that year: ‘We are very desirous of obtaining self government. You are anxious for railways; give us what we desire and we will give you what you want.’ (See chapter 8, section 8.6.3.)

In November 1884, as set out in chapter 8, Wahanui Huatare appeared before both the House of Representatives and the Legislative Council. In his address to the House, he asserted that the administration of native lands was to rest with Māori. To that end it was his wish, and that of his people, that ‘the authority over our lands may be vested in our Committee’ (see chapter 8, section 8.7.2.1, and appendix II). In debate on the Native Lands Settlement Bill, which followed immediately after Wahanui’s address, Ballance said Wahanui had made reference to ‘a [native committee] movement . . . which is calculated to place in their hands the fullest privileges of self-government with respect to dealing with their own

42. AJHR, 1883, J-1, p 2.
43. AJHR, 1883, J-1, p 2.
44. Submission 3.4.301, p 44.
45. Rewi Maniapoto to John Bryce, 26 January 1884 (doc A78, p 1018).
lands’ (see chapter 8, section 8.7.2.2). A few days later, Wahanui appeared before the Legislative Council, where he described his principal object as being ‘mana whakahaere’ (translated as ‘full control and power’) over his own lands, but ‘subject to the authority of His Excellency the Governor’. He did not want the land court to have jurisdiction ‘for the present’, pending the opportunity to come to an arrangement with the Crown over how to deal with the district. His second object was for ‘all dealings and transactions’ in the district to be left in the hands of the native committee. Thirdly, he wanted to see ‘laws carefully framed for the protection of both races, and that the Natives be treated in the same way as Europeans’ (see chapter 8, section 8.7.2.4, and appendix II). Four days after Wahanui’s speech to the Council, Parliament passed what had now become the Native Land Alienation Restriction Act 1884. It prohibited private dealings in Māori land in a large area that appears to have included virtually all the land within the boundary set out in the ‘four tribes’ petition of the previous year. However, the Crown’s right to negotiate was maintained.

At Kihikihi in February 1885, Wahanui, Taonui, Rewi Maniapoto, and other chiefs and leading figures of the rohe met with the new Native Minister, John Ballance. This hui is discussed at length in chapter 8 (section 8.8.2.3). It is noted that those leaders who spoke mentioned a range of contexts where they wanted more control and influence, from dealings in their land (which they wanted to be decided entirely by the relevant native committee) to a greater say in lawmaking. It is important to note that control over decision-making, rather than merely the committee itself, was the ultimate objective of Te Rohe Pōtae Māori. In response, Ballance gave several undertakings that went part way towards addressing some of their concerns. One such assurance appeared to endorse the proposal that the native committee act as ‘a court of first instance’, with the Native Land Court hearing any appeals. On the subject of lawmaking, Ballance agreed that Māori should be consulted on all laws affecting them, and that there should be more Māori members in the House of Representatives.

Having briefly revisited what Māori and the Crown expected regarding Māori autonomy and access to the district respectively, the following section looks at how matters played out with regard to legislative provisions for mana whakahaere and Māori local self-government, following the lifting of the aukati. It examines mechanisms the Crown provided that could potentially have offered avenues for the expression of autonomy; the degree to which these were taken up by Māori; and if these arrangements received the support necessary for them to succeed. Early forms of local government that largely benefited the European population of Te Rohe Pōtae (while not specifically excluding Māori) will be discussed in chapter 19.

46. ‘Native Lands Settlement Bill’, 1 November 1884, NZPD, vol 50, p 312.
47. No Native Lands Settlement Act was passed in 1884. Native Minister Ballance’s words at Kihikihi the following year indicate that, instead, the legislation morphed into the Native Land Alienation Restriction Act 1884. [See AJHR, 1885, G-1, p 16; also chapter 8, section 8.7.2.6.]
48. A schedule to the Native Land Alienation Restriction Act 1884 describes the boundary of the ‘Native district’ affected.
At the time of the Te Ōhāki Tapu agreements, the Crown's existing statutory provisions for Māori self-government included section 71 of the New Zealand Constitution Act 1852, which enabled the Governor to declare self-governing 'native districts', and an allowance under the Native Districts Regulation Act 1858 for the establishment of rūnanga. While falling outside the scope of this chapter, these representative models are briefly recapped below to assess to what extent, if any, existing legislative provisions were used to advance Māori autonomy in Te Rohe Pōtae. These models were followed by the provision for native committees under the Native Committees Act 1883, as mentioned above. Provision for Māori councils came in 1900.

18.4.1 Section 71 of the Constitution Act 1852

Of the models mentioned, section 71 of the Constitution Act is addressed in earlier chapters so will not be extensively discussed here (see, in particular, chapter 6, section 6.5.1.3, and chapter 7, section 7.3.4.1). As covered in chapter 7, a significant proposal by Sir William Martin, the former chief justice, that the ‘Waikato’ be constituted as a separate district (see chapter 7, section 7.3.6.3.1) was dismissed by Native Minister Donald McLean as a ‘very pernicious’ idea. Moreover, as noted in chapter 7, McLean believed it was already ‘too late’ to use section 71 (see chapter 7, section 7.3.4.1). Sir George Grey, too, opposed the use of section 71, and particularly did not want to give the Kingitanga its own separate district (see chapter 6, section 6.5.1.4). Thus, no self-governing native district formed under section 71 was ever declared in, or involved, Te Rohe Pōtae. In chapter 6, we found that this failure of the Crown to provide for Te Rohe Pōtae Māori to continue exercising rangatiratanga by proclaiming a native district (and thus a failure to exhaust all ‘reasonable peaceful means’ of resolving tensions with the Kingitanga) breached the principles of partnership and Māori autonomy (see chapter 6, section 6.5.4).

18.4.2 The rūnanga model

Chapter 6 discussed how the Kingitanga established a formal system of self-government in the 1850s that included provision for tribal rūnanga. These rūnanga could make their own local laws, regulate tribal affairs according to tikanga, adjudicate important matters (including any disputes between Māori and local settlers), and generally exercise authority within their rohe. Rewi Maniapoto established a rūnanga at Kihikihi, where it met in the whare rūnanga Hui Te Rangiōra (see chapter 6, section 6.3.1). These rūnanga were Māori initiatives; they were not set up under the Native Districts Regulation Act of 1858.

How Te Rohe Pōtae Māori responded to the 1858 legislation was also discussed. We noted that they did not reject the idea of State-sanctioned rūnanga out of hand, but that the issue of where the King would fit in was among the sticking points.

This discussion set out how the Duke of Newcastle, in Britain, saw no problem with giving the King a role in assenting to laws passed by the rūnanga, noting his view that: ‘Such an assent is in itself no more inconsistent with the sovereignty of Her Majesty than the assent of the Superintendent of a Province to Laws passed by the Provincial Council’ (see chapter 6, sections 6.5.1.4 and 6.5.4). Grey, though, made it clear on a number of occasions over a period of several years that he was not prepared to tolerate any role for the King (despite later asserting that he had offered ‘to create all the upper Waikato and Ngati Maniapoto districts into a separate native Province’) (see chapter 6, sections 6.5.1.4, 6.5.3.3, and 6.5.4). As a result, no State-sanctioned rūnanga was ever set up that involved Te Rohe Pōtae.

18.4.3 The Kawhia Native Committee

The Kawhia Native Committee has been discussed at several points in this report, notably in chapter 8, which looked at its role during the Te Ohākī Tapu negotiations. This section briefly recaps some salient aspects of the committee’s genesis and activities, concerning the continuing quest of Te Rohe Pōtae Māori to ensure the survival of mana whakahare from 1883 onwards.

At Kihikihi on 1 December 1883, Native Minister John Bryce promised Te Rohe Pōtae rangatira that he would take steps to provide the district with a native committee, as enabled by the 1883 Act. Roughly six weeks later, a notice published in the New Zealand Gazette designated native committee districts and returning officers for the election of members. 50 Although the districts were large, encompassing multiple tribal interests, the boundaries gazetted for the ‘Kawhia Native Committee’ – covering an area of some 3.5 million acres – had the merit of approximating the external boundary set out in the June 1883 ‘four tribes’ petition (see chapter 8, section 8.6.4).

Elections for the committee were held at Alexandra (Pirongia) in March 1884 under returning officer George Wilkinson. Of 19 nominees, the 12 candidates with the most votes were elected. 51 The elected members, listed in chapter 8, represented different districts and five major tribes within Te Rohe Pōtae territory, and included a mix of junior and senior chiefs. Despite this diversity, Wilkinson did not acknowledge the committee’s multi-tribal identity in his May report to the House of Representatives. Instead, he inaccurately referred to the election and the district as only involving ‘Ngati Maniapoto’. 52 That said, it must be acknowledged that Waikato and Ngāti Hauā, who had interests in the northern part of the district, were key absences from the committee, having refused to take part in the election. 53 The following month, the Herald reported that those elected were all supporters of the Kīngitanga and that ‘the district for which they were to act was formerly the “King Country.”’ 54

51. ‘Alexandra’, Waikato Times, 8 March 1884, p 2.
52. Document A78, p 1042; Wilkinson report, May 1884, AJHR, 1884, G-1, p 11.
54. New Zealand Herald, 21 June 1884, supplement, p 1 (doc A78(a), vol 6, p 2820).
The committee met for the first time in June 1884. Hone (John) Ormsby was elected as chairman. From the outset, the paucity of its legal powers concerned the committee. It essentially lacked a mandate to undertake the functions it envisioned and that Bryce’s statements during the Te Ōhākī Tapu negotiations had appeared to promise. In particular, Bryce had led Te Rohe Pōtae chiefs to believe the committee would be able to make inquiries to determine titles once the survey of the external boundaries of the Rohe Pōtae block was complete. Indeed, to this end, chiefs such as Wahanui were already urging their people to withdraw any claims before the land court, and submit them to the committee instead.

When the committee met, however, the survey had not yet been carried out. Moreover, as set out in chapter 8, the 1883 legislation, when passed, effectively limited native committees to an advisory role. The committee was to investigate and make recommendations on matters such as the rightful owners of land, successors, or disputes over boundaries. Those recommendations were then to be relayed to the Native Land Court, which had no obligation to act on or even consider the information the committee had tendered (see chapter 8, section 8.4.6.2). Several Te Rohe Pōtae rangatira headed for Wellington, to argue for more powers for the committee and for legislation that would better enable them to manage their tribal lands.

As returning officer, Wilkinson had already reported that the Kawhia Native Committee’s allegedly unrepresentative nature (he viewed it as solely a Ngāti Maniapoto committee) should prevent it from being directly involved in title determination. Further up the hierarchy, Bryce had voiced opposition to native committees having any significant power to determine title, and had described the idea of Māori self-government as an ‘absurdity’. In an 1884 memorandum to Governor Jervois, he expressed the view that Māori should instead ‘frankly accept European institutions and laws’ (see chapter 8, section 8.6.4.2). Even the Governor himself was against the idea of native committees determining title and the notion of Māori being empowered to ‘make laws for Māori guidance’. Taken together, these views indicate that native committees appear to have been introduced more as a tool for securing Māori cooperation than as vehicles for truly autonomous Māori self-government.

The Kawhia Committee had hoped that while the external survey was being completed, it would at least be able to assist in determining the title of border lands already under a Native Land Court rehearing. This aspiration came to

60. Document A78, p.1043.
61. Bryce to Governor, 11 February 1884 (doc A78, p.1025).
62. Dispatches from Governor of New Zealand to Secretary of State, 1 March 1884, AJHR, 1884, A-1, pp.10-11.
nothing, due to the land court’s decision to press ahead with hearing cases before the committee had an opportunity to investigate. Attempts by chiefs to withdraw the cases and place them before the committee instead were also defeated, due at least in part to the lobbying of private agents intent on purchasing the land as soon as title had been finalised.\(^{65}\)

Another provision of the 1883 Act, set out in section 11, enabled the committee to settle disputes between Māori, where the cause of the dispute had arisen within the district. It could only do so, though, where both parties agreed in a signed, witnessed memorandum that they were willing for the committee to hear the case, and where ‘the matter does not exceed £20 in value’. There seems to have been some confusion about what exactly was meant by the latter restriction: did it also include land value? The Kawhia Committee saw the cap as very limiting and proposed an upper limit of £100.\(^{64}\)

A lack of clarity from the Government about how the committees should carry out their business also caused confusion. As Ormsby said at the Kawhia Committee’s first meeting: ‘kaore ano i ata takoto nga ritenga mo nga whakahaere a te Komiti’ (the rules for the operation of the Committee have not yet been settled).\(^{65}\) Indeed, they had to wait until May 1886 before any rules for the conduct of native committee business were gazetted. Those rules included provision for any group of Māori to request a special meeting of the committee, and for members of the public to be present at meetings (but not to participate).\(^{66}\)

The committees were also initially without funding.\(^{67}\) Not until 1885 did Ballance approve an annual payment of £50 to each native committee chairman. Even then, there was no clarification as to whether this payment was intended just as remuneration for the chairman, or whether it was to cover the committee’s expenses more generally. If the former, it was little enough, given the hours of work involved and the amount of travel necessary (a Native Land Court judge, by comparison, earned £600 a year). If the latter, it was pathetically small.\(^{68}\) The £50-a-year payment was abolished in 1887.\(^{69}\) Meanwhile, the rules published in the May 1886 Gazette notice had included a clause stating that ‘[f]ees in accordance with the scale in the Second Schedule hereto may be charged by the Committee by consent of the party or parties’. Fees listed included those for a summons (two shillings), affixing a seal (is 6d), hearing days (five shillings for the first day, and three shillings a day thereafter), and an application for adjourning the committee to another place (five shillings). Three years later, the Native Department realised

---

63. Document A78, p.1044.
64. Native Committees Act 1883, s 11; doc A78, pp 1044, 1068; doc A71 (Robinson and Christoffel), p107.
65. ‘Huina Tuatahi o te Komiti Māori mo te Takiwa o Kawhia’, 10 June 1884 (doc A78(a), vol 3, p1544).
69. Document A79, p.188.
that the legislation did not actually permit the committees to charge fees, and a circular had to be sent round asking them to desist from the practice.\textsuperscript{70} From mid-1886, therefore, it would appear that the committees were back in the position of being without any official form of funding. Nonetheless, the Kawhia Committee did its best to use what powers and resources it possessed. It began using its dispute resolution powers, for example, as early as August 1884, when it heard a case relating to a fight and imposed a fine of £2.\textsuperscript{71} Other cases heard subsequently included one involving some land at Pitoritori near Kihikihi where one of the Māori owners had apparently burned down the house of another. The perpetrator agreed to have the matter heard by the Kawhia Committee.\textsuperscript{72}

Towards the end of the decade, the committee was still issuing summonses in cases relating to matters such as adultery and false accusations. Historians Helen Robinson and Paul Christoffel have suggested that the need for a summons indicates the committee was ignoring the legislative requirement that the affected parties had to have signed a joint memorandum requesting the committee to hear the case.\textsuperscript{73} The need for a summons, however, did not necessarily imply the lack of such a memorandum, since a summons could be issued for a number of reasons: the rules gazetted in 1886 stated that the chairman was to ‘issue summonses to persons to attend before the Committee to give evidence, or for any purpose he may consider necessary for the proper conduct of the business of the meeting’.\textsuperscript{74}

Commodity prices and access to resources were areas in which the committee managed to have an influence beyond its statutory powers. In November 1885, the \textit{Waikato Times} reported that Ballance had arranged with the committee that, for the present, ordinary market rates would be charged for all timber used and, in the future, prices decided ‘by arbitration between the native committee and the Government’. At the committee’s next meeting, in December, a government railway engineer attended to give information on timber royalties. The following year, Wilkinson reported that the committee had fixed a scale of prices for different classes of timber (much of which was to be used in railway construction). Rather than ‘arbitration’, though, this suggests that after seeking information to enable it to come to a decision, the scale of prices had been set by the committee unilaterally. The evidence also suggests that, thereafter, the committee continued to interact directly with buyers, without any mediation by the Government. The committee also set prices for coal, limestone, and gravel. This involvement in price-setting continued until about 1888 or 1889.\textsuperscript{75}

\textsuperscript{71} Document \textit{A71}, p 108.
\textsuperscript{72} AJHR, 1886, G-1, pp 5, 6.
\textsuperscript{73} Document \textit{A71}, p 108.
\textsuperscript{74} ‘Rules under “The Native Committees Act, 1883”’, 22 May 1886, \textit{New Zealand Gazette}, 1886, no 32, p 705.
\textsuperscript{75} Document \textit{A20} (Cleaver and Sarich), pp 103–106; doc \textit{A71}, pp 107, 109–110; doc \textit{A78}, pp 1213–1215, 1222; \textit{Waikato Times}, 7 November 1885, p 2; AJHR, 1886, G-1, p 6.
Then there was the matter of gold prospecting. As already set out in chapter 8, when Te Rohe Pōtae leaders met with Ballance in February 1885, as part of the Te Ohākū Tapu negotiations, they told him they did not want gold prospectors entering the district without first seeking authority from them (see chapter 8, section 8.8.2.2.1). The Kawhia Committee subsequently discussed the matter among themselves and also met with Wilkinson and the warden of the Thames goldfield. As a result of those deliberations, an arrangement was arrived at whereby the area covered by the committee would be divided into six sub-districts, each being assigned two ‘bona fide and qualified prospectors, and who were sober and respectable withal’ and two Māori guides. The committee gave its final approval to the plan in January 1886 and prospecting began almost immediately.\(^76\)

In some instances, the committee attempted to facilitate land use, and to mediate in related matters. It agreed to the erection of stores and butcheries in various places, for example, conditional on the payment of £5 a year to the committee. It also granted temporary occupation leases to contractors and storekeepers wishing to live in the district. With regard to a toll gate at the Mangaokewa Bridge, the committee decided to ask the owner to remove the gate once he had earned enough money to cover the cost of erecting the bridge.\(^77\) In the case of lands that had been taken for, or damaged by, public works, it resolved to ask the Government for help in valuing them.\(^78\) Associated with this resolution came Ormsby’s request to Ballance at a meeting at Te Kōpua in April 1886. There, speaking as chairman of the committee, he asked that the Government appoint an officer who, in conjunction with a person appointed by the committee, would value any land in excess of one chain width taken for railways and for station sites.\(^79\)

Alongside these local procedural matters, the committee continued to discuss government policy and to press for more statutory powers. At its meeting in August 1885, it condemned the Crown’s pre-emption policy.\(^80\) At the following meeting, and in line with what it had always been seeking, it voted against allowing the Native Land Court to deal with the Rohe Pōtae block, and for the committee to deal with all claims inside the boundary.\(^81\) Then, at the April 1886 meeting with Ballance at Te Kōpua, mentioned above, the committee again lobbied for the legislation to be amended, ‘to make it more workable and more acceptable to them’.\(^82\)

Whether the committee represented a working model of Māori self-government is complicated by the fact that while the Kingitanga rejected the 1883 Act’s provisions, it set up committees of its own. These ‘King committees’ were not government-sanctioned, nor were they elected; rather, they were appointed (according to Wilkinson) ‘by and from amongst the supporters of the King party’.\(^83\)
In addition to a committee at Whatiwhatihoe, Wilkinson reported committees at Kāwhia and Aotea (among others). There is little information, in the evidence for this inquiry, about what work they carried out: in Wilkinson’s view, their main aim was to stop any public works going ahead unless sanctioned by Tāwhiao.\textsuperscript{84} Historians Paul Husbands and James Mitchell, however, note that in April 1886 these King committees held a joint meeting with Ormsby’s Kāwhia Committee to discuss the filing of the Aotea–Rohe Pōtae block application.\textsuperscript{85} That same month, Te Wheoro also proposed to Ballance that the King committee merge with the Crown-sanctioned Kāwhia Committee. Ballance made the counter-proposal of adjusting the boundaries of each, so that they could exist side by side. Wilkinson then relayed both proposals to Ormsby’s committee, which declined to countenance either of them.\textsuperscript{86} The Native Department did not pursue the matter, and the King committee remained unrecognised. Historian Vincent O’Malley suggested that the department’s reason for letting the matter lie is that, while the Crown might have been keen for a degree of rapprochement with the Kīngitanga, the Kāwhia Committee spoke for ‘the customary owners of a vast tract of land which the Crown was anxious to see opened up to European settlement’.\textsuperscript{87}

This leverage the committee had over the Crown was significant, and the committee used it to extend its agenda, arguably beyond its rather limited statutory powers, in an attempt to address some of the expectations deriving from the Te Ōhākī Tapu agreements. Despite initial attempts to paint the committee members as ‘unrepresentative’, they were elected members of a Crown-recognised body. On its own, this would not have been enough. Using that status as a base, however, they then took advantage of the leverage offered by the Crown’s need to push the railway through. In other words, their successes came largely despite, not because of, the Crown’s legislative provisions. Te Rohe Pōtae Māori, then, were essentially doing the best they could in the circumstances to implement the mana whakahaere they had been promised.

The committee’s last recorded meeting was in February 1887.\textsuperscript{88} Nevertheless, Ormsby continued to sign correspondence as chairman of the committee after that date and also to impose levies on its behalf on economic activities such as shop keeping.\textsuperscript{89} Then too, as noted above, it issued summonses relating to adultery and false accusations in late 1888 and early 1889.\textsuperscript{90} It is probable, therefore, that it continued to operate until the end of the decade, albeit with less vigour, perhaps, than in its earlier years. In June 1888, Wilkinson submitted a report to the Government as native agent and land purchase officer for ‘Waikato, Thames, and Auckland’ (which, based on an earlier report, can be taken to include ‘Kāwhia,

\begin{itemize}
\item \textsuperscript{84} Document A78, pp 1217–1218, 1266.
\item \textsuperscript{85} Document A79, p 188.
\item \textsuperscript{86} Document A71, pp 115–116.
\item \textsuperscript{88} Document A71, p 111.
\item \textsuperscript{89} Document A79, pp 65–66.
\item \textsuperscript{90} Document A71, p 108.
\end{itemize}
Waipa, and Upper Mōkau’). He wrote that the native committees in his district ‘had very much languished, and it is thought that they will collapse altogether’. In considering the reasons for this decline, he observed that the committees had been given only very limited powers, and that the districts were ‘altogether too large’, with ‘some of the members having to travel over fifty miles to attend a meeting’. Wilkinson thought that the ‘tino rangatiras, or principal chiefs’ might have seen the committees as threatening their own power and influence. However, in his view, the prime reason was that once the land court had entered the district, individualism had taken over.  

It seems more likely that the Kawhia Committee’s leverage, both with the Government and in the community, declined as the railway progressed and the Crown increased its control of and presence in the district. Once the Government’s land needs diminished, so did the Kawhia Committee’s leverage and influence. The Kawhia Committee’s story thus reflects hopes that government structures could be harnessed to advance self-determination, but also that under-investment, relatively weak statutory powers, and changing political exigencies prevented these expectations being realised in the long term.

18.4.4 Māori councils

Following the demise of the Kawhia Native Committee, Parliament did not pass legislation providing for a significant degree of Māori self-government in the inquiry district until 1900. The Māori Lands Administration Act, passed on 20 October, enabled the Māori land councils discussed in chapter 12. Two days earlier, however, Parliament had passed the Māori Councils Act, providing for another kind of Māori governance body. The following section examines the councils set up under this Act.

18.4.4.1 What Te Rohe Pōtae Māori had wanted from local self-government by 1900

Evidence available to this inquiry indicates significant Te Rohe Pōtae support for the idea of national Māori assembly, as promoted from 1897 by Henare Kaihau. That year, Kaihau, a prominent figure in the Kingitanga and parliamentary member for Western Māori, drew up a ‘Māori Council Constitution Bill’. The aim of the Bill was to establish a single, national, Māori council to ‘confer Local Government on the Māori Race’. The new national Māori council proposed by Kaihau was to have 56 members, of whom the Māori King would nominate 14, as well as the council’s president. Once constituted, the proposed council would have full power to manage and administer Māori lands, property, estate, and business. The council’s authority would extend to control over fishing grounds of all kinds, the

91. AJHR, 1888, G-5, pp 4–5; AJHR, 1886, G-1, p 3; doc A71, p 111.
levying of certain taxes, and the granting or withholding of liquor licences. The mana of the council would be vested in Mahuta Tāwhiao Te Wherowhero for life, with mana defined in this instance as ‘the power to confirm or veto any action of the Council’.

Kaihau’s Bill had its first reading on 29 October 1897. A newspaper article of the time described it as intending to embody ‘two fixed ideas in the Māori mind which of late have been gradually assuming very definite shape’, namely: ‘That the Māori is entitled to a voice in the matter of native land legislation, and that he has also a right to a measure of local self-government’. The same month, the ‘five tribes’ (including signatories from Te Rohe Pōtae) submitted their petition to Parliament, which asked for the Bill to be considered favourably.

In December 1897, at about the same time that the Bill was having its second reading, Te Rohe Pōtae and Waikato Māori met in Wellington, along with Māori from the East Coast, for discussions lasting several weeks. It is a reflection of the strong favour Te Rohe Pōtae Māori leaders had for the proposal that they not only petitioned for it but went to Wellington to discuss it in person. A brief New Zealand Herald report noted that Henare Kaihau and John Ormsby played a prominent part, along with (Tureiti) Te Heuheu. According to the article, ‘[t]he objects chiefly in view [were] the suspension of lands sales, and the establishment of a Māori Council under Kaihau’s Bill.’

In late March and early April 1898, many hundreds of Māori gathered for a hui at Huntly, coming not only from the Waikato but also other parts of the North Island. The Ngāti Maniapoto delegation numbered around 40 and included leaders such as Ngāmotu Maniapoto, Matengaro, and John Ormsby (who was elected chairman of the hui). Kaihau’s Bill featured once more on the agenda, as did matters such as keeping ‘strong drink’ out of the King Country. Carroll arrived near the beginning of the meeting, but he was asked to come back later when those present had had more time to discuss and arrive at ‘definite resolutions’. The ensuing discussion addressed in detail several matters covered in the Bill, including the stopping of land sales, abolishing the Native Land Court, and setting up a single, representative Māori council. Carroll duly came back later in the proceedings and Premier Richard Seddon arrived on the last day. It is worth noting that Seddon’s decision to appear in the inquiry district demonstrated at least a willingness to engage in dialogue on issues of concern to Te Rohe Pōtae Māori. Indeed, Mahuta, Tana Taingakawa, and Kaihau all took the opportunity of an audience with the

---

95. The Māori Council Constitution Bill, Bills Thrown Out 1897, no 96–1, ss 2, 5.
96. NZPD, 1897, vol 99, p 320.
premier to stress that what they and their people wanted was ‘a Council . . . with full powers to govern themselves’ in accordance with the Treaty of Waitangi.\footnote{99}

Seddon then continued to Ōtorohanga, apparently without Carroll. There, Ngāti Maniapoto leaders agreed to meet with him, despite it being Good Friday and his arrival unexpected. John Ormsby, for one, was not pleased by their unannounced appearance: ‘you have taken us by surprise, coming here as you have done to-day without some warning. It is not as though there were no subjects to discuss; there are many matters to talk about, but we would prefer that you should state your views to us.’\footnote{100}

Although it may have caught them unprepared, this was the first time Seddon had visited Te Rohe Pōtai Māori on their home ground since 1894 and this willingness on behalf of the premier to discuss issues directly should be recognised.\footnote{101}

As Te Rohe Pōtai Māori support for Kaihau’s Bill and the proposal for a national Māori assembly were known, discussion on this occasion focused on the management of their district. The leaders, however, drew attention to the 1897 (‘five tribes’) petition that had lent support to the Bill, as well as the petition from 1883 (the ‘four tribes’ petition), and another dating from 1895.\footnote{102} The latter was presumably the petition being circulated for signature at Kihikihi in June of that year. According to an article in the \textit{New Zealand Herald}, this petition was from the ‘chiefs and land owners of the Ngatimaniapoto tribe’ and focused particularly on land matters.\footnote{103} At the Good Friday meeting, a chief by the name of Tahuna told Seddon that Ngāti Maniapoto had ‘waited in vain for a reply’ to all these approaches to the Government.\footnote{104}

In order to effect Te Rohe Pōtai Māori support for a general assembly and increase their ability to manage their own district, land legislation needed to be improved. This became an urgent issue for discussion at hui in various North Island locations. Indeed, there is a clear shift from Te Rohe Pōtai Māori developing their understanding of how mana whakahaere should work to advocating for inclusion in legislation affecting them. In late May 1898, the Kotahitanga (Māori Parliament) movement held a large meeting at Pāpāwai in the Wairarapa, for further discussion of land matters. One source suggested that around 1,000 Māori

\footnotesize
\begin{itemize}
\item 100. \textit{Notes of Meetings Between His Excellency the Governor (Lord Ranfurly), The Rt Hon R J Seddon, Premier and Native Minister, and the Hon James Carroll, Member of the Executive Council Representing the Native Race, and the Native Chiefs and People at Each Place, Assembled in Respect of the Proposed Native Land Legislation and Native Affairs Generally, during 1898 and 1899} (Wellington: Government Printer, 1899), p 19; doc A93, p13 n.
\item 101. Document A93, pp 7, 14.
\item 103. ‘Natives and their Lands’, \textit{New Zealand Herald}, 18 June 1895, p 5; doc A68, p199.
\item 104. \textit{Notes of Meetings}, p 18; doc A93, p13 n.
\end{itemize}
attended, and another stated that it lasted six weeks.¹⁰⁵ Like the Kingitanga, the Kotahitanga rejected the Native Land Court and, as part of their parliamentary system, wanted local Māori committees to have the delegated authority to deal with land issues.¹⁰⁶ The two movements had tended to maintain separate paths, but by the late 1890s concerns to improve land legislation and systems for Māori self-government were starting to bring these movements together. Indeed, the 30-strong Kingitanga delegation to the Pāpāwai hui marked the first formal Kingitanga representation at a Kotahitanga meeting.¹⁰⁷ T T Rāwhiti, one of the leaders of that delegation, had been born in Kāwhia and served for a time as native agent in the King Country, but his main affiliation appears to have been to Ngāti Hauā. Tana Taingakawa, another leading member of the delegation, was also of Ngāti Hauā.¹⁰⁸ The evidence does not directly indicate whether the delegations included Te Rohe Pōtae iwi and hapū.

A few days into the hui, Seddon and Carroll arrived, bearing copies of a new Native Lands Protection and Administration Bill. Many of the leaders, including the Kingitanga delegation and Te Heuheu and Hamiora Mangakahia of the Kotahitanga, saw little benefit in the legislation or in discussing it further so left before the hui finished.¹⁰⁹ Some of those present stayed to draw up an amended version of the Bill they had been shown, and afterwards presented it to Seddon.¹¹⁰ Subsequently, the Evening Post reported that ‘a petition from the Papawai conference’ was presented to Seddon at a meeting in Wellington. According to the article, it included a request for the setting up of ‘block Boards’.¹¹¹

Indeed, the draft legislation generated several petitions. Those filed in support bore around 3,600 signatures; those filed against bore considerably more – around 9,700. Several points on these various petitions are worth noting:

- Hamiora Mangakahia said that those supporting the Bill were ‘principally those who [would] not be affected by it’.¹¹² It is not clear from the evidence that the supporters included any from Te Rohe Pōtae.
- Tana Taingakawa of the Kingitanga, and 5,975 others of ‘the West Coast district [of the North Island]’ petitioned against the proposed Bill. They particularly feared that hitherto-un-investigated land would be divested of its


¹⁰⁷. Lindsay Cox, Kotahitanga: The Search for Māori Political Unity (Auckland: Oxford University Press, 1993), p 70; Williams, Politics of the New Zealand Māori, p 103; doc A53 (Stirling), p 1596.


¹¹⁰. AJHR, 1898, G-7, pp 1–2.


¹¹². AJHR, 1898, 1-3A, p 2.
papatupu status. Apart from the abolition of the Native Land Court, they said, they did not agree with ‘a single part of the Bill.’

Hamiora Mangakahia and six others feared that the Bill, if passed, would vest their lands in ‘a Board absolutely controlled by the Government which will probably exercise its powers of control rather for the advantage of settlement in general than for the advantage of the Māori owners.’ They also said they had ‘many other specific objections to the Bill’ which they would be happy to lay before the Native Affairs Committee.

In late August 1898, Kaihau re-submitted his own Bill to Parliament. A few weeks later a deputation of Kingitanga leaders, including Taingakawa, travelled to Wellington to meet with Seddon and Carroll and speak in support of it. Whether the deputation included any Ngāti Maniapoto chiefs, or others from within the present inquiry district, is unknown. Seddon told them he thought the Bill asked for ‘many powers . . . which could not be granted by Parliament’, but that it might also contain ‘suggestions of an important nature acceptable to the Government.’ He conveyed his hope that Mahuta might ‘come as soon as possible and thresh matters out.’

A meeting between Mahuta, Kaihau, and the Governor did finally occur in Auckland in March 1899, but by this time Kaihau’s Bill had already been discharged.

Meanwhile, Tureiti Te Heuheu was appearing before the Native Affairs Committee. Being based in Wellington for much of the year, he had been chosen to chair a chiefly committee considering Seddon’s Bill. He told the Native Affairs Committee that he had received letters from ‘the principal men’ of several tribes, including Ngāti Maniapoto, Ngāti Raukawa, and the people of the Whanganui. They had asked him to watch the progress of the Bill and to oppose it.

The minutes record his appearance as being on behalf of ‘the Ngatiraukawa, the Ngatimaniapoto, the Wanganui, the Arawa, and [his] own tribe, the Ngatituwharetoa.’

Te Heuheu gave evidence over six days, expressing the tribes’ disagreement with many aspects of the Bill that Seddon had presented to them during their meetings earlier in the year. One concern was that the Crown would have undue influence over a board or council. Rather, they wanted ‘all their rights, title, and [the] management of their own affairs’, as assured to them by article 2 of the Treaty. If there was legislation that would secure them those privileges (which, Te Heuheu said, had also been conferred on them by the Constitution Act of 1852), they would...
support it. Te Heuheu also pointed out that the Bill now before Parliament was not the same Bill that Seddon had presented to Māori at the earlier meetings. Thus, even the petition from Pāpāwai supporters of the Bill could be disregarded, because it was not the same Bill that had been discussed with Māori there. Moreover, the current Bill contained none of the amendments put forward by Māori after these meetings.

Pressed to give more information about what the tribes he represented did want, Te Heuheu referred the committee to ‘the Native Rights Bill . . . drawn up by the Māoris.’ Hone Heke Ngāpua had introduced this Bill to the House in 1894. It provided for equal status for Māori and Pākehā under the Queen, with Māori having their own Parliament to legislate for their personal, land, and property rights. A Māori committee led by Te Heuheu had supported the Bill, but it failed to pass. Te Heuheu pointed to Kaihau’s Māori Council Constitution Bill as another example of what might be acceptable, though even this, he said, might benefit from some amendment.

Te Heuheu agreed to the suggestion that they were seeking a single council, comprised entirely of Māori members elected by constituencies, with ‘the power to appoint several other Boards in different districts to carry out the work of investigating all Native lands.’ The tribes wanted control and management of their own affairs. They wanted all lands sales stopped, ‘either to the Government or any other person’, so that they could retain their lands and use them. Where they had areas surplus to their requirements, however, they would not mind leasing them out. He also said that owners did not want to be forced to consolidate all their interests into a single block, foregoing interests they might have elsewhere.

Overall, Te Heuheu did not expect a good outcome. ‘It does not matter to me what Government may come into power at any time’, he said, ‘and it does not matter how they may propose to legislate for the benefit of the Māori people and redress the wrongs of the Māori people, I do not believe they will ever do it’. For one thing, ‘they are afraid of the votes behind their backs’.

Māori submitted more petitions in 1899, including one from Taingakawa and Te Rāwhiti on behalf of ‘the hapus and tribes of the Western Māori District’. Responding to questions from the Native Affairs Committee of Parliament, Kaihau said the petition expressed the wishes of the 10,000 people who had supported his Māori Council Bill. They still strongly preferred a Māori-elected council

---

121. AJHR, 1898, I-3A, pp 7, 22.
122. AJHR, 1898, I-3A, pp 9, 11.
123. AJHR, 1898, I-3A, p 12.
125. AJHR, 1898, I-3A, pp 16, 22.
126. Williams, Politics of the New Zealand Māori, p 56.
127. AJHR, 1898, I-3A, pp 16, 22.
129. AJHR, 1898, I-3A, pp 6, 12–14.
130. AJHR, 1898, I-3A, p 6.
131. AJHR, 1898, I-3A, p 12.
composed of Māori representatives to control their lands and leases. But they were now willing to consider ‘a sort of combination of the provisions contained in both the Māori Council Bill and the Government Native Land Board Bill.’\textsuperscript{132} The Te Aute College Students Association also became involved in the lobbying, pointing out the beneficial work that informal kāinga committees already carried out. What they needed, Ngata told Seddon, was government support and empowerment.\textsuperscript{133}

In August 1900, a deputation of ‘some 14 native chiefs, picked by Mahuta from the various West Coast, Waikato, and Northern tribes’ visited Wellington to meet with Seddon. Kaihau, who was also present, commented that they had been chosen to represent ‘the various tribes throughout the island’. They asked that Māori be given ‘similar privileges to those enjoyed by Europeans’. In reply, Seddon told them that ‘[t]he time had arrived when they might be allowed to rule their own kaingas’, but quickly added that this would only be as regards sanitary arrangements, dog tax, and other matters such as the control of ‘sly grog-selling’ in the King Country.\textsuperscript{134}

18.4.4.2 What the Crown provided

As the preceding section noted, by the late nineteenth century Te Rohe Pōtae Māori supported Kaihau’s proposal for a national Māori general assembly. They also had reminded ministers of their long-held commitment to managing their own district (which they had been negotiating for since the mid-1880s) and they also made clear a desire for improvements to land legislation. In October 1900, Parliament passed the Māori Lands Administration Act and the Māori Councils Act as separate pieces of legislation. This decision split management of local affairs by and for Māori between two structures: the Māori councils and the Māori land councils. The Māori councils had no power to manage land.

The preamble to the Māori Councils Act described the legislation as the Government’s response to ‘reiterated applications’ from Māori for ‘some simple machinery of local self-government’. To that end, the Act would allow them to enact bylaws ‘on matters of local concernment’ within Māori districts. Under sections 3–5 of the Act, the Governor was empowered to proclaim Māori districts and to appoint a returning officer to hold elections for a Māori council in each. The Tribunal has already analysed the Māori Councils Act in some detail in several district inquiries, including the Central North Island. In brief, the Act ‘provided bodies for local Māori self-government’,\textsuperscript{135} offering what claimant counsel in that inquiry described as ‘modest powers of self-management, in return for Māori

\textsuperscript{132} AJHR, 1899, 1–3A, pp1–3.
\textsuperscript{135} Waitangi Tribunal, \textit{He Maunga Rongo}, vol 1, p 381.
leaders accelerating the pace of assimilation.’\textsuperscript{136} The Act required the councils it established to

suppress ‘injurious’ customs, promote education via native schools, promote changes in health, and supply information to the Government (such as population statistics) that resident magistrates used to do. Councils were empowered to make bylaws to carry out this revolution, and to impose fines.\textsuperscript{137}

The specific functions of the councils, and the provisions of the legislation enabling them, are discussed in detail below.

Soon after the passage of the Act, the Government took steps to set up the Māori districts in which the new councils would operate. According to an \textit{Evening Post} report, ‘representatives of the various North Island native tribes’ had been consulted about this action. The report also indicates that the King Country and Waikato boundaries took longer to settle than some of the others.\textsuperscript{138} In January 1901, the Crown gazetted the first 19 districts, along with a boundary description for each. Those districts included Maniapoto but not Waikato.\textsuperscript{139} Later, a map was published showing 21 North Island districts (including Waikato).\textsuperscript{140}

Most of the present inquiry district falls within what was the Maniapoto district. As can be seen from map 18.1, the exceptions were:

- an area in the north between Kāwhia and Raglan, and another area in the north-east, both of which fell into the Waikato district;
- small portions in the south-east, which fell into the Tongariro district;
- a tiny area in the south, which fell into the Whanganui district; and
- another small portion in the south, which fell into the Taranaki district.

Māori councils would consist of six to 12 elected Māori members, to hold office under normal circumstances for three years. There was also to be an ex-officio member – usually the local stipendiary magistrate – appointed by the Governor.\textsuperscript{141} The only role actually specified in the Act for the ex-officio member was to countersign cheques issued by the council.\textsuperscript{142} Indeed, file material from some years later indicates that this person did not even need to attend council meetings; the position was unpaid and largely nominal.\textsuperscript{143} The Governor could also appoint a

\begin{footnotes}
\item[137] Waitangi Tribunal, \textit{He Maunga Rongo}, vol 1, p 369.
\item[139] ‘Defining Districts under “The Māori Councils Act, 1900”’, \textit{New Zealand Gazette}, 1901, no 1, 26 December 1900, pp 12–15.
\item[141] Māori Councils Act 1900, ss 6–9.
\item[142] Māori Councils Act 1900, s 26.
\item[143] Lange, \textit{A Limited Measure}, pp 26–27.
\end{footnotes}
Map 18.1: Maniapoto Māori Council district boundary as compared with the inquiry boundary
Māori chief in each district as an ‘Advisory Counsellor’ entitled to offer advice to the council and/or the Governor as he saw fit. The evidence indicates that many, if not all, districts had such an advisory counsellor. Several advisory counsellors, according to the Government official appointed to supervise the councils, proved ‘more of a hindrance than a benefit, through assuming the power of veto, which they are not slow to exercise.’

Under the Act, the councils were charged with ‘ascertaining, providing, and prescribing for the observance and enforcement of the rights, duties, and liabilities, amongst themselves, of tribes, communities, or individuals of the Māori race, in relation to all social and domestic matters.’ As mentioned, the councils were also instructed to suppress ‘injurious Māori customs’ and to promote education and the general health and welfare of Māori in their districts. They were given no civil or criminal jurisdiction, however, and they had mandatory powers in only two areas: the control and prevention of the spread of noxious weeds, and the requirement that the fathers of illegitimate children pay maintenance.

In addition to their mandatory functions, the councils were able to exercise a range of optional powers. They could pass bylaws on matters including health and hygiene, the prevention of drunkenness and gambling, the protection of meeting houses and burial grounds, the management of eel-weirs, shellfish beds, and fishing grounds, and the control of hawkers. If Māori broke the council’s bylaws, a fine could be imposed. In the event of non-payment, the delinquent party could be brought before the Magistrates Court. The bylaws were to be administered locally by village committees (komiti marae) appointed by, and subject to, the councils. It is noted that the Government supplied each council with a model set of bylaws drawn up by the Te Aute College Students Association. Gathering census information and recording Māori births, deaths, and marriages were other powers accorded to the councils. Subject to the Governor’s approval, they could likewise impose a ‘tenement tax’ on ‘houses, whares, or Native lands within the boundaries of any Māori kainga, village, or pa’. Any individual taxed in this way would be exempt from local body rating.

The Act made no provision for any funding from the Government, other than (at section 19) the possibility of a pound-for-pound subsidy towards the cost of sanitary works. From sections 26 and 27, it would seem that such works were expected to take up the larger part of any money the council acquired by means of rates, fines, or fees – although sections 13 and 14 did provide for some money to be used for the remuneration of the chairman and members. In the event, it appears that the Government did make a founding grant of £25 to each council in

---

144. Māori Councils Act 1900, s 9(7).
145. Lange, A Limited Measure, p 26; AJHR, 1903, G-1, p 1.
149. Lange, A Limited Measure, p 19.
151. Māori Councils Act, s 24.
the 1901/02 financial year, and a further grant of £20 the following year. In 1908, however, Ngata told Parliament that up until then, ‘subsidies’ to Māori councils had been paid out only in 1902 and 1903. It is probable that he was referring to the grants (rather than the pound-for-pound subsidies) because he went on to indicate that the councils relied on this money for their everyday administrative costs:

The funds of these Councils were very slender, having regard to the functions they had to perform. . . . Since the subsidy was withdrawn the Councils had been compelled to hold fewer meetings, because they regarded the subsidy as a contribution to expenses of administration.

On the subject of administration, the 1900 Act had stipulated that minutes were to be kept (section 10(7), (8)); the council was to have its own bank account (section 26); and a financial return was to be filed with the Native Minister at the end of each quarter (section 28). The latter was to prove particularly problematic since it required accounts to be kept in accordance with Pākehā book-keeping rules. No training or guidelines were initially provided, but in the middle of 1902 a pamphlet finally circulated giving advice and instructions on matters such as council finances, the keeping of registers, village committees, and the collection of the dog tax. Section 29 of the Māori Councils Act also made provision for a general conference to be held each year, attended by a delegate from each of the councils. In practice, conferences became sporadic after 1906 and the last was held in Wellington in 1911.

With regard to support from Wellington, Patrick Sheridan initially had general oversight of the councils. Later, Gilbert Mair became the first superintendent of Māori councils, but resigned somewhat disillusioned in 1906 as a result of poorly maintained council records and the need to keep new councillors advised of their duties. Around 1907 the role was taken by J B Hackworth, but it seems he was unable to devote much time to it. In 1915, he admitted having been ‘dependant on hearsay or correspondence’ for his knowledge of what was going on. Initially, too, an organising inspector position was established, a role undertaken by Āpirana Ngata until he found himself obliged to resign due to work and family pressures in 1904. Ngata was eventually replaced but his successor failed to bring the same energy to the role. The position was discontinued in 1907.

By the end of that decade, the scheme was already losing momentum. The first general conference of Māori councils in April 1903 had asked for greater responsibilities: to be able to regulate Europeans living in Māori villages; to deal with

---

152. Lange, A Limited Measure, pp 43–45.
154. Lange, A Limited Measure, p 25.
156. Lange, A Limited Measure, pp 48–51.
offences such as assaults and thefts; and to have full local government powers in wholly Māori areas. Amending legislation passed later that year, however, secured only very minor increases to the powers and resources of the councils. Towards the end of the decade, Te Rangi Hiroa (then the member for Northern Māori) expressed disappointment that the amount (£659) being allocated to Māori councils in the year’s budget was ‘so small’. Tame Parata (the member for Southern Māori) agreed, and added that the Native Minister and his department should ‘take a keener interest in them, and pay more attention to the suggestions and resolutions which were forwarded by the Councils from time to time’. By 1913, the annual vote for the work of the Māori councils had dropped to £350.

Meanwhile, Ngata had in 1909 drafted a new Māori Councils Bill but had not managed to get it introduced to Parliament. A similar attempt the following year also came to nought. When new legislation did eventuate, in 1916, it reduced the Māori councils’ membership from 12 elected members to seven members appointed by the Government (plus the ‘official member’). The same Act also contained provision to relieve the Māori councils of their responsibility for dog registration, which had been one of their sources of income.

By 1918, Te Heuheu was telling the Legislative Council that he thought the Māori Councils Act 1900, along with the accompanying piece of legislation setting up the Māori land boards, had been ‘so treated that they are now practically a dead-letter’. Te Heuheu appealed to the Government to reinvigorate them and give them better funding. The Government chose to take a different tack: in 1920, it effectively transformed the councils into Māori health councils, under section 66 of the Health Act of that year. It was not until 1945, that the Māori Councils Act 1900 was actually repealed.

18.4.4.3 The establishment of the Maniapoto Māori Council

As noted, the Maniapoto Māori Council represented the vast majority of this inquiry district. Those nearby council districts of Tongariro, Whanganui, Taranaki, and Waikato, whose boundaries included small fragments of this inquiry district, are discussed briefly in a separate section below. In all instances, information on the councils is slight. One historian has noted, for instance, how the records of Superintendent Gilbert Mair became scattered and damaged, as a result of the poor resources accorded to him. Indeed, little documentation is to be found

162. Lange, A Limited Measure, p 36.
165. Lange, A Limited Measure, p 39.
166. Williams, Politics of the New Zealand Māori, p 116.
in the official record. The Pākehā news media do not seem to have taken much interest in the councils’ work either – the articles that do exist often confused the work of the Māori councils with that of the Māori land councils.167

Once the district was officially gazetted, the first election for the Maniapoto Māori Council took place on 12 March 1901 and the 12 successful candidates were announced a couple of weeks later. They were: Patupatu Keepa (from Ōtorohanga); Hone Keeti (Ōpārau, Kāwitia); Te Ahipu Tukorehu (Pūniu); Wetere Eketone (Waipara, Kāwitia); Hariwhenua Herangi (Te Kōpu); Te Moerua Natanahira (Hangatiki); Te Hekenui Te Awhe (Mangaorongo); Tāmihana Te Huirau (Oparure, Te Kūiti); Hori Hetete (Te Kūiti); Ngatokowha R Rangi (Tūhua); Ira Takiwa (Rangitoto); and Pairama Keepa (Mōkau).168 This list indicates a reasonable spread of elected council members from across the district.

George Wilkinson (who was also president of the Hikairo–Maniapoto–Tuwharetoa Māori Land Council at the time) was the Maniapoto council’s first ‘official member’. Wilkinson learned upon his appointment in August 1901 that ‘[a]fter the first meeting of the Council, you need only attend on very special occasions until you are relieved of the duties of Official Member altogether. Along with his letter of appointment, he was provided with an official seal for the council, a minute book, and copies of the Act and associated regulations.169 Following Wilkinson’s death in 1906, the role passed to Alfred Puckey, who by 1909 had been replaced by George Cardno, a clerk in the Native Land Court in Auckland. The latter’s tenure did not last long, however. Ngata reminded Hackworth (the superintendent of Māori councils) that the ‘official member’ needed to be local, and Charles Johnson, an Ōtorohanga justice of the peace, assumed the role.170 Hackworth advised Johnson that his duties would take little time.171

The Governor initially appointed John Ormsby as the advisory counsellor for the district. Like Wilkinson, Ormsby was already an appointed member of the Hikairo–Maniapoto–Tuwharetoa Māori Land Council (see chapter 12), and Wilkinson recommended him for this new position as someone ‘recognised by Ngatimaniapoto as their leading man & because [of] his intelligence & desire for the welfare of his people coupled with his wish to make the working of the Māori Councils Act a success’. However, Ormsby lasted little over a year in the role and when he resigned the following year, he was replaced in July 1902 by Hari Hemara of Ōtorohanga. By 1906, Pepene Eketone had replaced Hemara as the appointed advisory counsellor.172

172. Document A71, p 185; Wilkinson telegram to Sheridan, 9 November 1901 (doc A71(a), vol 2, p 417); doc A71(a), vol 2, 421.
18.4.4.4 The operations of the Maniapoto Māori Council

While the Maniapoto Māori Council was yet to have its first meeting, a hui was held at Ōtorohanga on 21 August 1901 in anticipation and to set up a komiti marae. Te Huia Kiingi, Te Mokena Patupatu, John Ormsby, Hongihongi Kapara, and Te Arai Mokena were chosen as its members. The hui also designated the area to be covered by the komiti, mentioning a boundary marked by several places including Tahaia and Kiokio.  

The following day, the Maniapoto Māori Council met for the first time, at Te Kūiti. From the minutes, there seems to have been discussion on local district matters of interest extending from liquor licensing to the need to extend roads to provide access to Māori land. At the end of the minutes are lists of names, totalling several hundred people.  

By April 1902, the chairman Moerua Natanahira advised the Native Minister that komiti marae had been established not only at Ōtorohanga but also at Te Kōura Putaroa south of Ōngārue (with five committee members), and at Kāwhia South (four members). Another komiti appears to have been established at Te Kūiti, possibly by 1902 (when impounding was discussed), or certainly by 1904, when Superintendent Gilbert Mair was still complaining that he was waiting to be advised of its boundary. By April 1902, the chairman Moerua Natanahira advised the Native Minister that komiti marae had been established not only at Ōtorohanga but also at Te Kōura Putaroa south of Ōngārue (with five committee members), and at Kāwhia South (four members). Another komiti appears to have been established at Te Kūiti, possibly by 1902 (when impounding was discussed), or certainly by 1904, when Superintendent Gilbert Mair was still complaining that he was waiting to be advised of its boundary.  

Sheridan visited Te Kūiti in May 1902 shortly after the majority of the Maniapoto council komiti were established. The hui was evidently to further explain the council and komiti powers in response to requests. Apparently in response to issues of impounding stray animals, for instance, Sheridan suggested to council members that the council construct enclosures both at Te Kūiti and Ōtorohanga, ‘for the purpose of impounding horses, cattle, pigs etc, found trespassing, or wandering at large’. A couple of months later, however, Wilkinson (the council’s official member) wrote to point out that the council actually had no power to do this because he claimed that council was not a local authority as defined by the Impounding Act 1884. Moreover, even if it did erect such enclosures, he felt it had no power to impound animals owned by Europeans, ‘no matter where they are trespassing’. Wilkinson believed an amendment was required to the Māori Councils Act so that the council did have the required powers.  

By August 1902, the council had finalised its set of bylaws, gazetted the following month (in English and te reo) after approval by the Governor. By comparison with the bylaws of the Horouta council, gazetted nine months earlier, they were more detailed and covered a wider range of issues. The Maniapoto council was
concerned, for example, to encourage people to build their houses with wooden, rather than earth, floors, or else to sleep on raised beds. It also sought to protect children under the age of 15 by not allowing them to smoke and by keeping them out of billiard halls. While the Horouta council banned billiard halls entirely, the Maniapoto council decided to countenance them as long as they paid £5 a year for a licence. There were restricted opening hours, though, and no betting was allowed. Bylaws regulating tohunga and their practices were also instituted. These decreed that a tohunga was not allowed, for example, to demand that any patient bathe in cold water; nor was he allowed to receive any fee or reward for his services. Several non-health-related bylaws related to the keeping of animals. Fines were imposed if animals were found wandering in the streets, and dogs were to be registered (with a lesser fee for working dogs). A fine ‘not exceeding one pound’ was also set out for any person ‘furiously riding a horse in any kainga or through any streets of any Māori kainga occupied as a township, or furiously driving any sledge, wagon, carriage, or other vehicle through the same’.180

In January 1903, Ōtorohanga and Te Kūiti were both proclaimed as native townships (see chapter 15, sections 15.4.3 and 15.4.4), administered by what had now become the Maniapoto–Tūwharetoa Māori Land Council. It is not clear from the evidence before us what role the council komiti had (if any) in the running of these townships. Of note, however, is that as well as being on Ōtorohanga’s komiti marae, Ormsby was a member of the land council in question.

Later that same year, in April 1903, Te Moerua Natanahira attended the first general conference of Māori councils, at Rotorua.181 There, he put forward a motion ‘kia whiwhi nga Kaunihera Māori i nga mana o nga Ropu Takiwa mo nga wahi kaore nei he Ropu Takiwa’ (‘that the Māori Councils should acquire the mana of Local Bodies in districts that did not have a Local Body’).182 Then, too, there was discussion at one point about the Maniapoto council’s ‘paeroa 30’ and whether they had the power to enforce it. This was the bylaw relating to fines for anyone whose animals were found roaming in kāinga.183 Given their discussion with Sheridan the previous year, the Maniapoto council clearly felt they had the power but more widely the issue remained confused and a matter for further resolution. Some disputes between the Taranaki, Kurahaupo, Whanganui, Tongariro, and Maniapoto Māori council districts was mentioned, but this had been aired out.184 Several resolutions were subsequently passed, including one to amend the boundaries of the various council districts where required. Resolutions about extending the powers of the councils and komiti were also passed, including:

181. AJHR, 1903, G-1, pp 3, 10.
‘That the general jurisdiction of the Māori councils may be extended as far as possible, in order that they may the better carry out the intentions of Parliament in enacting the measure’;

‘That additional powers be given to the Village Committees’; and

‘That fuller authority be given to the Māori Councils and Village Committees to insure more regular attendance of Māori children at school’.\(^{185}\)

In addition, the councils wanted hospitals established in native districts; more protection of wāhi tapu ‘from desecration by Europeans’; more vigorous enforcement of the law regarding the supply of liquor to Māori; subsidies ‘for necessary work in Māori villages’; and that arrangements be made for publishing ‘all proceedings, reports, notices, &c, of the Māori Council meetings’. They also wanted greater conformity between the bylaws of the various councils.\(^{186}\)

In August 1903, the chair of the Maniapoto Māori Council wrote to the superintendent in Wellington, following a council meeting held in Ōtorohanga earlier that month. One of his concerns was how to deal with a member who had apparently missed three consecutive meetings and who, under section 9 of the 1900 Act, should therefore vacate his seat. Another was that the council wanted men installed in five locations as ‘pirihimana tiaki mo nga mahi a te Kaunihera’ (‘policemen caretakers for the work of the Council’), one each for Ōtorohanga, Kāwhia, Te Kōpua, Te Kūiti, and Tūhua.\(^{187}\)

By the end of 1903, however, it seems like some disillusionment was setting in with the new council system as a means for providing the effective, local self-government they wanted. On Christmas Day 1903 a new development arose: Te Rangituataka Tākerei called a significant iwi gathering of all Ngāti Maniapoto at Mahoeinui (between Piopio and Awakino). The meeting lasted for four days, and the main concern was how to maintain tribal cohesion. Not only had they lost many of their great leaders in the 1880s and 1890s but there had been the effects of ‘Te Ture Kaunihera’:

Katahi ka tino marara ka kore e kotahi te reo me nga whakahaere. – Na Te Ture Kaunihera te take.\(^{188}\)

[The lack of unity of voice and of action resulted in a scattering of the Iwi. All caused by The Council Law.]

It appears that, having attempted to use the new system, there were now serious concerns amongst Te Rohe Pōtae leaders that it was not providing the kind of self-government they wanted or expected and that as a result their district unity was fragmenting. It is not clear whether this concern was limited largely to boundary

---

\(^{185}\) AJHR, 1903, G-1, pp 3–4.

\(^{186}\) AJHR, 1903, G-1, pp 3–4.

\(^{187}\) Chairman of the Maniapoto Māori Council, Otorohanga, to the Superintendent of Māori Councils, Wellington, 27 August 1903 (doc A71(a), vol 3, pp 843–844).

\(^{188}\) ‘Nehenehenui: Ko Te Kawenata o Ngati Maniapoto me ona hapu maha’ (doc H9(b), p 8).
issues or if there was a deeper concern regarding the system itself and its potential impacts.

To promote unity, participants decided that they would install a Maniapoto council of elders, and that Te Wherowhero Tāwhiao would be included among its members. Alongside that, the meeting finalised a kawenata, or covenant, that had apparently been drafted by a committee of six who described themselves as ‘te Ropu Whakahae re o te Iwi’. That committee comprised Pepene Eketone, Hemara Wahanui, H M Hetet, H T Hetet, Moerua Natanahira, and John Ormsby. Of note here is that Natanahira was chairman of the Maniapoto Māori Council. His close involvement with the rōpu whakahae re and the kawenata in this way suggests that he agreed with their proposition that the councils were not able to achieve the wider vision of the iwi.

At the core of the kawenata were two main themes: a desire to maintain tribal unity under a council of chiefs, irrespective of whether people supported the Kingitanga, the Government and its laws, or Te Whiti; and a desire to maintain Māori values and knowledge and transmit them to future generations. The kawenata was intended to be the ridgepole of a house that would bring together all of Ngāti Maniapoto to achieve these aims.

After the hui, copies of the kawenata were carried back to the hapū for ratification, with an accompanying message from the rōpu whakahae re:

Kua oti to koutou Waka, a ka tukua atu nei kia hoea. Me whai kupu atu ano matou kia koutou. Ata titiro marire ki nga taonga o runga i te Waka nei, ki te haratau – utaina – hoea.

[The Waka has been completed and is being sent to you to be rowed. And with these our words to you. Consider carefully the treasures aboard this Waka, [and] if pleasing to you – take them on board – launch the canoe.]

In other words, although the leaders might set the course, the waka would not reach its destination if the people did not lend their strength to the venture. In our view, this statement was a call to action and a show of leadership. The document was subsequently printed, on 1 January 1904, as ‘Te Kawenata o Ngāti Maniapoto me ona hapū maha’ [the Covenant of Ngāti Maniapoto and its many hapū]. The full kawenata text is reproduced as an appendix to this chapter.

It is not known whether the kawenata was discussed at the next meeting of the Maniapoto Māori Council. Indeed, none of the council’s later minutes, if they survive, have been filed in evidence. The limited and scattered information available on the council from early 1904 has been gleaned from other sources.

---

189. Document A110 (Joseph; Meredith), pp 474, 602.
190. Document A110(a) (Ngāti Maniapoto supporting papers), vol 2, pp 389–390; ’Te Nehenehenui: Ko te Whakakaupapa’ (doc H9(b), p [5]).
191. ‘He Kura Rere’ (doc A110(a) (Ngāti Maniapoto document bank), vol 2, p 382.
192. Document A110(a), vol 2, pp 389–390; doc A110 (Joseph; Meredith), pp 474, 507, 602, 606.
point in 1904, for instance, certain members of the Maniapoto council apparently complained to Superintendent Gilbert Mair that ‘lazy’ colleagues were holding them back.\(^{193}\) The evidence does not reveal, however, who complained and the exact nature of the problem.

In March that same year, Natanahira attended the general conference at Ruatoki and was appointed to a sub-committee tasked with looking at motions relating to health and well-being. These included a motion that the Government be urged to provide more support for Māori children wishing to learn practical skills.\(^{194}\) Various motions were later approved by the hui, including one that the councils complete the definition of kāinga boundaries in their rohe, in accordance with section 3 of the amending Act of 1903. Another, proposed by Natanahira, was that the councils should support the kāinga in their districts with a modicum of funding.\(^{195}\)

Later, in September 1904, John Ormsby wrote on behalf of the Maniapoto council to a solicitor in Hamilton, asking him to take action against three Māori of Ōtorohanga who had failed to pay their dog registration fees. Some ‘technical requirements’ pointed out earlier by the solicitor had now been dealt with, said Ormsby, and ‘there should be no difficulty this time.’\(^{196}\) A further letter the following month asked the solicitor to follow up on nine more cases.\(^{197}\)

As at 30 June 1904, the Maniapoto council had £126 8s 2d in its bank account. No further return had been filed by 1907, however, and no information was available as to how much money had been collected during the 1906/07 year.\(^ {198}\) By September 1910, the council’s bank balance had decreased to just £58 6s 11d.\(^{199}\)

Meanwhile, in 1905, Natanahira had again attended the general conference, this time in Rotorua.\(^{200}\) At one point he seems to have wanted to table a motion ‘mo te whare i te teihana i Ōtorohanga’ (‘about the station house at Ōtorohanga’), but then decided to withdraw it and send it to Dr Māui Pōmare instead. It is not clear what the issue was. There is also mention of him being concerned about schools and other matters, but again no details are given.\(^{201}\) Later he proposed: ‘Me mutunga Komiti Marae’ (‘let the marae committees come to an end’). There is no indication of why he proposed this, and the motion was defeated.\(^{202}\) Another motion from Natanahira, about the registration of Pākehā-owned dogs, met with more success, however.\(^{203}\)

The following year saw new elections. Eight of the original 12 members were voted back in, along with four new members: Te Watikana Herewini

---

196. John Ormsby to A Swarbrick, 19 September 1904 (doc A71(a), vol 3, p 846).
203. Document A71(a), vol 3, p 794.
(of Mangawhero), Hari Hemara (Ōtorohanga), Poututerangi Ngahianga (Mangaorongo), and Wiremu Tuapokai Huihi (Te Kōpua). Gone from the council were Hone Keeti, Hariwhenua Herangi, Te Hekenui Te Awhe, and Ira Takiwa. Te Moerua Natanahira was again voted as chairman.204 Soon after the election, the general conference convened at Pāpāwai but the Maniapoto council does not seem to have sent a delegate.205

Later that year, John Ormsby wrote on behalf of the Maniapoto council to a Mr Bond, owner of a billiard room in Ōngarue. He pointed out that under section 36(b) of the Maniapoto District Māori Council’s bylaws, a billiard room was required to renew its licence each year and that renewal was now due.206 The evidence does not reveal the outcome. A couple of years later, however, in July 1908, the Māori Councils Office in Wellington told the Native Minister that, in general, those councils who had decided to allow licensed billiard halls, ‘are not very successful in collecting [the licence fee], owing to some doubt having arisen as to power to enforce payment.’207

That month, another general conference was held, this time in Wellington. As evidenced by the list of prospective attendees, Natanahira had been intending to be present.208 But the fact that his name has been crossed out in the minutes, suggests that he did not attend after all.209 He did attend the August 1911 conference (again in Wellington).210

Following the 1912 election, there was little change in the council’s membership.211 The Maniapoto Māori Council appears to have all but ceased operating between 1913 and 1915, although it revived somewhat as a Māori health council after 1920.212 That year, the seven appointed members were Raureti Huia, Pire Huihi, Mokena Patupatu, Te Tata Wahanui, Ngatai Hetete, Te Whiwhi Mokau, and Moerua Natanahira, with the latter again being chairman. The official member was James Herbert Armstrong. By the end of the year, the balance in the council’s account was £41 9s 6d.213

In 1922, Natahanira passed away and Patupatu took over as chairman. He immediately began attempting to revitalize the komiti marae, leading to their establishment or strengthening in a total of 23 locations.214 The council and komiti network suffered, however, from instability of membership. In 1925, Native Health Inspector Anthony Ormsby told Te Rangi Hiroa that the Maniapoto Māori Council was ‘practically useless and further the Chairman is now a bankrupt.’ On
2 June 1926, Patupatu resigned as chairman and by mid-July a new council had been formed.\textsuperscript{215} The new council members were apparently mostly younger men, but the council still suffered from a lack of funding and had to apply for subsidies in order to achieve anything. Not for another year did things start to improve: in July 1927, Inspector Ormsby reported that the council membership was ‘now in working order and are showing signs of energy.’\textsuperscript{216}

Meanwhile, in 1922 a revised and consolidated set of bylaws, as called for by the 1905 general conference in Rotorua, was finally drawn up by Te Rangi Hīroa and adopted by the Maniapoto council.\textsuperscript{217} Additional bylaws were also allowed, and the Maniapoto council had theirs approved and gazetted in early 1927.\textsuperscript{218} Jonathan Sarich commented in his evidence that ‘[t]hese additional bylaws demonstrate Maniapoto Māori Council efforts to extend and retain a measure of influence over their communities.’\textsuperscript{219}

In March 1929, another general conference of Māori councils was held, in Ngāruawāhia. Afterwards, a summary of proceedings sent to the Native Minister commented bleakly that ‘today the Māori Councils throughout the Dominion are almost dead.’\textsuperscript{220} The response was not encouraging. In regard to finance, the Under-Secretary of Native Affairs’ advice was: ‘Logically, the Natives should themselves contribute the money for their special local government.’\textsuperscript{221}

Despite all this, the Maniapoto council continued trying to exert some self-government in its communities. In addition to attempting to curtail unsafe liquor consumption, the council still kept trying to enforce systems in the few areas it could operate, including trying to enforce licensing for hawkers and billiard halls. It also tried to quell ‘loafing about instead of working’ by introducing fines for any young Māori found ‘guilty’ of such loafing. As always, however, the council found it difficult to enforce the collection of fines without the necessary statutory powers.\textsuperscript{222}

\textbf{18.4.4.5 The other Māori councils relevant to this inquiry district}

\textbf{18.4.4.5.1 WAIKATO}

In Waikato, the Kīngitanga’s resistance to the formation of a Māori council meant it was the only district in the country with a significant Māori population that did not initially elect a council under the 1900 Act.\textsuperscript{223} In 1909, however, Māori Health Officer Máui Pōmare began discussing the formation of a council with Kīngitanga leaders. The following year, during a hui at Waahi, James Carroll announced that the Kingitanga had agreed to join the councils system. An election was then held

\textsuperscript{215} Document A29, pp 75–76.
\textsuperscript{216} Ormsby to Menzies, 26 July 1927 (doc A29, pp 76–78).
\textsuperscript{217} Document A29, p 78.
\textsuperscript{218} Document A29, pp 78–80.
\textsuperscript{219} Document A29, p 80.
\textsuperscript{220} Pitt to Native Minister, 18 March 1929 (doc A29, p 81).
\textsuperscript{221} Under-Secretary to Native Minister, 12 August 1929 (doc A29, p 82).
\textsuperscript{222} Wetini Hotu to director of Māori hygiene, 24 October 1931 (doc A29, pp 83–87).
\textsuperscript{223} Document A71, p 182.
in 1912. Nevertheless, the new council had no dealing with the superintendent and, unlike other councils, never sent delegates to any of the general conferences. 224

In 1931, when the councils as entities for self-government had effectively become inoperative and were replaced for the most part by health councils, Health Inspector Anthony Ormsby proposed that one Waikato–Maniapoto Māori council be formed, but the idea was rejected at a meeting at Waahi in 1932. 225

18.4.4.5.2 TONGARIRO
There is very little available evidence regarding the Tongariro Māori Council, even the first members. In April 1903 the council sent its chairman, Parati Paurini, and two other council members (Nepia Matenga and Hira Rangimatini) to the first general conference in Rotorua. As with other councils, Paurini expressed concerns about the Tongariro council boundary between the Tongariro and Mātaatua districts, as well as the Tongariro/Kurahaupō boundary. 226

Paurini attended the next general conference in 1904, this time at Ruatoki, and was appointed onto a sub-committee to consider the motions to be presented. The sub-committee organised these into three categories: general; land-related; and related to health and well-being. Paurini was then appointed to a sub-committee to consider the general motions. He later seconded a motion that councils should file two returns each year, one at the end of June and the other at the end of December. 227

The minutes from the 1905 general conference record that there was no spokesperson present from the Tongariro district, but Parati Paurini did attend at Pāpāwai in April 1906. On that occasion, he tabled a motion concerned with encouraging the Minister to take action on bringing about coherence between the bylaws of the different councils – in accordance with the resolution passed at the Rotorua conference in 1903. 228

Just a few weeks prior to the Pāpāwai conference, the council had come up for re-election. According to a newspaper report of the time, the voting took place at Tokaanu and around 400 Māori were present. ‘No opposition was shown’, said the article, ‘and everything was unanimously arranged between the various tribes’. The council was composed of representatives from various settlements around Lake Taupō and also from Taumarunui and Moawhango. 229 Around the same time, a financial return drawn up by the council showed that it had £155 4d in its bank account. No information seems to have been provided for the 1906–07 year. 230 By September 1910, the bank balance had decreased to only £23. 231

The available evidence about the council is scattered:

In July 1908, Te Heuheu Tūkino attended the general conference in Wellington. At the August 1911 conference, it was Kepa Te Ahuru.

In 1909, a schoolmaster at the native school in Tokaanu, one Frederick Reid Wykes, was serving as the official member on the council.

There is nothing further in evidence presented to this inquiry that relates specifically to the small parts of the Tongariro district that fall within our inquiry boundary.

**18.4.4.5.3 WHANGANUI**

The initial election results for Whanganui, like those for the Maniapoto district, were announced in April 1901. In April 1903, the council sent its chairman, Neri Poutini, as its delegate to the first general conference, in Rotorua. In July 1903, Superintendent Gilbert Mair submitted a report to the Native Minister. Included in it were comments about the expense, in some districts, of getting all 12 council members together for meetings. He cited four districts in particular, of which Whanganui was one. In these districts, he said, 'the members have to pay high fares for travelling by the river-boats, which are the only means of communication.'

The following year, at the general conference in Ruatoki, Neri Poutini’s name was entered in the minutes but then crossed out, so it seems he may not have attended. He did attend in 1905, when the conference was held in Rotorua, but there again seems to have been no Whanganui delegate at the Pāpāwai conference in 1906.

Sometime later in 1906, Mair met with the Whanganui council at Hiruhārama. He commented that he ‘sat up nearly all night discussing Council matters and settling troubles that had arisen,’ adding: ‘I think I did a lot of good.’

In its financial return dated 30 June 1906, the Whanganui council reported that it had £129 14s in its bank account. A further £24 was then collected during the 1906–07 year. As at 30 September 1910, the bank balance had dropped only slightly, to £120 4s 7d.

In July 1908, Te Aonui Whakaheirangi, of Karioi, attended the general conference in Wellington. In August 1911, Te Weri Haeretuterangi attended.
In 1909, T D Cummins held the dual roles of official member on the Whanganui Māori Council and clerk to the Aotea Māori Land Board.\(^{245}\)

In the years 1912 to 1925, the Whanganui council was apparently one of those that managed to meet on a fairly regular basis.\(^{246}\)

18.4.4.5.4 TARANAKI

The first Taranaki Māori Council, also announced in April 1901, was somewhat skewed towards southern representation: it had five members from Waitōtara, two from Pātea, one from Waverley, and one from Whenuakura. For the northern side of the district, the only representatives were Hone Tuhata and Karaitiana Te Tupe (both from Waitara), along with Tutanuku (from Purangi, which was more inland).\(^{247}\) We have no information on what work the council might have carried out affecting the area inside our inquiry boundary. Nor do we know whether any komiti marae were set up there. What little can be gleaned is set out below.

In April 1903, the council sent Tutanuku as its delegate to the first general conference, in Rotorua.\(^{248}\) The minutes from the 1904 conference do not list any representative from Taranaki, but the following year, when the conference was in Rotorua, the delegate was Te Pakeka Ngatau.\(^{249}\)

In early 1906, when a new round of elections was held, representation on the Taranaki council was even more heavily weighted towards the southern half of the district: of the 12 successful candidates, the only one from the northern half was Rangi-irunga Meera, of Onaero. The delegate who attended the 1906 general conference at Pāpāwai on behalf of Taranaki was Wiremu Tupito, of Pariroa (near Pātea).\(^{250}\)

In its financial return dated 29 September 1906, the Taranaki council reported that it had just £8 15s 3d in its bank account.\(^{251}\) As at 30 September 1910, the bank balance had dropped even further to £2 13s.\(^{252}\)

In July 1908, Rima Wakarua, of Ihupuku, Waitotara, attended the general conference in Wellington.\(^{253}\) At the August 1911 conference, Ropiha Rangihaukore attended.\(^{254}\)

In 1909, a constable from Pātea, Michael O’Brien, was serving as the official member on the council, but a fresh appointment was being sought.\(^{255}\)

As for Tongariro and Whanganui, nothing in the available evidence relates specifically to the small part of the Taranaki district that falls within our inquiry

\(^{245}\) Document A71(a), vol 2, p 578.
\(^{246}\) Lange, *May the People Live*, p 227.
\(^{247}\) *Te Puke ki Hikurangi*, 15 April 1901, p 5.
\(^{248}\) Document A71(a), vol 3, p 695.
\(^{249}\) Document A71(a), vol 3, pp 741, 743, 762–763.
\(^{250}\) ‘Taranaki Māori Council Election’, *Hawera and Normanby Star*, 9 February 1906, p 5; doc A71(a), vol 3, p 810.
\(^{251}\) Document A71(a), vol 2, p 576.
\(^{252}\) Document A71(a), vol 2, p 581.
\(^{253}\) Document A71(a), vol 2, p 439.
\(^{254}\) Document A71(a), vol 2, p 465.
\(^{255}\) Document A71(a), vol 2, pp 578, 579.
boundary. We note, however, that at least in the council’s early years, very few of its members came from the northern part of the district.

**18.4.4.6 The effectiveness of Māori councils in providing for Te Rohe Pōtae Māori autonomy**

It is relatively clear that the Māori Councils Act 1900 ‘was intended to provide genuine local self-government for Māori communities at a district and kainga level.’ Nationwide, both Pākehā and Māori praised the councils for their work in Māori communities, crediting them with lifting Māori health and standards of living. Gilbert Mair reported in 1903 that ‘great good’ had already resulted in Māori communities from the councils being established. Māui Pōmare credited the councils, and komiti marae in particular, with improvements in the health and hygiene of Māori communities. This early enthusiasm for the councils proved short-lived. Robinson and Christoffel noted that ‘disillusionment quickly set in’ as it became apparent that ‘councils had little in the way of either power or funding.’

A report on the 1905 annual conference of Te Aute College Students’ Association claimed that the councils were already coming to be viewed as ‘inoperative’ and as ‘having no real power.’

As mentioned, the Māori councils had no power to manage land, this function being reserved for the parallel Māori land councils. As discussed in chapter 12, however, the potential of the land councils as vehicles of autonomy and self-management was effectively erased by the 1905 reform of their legislation. As the Central North Island Tribunal observed, a nexus existed between

Māori self-government and ability to control their own destinies on the one hand, and the ability to control and manage the community’s principal assets, especially land, on the other. The failure to give the councils and komiti power over land was a very significant inbuilt weakness.

We agree with this assessment.

Another early challenge for the Māori councils was how to control Pākehā living in Māori settlements. While the Act gave the councils the ability to pass and enforce bylaws on the Māori population of their districts, they had no powers to enforce these same bylaws upon Pākehā. This unfair treatment generated resentment among Māori.

---

256. Waitangi Tribunal, *He Maunga Rongo*, vol 1, p 396.
258. AJHR, 1903, G-1, p 1 (doc A71, p 188).
259. Document A71, p 188.
262. Waitangi Tribunal, *He Maunga Rongo*, vol 1, p 397.
263. Document A71, p 188.
264. Document A71, p 188.
A lack of funding was another significant, indeed crucial, issue for the councils. Historians have described these bodies as ‘hamstrung’ by ‘chronic under-funding’. They initially received funds from Māori donations, but these slowed as support declined and most Māori communities were not able to contribute much financially. While limited government subsidies were available, the actual amounts, once divided among the councils, were meagre. Unlike local authorities, which drew most of their income from rating, the Māori councils’ main sources of income were dog taxes and the imposition of fines. Māori councils could, in theory, apply a ‘tenement’ tax to lands or dwellings within the boundaries of kāinga, but the extent to which this provision was implemented is unknown.

By 1915, although some of the councils were said to be doing ‘most excellent work’, many were reported to be inactive or non-existent. As Robinson and Christoffel pointed out, in addition to their inadequate funding and lack of powers, the councils were plagued by a fundamental disconnect between Māori expectations and government aims. Māori viewed the council system as a vehicle for local self-government in order to maintain the autonomy that was their right according to the Treaty, and specifically in Te Rohe Pōtāe due to the Te Ōhākī Tapu agreements. By contrast, the Government’s aims for the councils were more limited: the general lifting of the health and sanitary conditions of Māori communities, and the control of ‘nuisances’ such as liquor, dogs, hawkers, and tohunga. This disconnect is particularly acute in the context of Te Rohe Pōtāe, given the frequently articulated expectations of rangatira that they would exercise ongoing authority following the Te Ōhākī Tapu negotiations.

Despite the determination of Te Rohe Pōtāe leadership to exercise management of their communities through the council system, the evidence suggests that this system was becoming increasingly moribund by the 1920s, a deterioration linked in particular to a lack of statutory powers to collect tariffs and penalties that would enable self-funding.

18.5 Opportunities for Autonomy and Self-government, 1940–62

This section extends the analysis of opportunities for Māori self-government through the period 1940–62, examining the ways in which hapū and iwi of Te Rohe Pōtāe engaged with Crown legislated and State-sanctioned bodies in an attempt to exercise control over their affairs. It begins by noting how, after some years of frustration, the circumstances of the Second World War provided a catalyst for a new era in Māori self-government and autonomy, beginning with the establishment of an organisation dedicated to facilitating and coordinating the Māori war
effort. The chapter then proceeds to discuss the system provided following the war, as embodied in the Māori Social and Economic Organisation Act 1945, and the impacts of that system for Te Rohe Pōtae self-government, until a new era of legislation and policy began in 1962.

18.5.1 The Māori War Effort Organisation

From early in the Second World War, political discussion addressed how best to coordinate the Māori war effort. As the war accelerated, it became increasingly clear that a dedicated organisation was required for this purpose. Labour–Ratana member of Parliament Tapihana Paraire Paikea, joining Cabinet in late 1940, submitted a scheme for a ‘nation-wide network, operated and controlled by Māori, which would deal not only with recruiting but with all war-related activities’.272 Māori leaders, recognising the proposed scheme as a potential avenue of autonomy, threw their support behind it. Cabinet approved a plan to establish a dedicated organisation, the Māori War Effort Organisation (MWEO) in June 1942. The structure of this organisation was based on a system Paikea had envisioned in which 'local community-based tribal committees were responsible for flax roots activities whilst executive committees would maintain district-wide oversight'.273

On 3 June 1942, the scheme was approved by Cabinet, and the MWEO soon consisted of 314 tribal committees and 41 executive committees, which liaised with army recruiting officers.274 However, the MWEO had been established only on a temporary basis: Paikea and fellow Labour–Ratana member of Parliament Eruera Tirikātene regularly had to justify its continued existence to the Government. Nonetheless, the extent of Māori involvement at all levels of the MWEO was intentional and unprecedented. Acknowledging the opportunities for autonomy the war had provided, the chief liaison officer for the MWEO, Lieutenant-Colonel H C Hemphill, stated 'never before has so much direct responsibility been given to the Māori People'.275 While not Māori himself, Hemphill considered the involvement of Māori to be a critical determinant of success for the MWEO. The 'Māori race', he wrote in 1942,

has, from ancient times, held the noble art of leadership, especially in warfare, as a tribal status of the utmost racial importance. Accordingly, every possible effort should be made by all concerned to restore and safeguard to the Māori people, their rightful place and pride of leadership especially during the present crisis. I attach considerable importance to the principle involved and to its effects on the Māori mind, and therefore of necessity on the Māori War Effort.276

276. Hemphill to Paikea, 11 July 1942 (doc A72 (Francis and Sarich), p 26).
The progress of the scheme would be reported to the Māori Parliamentary Committee, made up of five Māori parliamentarians from the House of Representatives and Legislative Council. A chief liaison officer occupied the highest echelon of the MWEO, attached to the Māori Parliamentary Committee. This role involved reporting directly to Paikea, liaising with the recruiting networks, and appointing recruiting officers to work with the tribal committees and executives.

For the first six months of operation, the Government's contribution to the MWEO amounted to £7,000, and thereafter it received an estimated £12,000 per annum. The majority of the MWEO's staff carried out their work on a voluntary basis, receiving reimbursement solely for travel costs. Only the chief liaison officer and the 20 appointed recruiting officers drew salaries. Despite its modest resources, the MWEO succeeded at mobilising Māori for both home and overseas service. Within six months of formation, it had significantly increased total Māori participation in the war effort to date. This included:

- placing an additional 3,317 men in essential industries, an increase of 44 per cent;
- enlisting an additional 740 men for ‘Territorial Force service within and beyond New Zealand, including those serving overseas, an increase of 18 per cent;
- enlisting an additional 453 men for ‘Territorial Force for service in New Zealand only’, an increase of 28.5 per cent; and
- enlisting an additional 2,478 men for ‘Home Guard’, an increase of 33.5 per cent.

These contributions to the war effort increased the number of Māori engaged in either the armed forces or required industries to just over 27,000, out of a Māori population of 95,000. It is also worth noting that by early 1943 the MWEO was no longer just supplying manpower but had assumed control and direction of all Māori manpower in the essential industries, in conjunction with the district manpower offices. The tribal committees were also able to devote 4,933 acres to the production of crops for the war effort, an ‘excellent result’. In addition, the MWEO rallied support, engaged in fundraising, and smoothed workplace relations in Māori employee–employer relations.

279. Document A72(b) (Francis and Sarich summary), p 3.
280. Submission 3.3.980, p 1046.
While it is difficult to gauge the exact contribution of Te Rohe Pōtae Māori to the overall war effort, the evidence before the Tribunal indicates that the hapū and iwi of Te Rohe Pōtae:

- contributed over 1,600 men and women to essential wartime industries within the first six months of the establishment of the MWEO;
- contributed 40 per cent of the maize produced for the war effort in 1942, followed by a contribution of 23 per cent in 1943; and
- allocated 275 acres to the production of potatoes for the war effort in 1942, a figure that increased to almost 400 acres in 1943.  

Ralph Ngātata Love noted that 45 committees and three executives (Taumarunui, Waipā-Ōtorahanga, and Te Kūiti) were active in the MWEO’s zone 9 (‘King Country’) and zone 8 (Waikato), which encompassed the inquiry district. Beyond the evidence of productivity above, not a great deal of information is available on the specific activities or makeup of the committees within Te Rohe Pōtae. However, it is reasonable to assume that the autonomy enabled by the committees resonated in a region such as the inquiry district with its distinctive history of recent political independence and Māori-led welfare provision. As Love remarked on this political appeal, the original ‘acceptance and participation in the war effort by previously hostile Māori tribes such as Taranaki and Waikato-Maniapoto was to a major degree due to the political possibilities the organisation offered rather than simple patriotic duty.’

Building on the unique conditions of war, the MWEO achieved for Māori what has been described as an ‘unprecedented level of authority’ nationally, including to a significant extent in Te Rohe Pōtae. This has been characterised as the closest manifestation of the mana whakahaere and self-government Te Rohe Pōtae Māori leaders wanted for their communities since the late nineteenth century. Indeed, as Paraire Paikea himself highlighted in a letter to Prime Minister and Minister of Native Affairs Peter Fraser, it was a Māori proposed and led initiative, founded ‘on the principle of Māori Tribal leadership.’ The MWEO increasingly used this authority to improve conditions for Māori, many of whom had been adversely affected by the upheavals of war. Deeming many Māori social welfare issues ‘associated war effort areas,’ the MWEO addressed housing conditions, social security issues, land use, and education needs. It was thus able to make a number of marked improvements to Māori welfare under challenging wartime conditions.

Despite the initial support of the Crown and its attempt to ‘accommodate a degree of te tino rangatiratanga’ through the MWEO, the military necessity of the

---

290. Memorandum 2.6.77, p 1068.
291. Paikea to Fraser, 2 April 1943 (doc A72, p 18).
293. Document A136, p 137.
mweo diminished as the outcome of the war became more certain. Moreover, the Crown increasingly saw the social welfare work undertaken by the mweo as an encroachment on the functions of the Native Department. With peace imminent, the political chasm widened between the objectives of Māori returned servicemen, the mweo, Māori members of Parliament, and the Crown. Māori sought a political future characterised by their autonomy and self administration, whereas the Crown sought a return to the essentially paternalistic pre-war state of Crown–Māori relations. 295

A Māori proposed and led initiative founded 'on the principle of Māori Tribal leadership', 296 the [mweo] and the autonomy it enabled were also products of the political turbulence of 'total warfare'. 297 Not only did the mweo achieve its wartime objectives, but it leveraged the authority and influence it gained to move into the sphere of Māori social welfare. The autonomy of the mweo, however, while initially receiving Crown support, became increasingly susceptible to entrenched colonial attitudes as the war drew to a close. As a result, the political gains of the mweo proved difficult for Māori to preserve following the war. Historian Claudia Orange has usefully set out of the trajectory of the mweo. She describes its inability to extend its role into peacetime as 'one of the best examples of the repeated pattern of government failure to allow Māori full freedom to develop their resources, and to give them scope to exercise that autonomy which they believe should be theirs under the promises of the Treaty of Waitangi'. 298 These limitations notwithstanding, the mweo heralded a new political era in which Māori expectations for autonomy were less easily dismissed by the Crown.

18.5.2 The Māori Social and Economic Advancement Act 1945
Towards the end of the Second World War, debate swirled about the future of the mweo, including the question of whether the degree of Māori self-government it had enabled could endure in peacetime. This discussion contributed to the eventual passage of the Māori Social and Economic Advancement Act 1945 (mseaa Act), under which a series of tribal executive committees were established in the inquiry district. This legislation operated in Te Rohe Pōtae between 1946 and 1962. 299 During the late 1940s, Māori in in the inquiry district, through a gradual process, came both to accept the Act and to determine the administrative configuration of the various committees it defined. From 1949, most committees the Act engendered were fully functioning. 300 This section discusses the political climate and discourse from which the mseaa Act emerged, the key provisions of the Act, and the extent to which this legislation and the organisations it created ultimately enabled Te Rohe Pōtae Māori to exercise autonomy over their affairs.
18.5.2.1 Background to the MSEA Act

The successful contribution of the MWEO to the war effort heightened expectations as the war drew to a close that the Crown would continue to allow Māori a similar or greater level of management of many aspects of their own affairs. However, Department of Native Affairs officials strongly campaigned to have any Māori welfare developments or the potential continuation of the MWEO following the war placed under the umbrella of the Native Department. That challenge to the continuation of the autonomy of the MWEO did not go unnoticed by Eruera Tirikātene, the other Rātana–Labour members of Parliament, and their allies. A national conference of Māori leaders was held in 1944 at the Ngāti Pōneke hall in Wellington to raise support for the continuation of the MWEO and the level of Māori administrative autonomy it had represented. This conference, which included delegates from Te Rohe Pōtae, passed unanimous resolutions expressing dissatisfaction with the Native Department and a desire to retain the independence of the MWEO in the post-war era.

Tirikātene, the Ratana–Labour members of Parliament, and other Māori leaders mobilised considerable regional support for the continued independence of the MWEO. They argued that the success of the MWEO demonstrated the ‘Māori capacity for leadership and planning’ and that as Māori were demonstratively capable of operating autonomously as a tribally based committee system, they should be allowed continue to do so. As chief liaison officer for the MWEO, Hemphill commented:

> In the minds of the Māori people, the establishment of the Māori War Effort Organisation is the greatest thing that has happened in the history of the Māori people since the signing of the Treaty of Waitangi. They feel that in the organisation lies the future prosperity, development and happiness of their people. It is submitted that the Organisation should be carefully nursed, encouraged and developed to the full, not only on account of the people's war effort, but also that it may play a worthwhile and practical part in the after-war reconstruction and rehabilitation.

Alternatively, Māori argued that at a minimum any post-war department in charge of Māori affairs should operate along the decentralised lines that had characterised the operating structure of the MWEO. Tirikātene’s view was that if Māori were to retain the political advances made during the war, compromise would be essential in formulating new peacetime legislation concerning Māori autonomy. His proposal for the Māori Social and Economic Reconstruction Bill thus emphasised the need for a new department to incorporate the ‘self administration and

---

301. Memorandum 2.6.77, p 1049; submission 3.3.980, p 1051.
302. Memorandum 2.6.77, p 1050.
discipline’ Māori had demonstrated in managing the MWEO. That inclusion also met the Crown imperative of ‘equality’ and the objective of socio-economic uplift. The Bill proposed to create an overseeing board including the Māori electorate members of Parliament and members of the district Māori councils, in the hope of replicating the unprecedented collaboration with government departments, local bodies, and wider Pākehā society that the MWEO had achieved.305

Ultimately however, the Crown was loath to consider such a comprehensive restructuring of Māori affairs.306 Government authorities were sceptical that such an organisation would help foster kotahitanga or Māori unity.307 Reflecting the contemporary attitude of many Pākehā, the Crown was also sceptical that ‘Māori could run their affairs autonomously’. In October 1945, Prime Minister Fraser indicated that the MWEO would be merged into the Native Department following the war.308 Fraser, however, was at least encouraging of limited Māori self-government in the post-war era. In November, he instructed Native Minister Rex Mason to draft legislation to revise the Māori Council Act. Less than a month later, on 6 December, the Māori Social and Economic Advancement Act 1945 passed into law.309

18.5.2.2 The MSEA Act and Te Rohe Pōtai

Te Rohe Pōtai communities formed several tribal executives under the MSEA Act. The Maniapoto Tribal Executive was the earliest, largest, and most active of these bodies. Each tribal executive contained a number of tribal committees and establishing executives and tribal committees, as required by the Act, proved to be a protracted process. As with the previous councils and marae komiti, new boundaries were required for each of the districts under the MSEA Act and had to be gazetted before they could become operational.310 By 1950, 72 tribal executives and 430 tribal committees had been established nationally.311 Within Te Rohe Pōtai, Māori engagement with the Act varied considerably. Some parts of the district formed committees swiftly, while other areas were entirely opposed to the legislation (this opposition is discussed in chapter 16, section 16.2.3).312

18.5.2.2.1 THE MANIAPOTO TRIBAL EXECUTIVE

The Maniapoto Tribal Executive formed relatively quickly in the central area of our inquiry district around Te Kūiti and Ōtorohanga.313 On 24 May 1946, the King Country Chronicle reported on the annual meeting of the ‘Maniapoto Māori Tribal Executive’ at Te Kūiti. The article indicated enthusiasm in this area at least for

305. Memorandum 2.6.77, pp 1051–1052.
309. Submission 3.3.980, p 1052.
313. Memorandum 2.6.77, p 1055.
the new Act. Charlie Davis was recorded as the chairman of the executive. Other representatives were T M Hetet and Taare Davis of the Te Kūiti Tribal Committee; A W (George) Joseph, Newton Moerua of the Oparure–Te Kumi Tribal Committee; Wetini Hotu of the Hangatiki Tribal Committee; C Waamu and Matiu Hau of the Mahoeunui Tribal Committee; Amokura Marshall and Campbell and Ruku of the Mōkau Tribal Committee; and P Horne and Te Kohianga Taniora of the Waimihia Tribal Committee. By the end of 1946, Edward Davis (chairman), Poutu Hihiti, Wetini Hotu (secretary), Newton Moerua, Campbell Ruku, Amokura Marshall, Tame M Hetet, Taare Davis, Henry Barrett, Tawhana Tangihaere, Charlie Waamu, and Matiu Hau were members of the Maniapoto Tribal Executive. Once established, the Maniapoto Tribal Executive was divided into seven zones (Hangatiki; Mōkau; Oparure–Te Kumi; Te Kūiti; Aria; Mahoeunui, and Maniapoto). In 1947, Aupouri Joseph, the first secretary of the Maniapoto Tribal Executive, who had been active in the MWEO, was appointed as the welfare officer for zone seven. The membership of the Maniapoto Tribal Executive consisted mainly of individuals, like Joseph, who had participated in the Māori War Effort Organisation. Between 1954 and 1956, the Maniapoto Tribal District was reformed into four districts of the same name. Parts of the Kawhia Tribal Executive (originally the Aotea Beach Tribal Committee), the Waipā Tribal Executive, and the Taumarunui Tribal Executive, also fell within the inquiry district. These tribal executives are discussed in chapter 19, section 19.6.2.4.

From its inception, the Maniapoto Tribal Executive was active in community affairs. One of its earliest annual meetings focused on using the new MSEA legislation for the appointment of wardens to firmly police drinking and gambling on marae. It should be noted that the executive’s attention to these particular issues reflected, at least as much as genuine local concern, that these matters were a focus for Minister of Māori Affairs Ernest Corbett. The executive also devoted considerable attention to housing. The tribal committees helped to disseminate information regarding government housing and land management programmes. In 1950, the Maniapoto Tribal Executive engaged with the Government on the issues of land development and the payment of rates on Māori land. The Maniapoto Tribal Executive submitted to the Minister of Māori Affairs that ‘[i]n the present

---

316. Memorandum 2.6.77, p 1055.
318. Document A72(a) (Francis and Sarich supporting papers), vol 2, pp 465–467, 475, 544, 551, 553, 570, 618. The four committees were: Maniapoto No 1 Tribal District (including Kahotea (ex Waipā Tribal District), Hangatiki-Waitomo, Otorohanga, and Otewa Tribal Committees); Maniapoto No 2 Tribal District (including Oparure–Te Kumi, Te Kūiti, Mangapeehi-Tiroa, and Waimihia Tribal Committees); Maniapoto No 3 Tribal District (including Mōkau, Mahoeunui, Napinapi-Piopio, and Aria Tribal Committees); and Maniapoto No 4 Tribal District (including Marokopa, Kinohaku, and Rakaunui Tribal Committees).
320. Document A72, p 126.
321. Document A72, p 121; doc A146 (Hearn), p 539.

---
state of involved ownership it is practically impossible for Māoris being desirous of settling on Māori lands and becoming farmers, to do so. The Maniapoto Tribal Executive therefore considered the development of land of ‘paramount importance.’\textsuperscript{322} In 1953, the executive also discussed the proposed Māori Affairs Act and condemned the Bill as contrary to the guarantees contained in article 2 of the Treaty of Waitangi.\textsuperscript{323}

Concern regarding liquor issues in Te Rohe Pōtae helped motivate the Maniapoto Tribal Executive and Te Puea Herangi to adopt the msea Act. This concern, coupled with the clear provisions under sections 39 and 40 of the Act for wardens, meant that they became a regular presence within Te Rohe Pōtae. Like most other functions of the msea Act, however, the warden system took time to develop. In 1950, by which point the system was on the verge of full functionality, it comprised 32 appointed wardens nationally and a further 95 awaiting appointment. The Department of Māori Affairs described the role of the warden as being ‘to stamp out mischief before it develops into crime.’\textsuperscript{324} District Welfare Officer William Herewini reported in 1953 that the ‘number of wardens appointed are increasing and working in close co-operation with the police, the results of their efforts are very gratifying indeed.’\textsuperscript{325} Herewini commented additionally that the powers provided to wardens under the msea Act were being ‘exercised to the full’. By 1962, over 500 wardens were in service.\textsuperscript{326} Legislative amendments in the early years following the introduction of the msea Act expanded the powers and scope of the wardens’ activities. Nevertheless, while wardens effectively carried out their duties and were ‘to be congratulated’\textsuperscript{327} for their work, and while women had also ‘tak[en] a keen interest . . . and . . . proved themselves as capable as male Wardens,’\textsuperscript{328} the ‘evils of over-indulgence in liquor’ remained a concern in Te Rohe Pōtae.\textsuperscript{329} Private parties were another ongoing issue, even though drinking on marae diminished significantly. Tribal committees also struggled to recruit new wardens, reflecting the financial weakness of the msea Act system: wardens were volunteers and were not remunerated for their work. In addition, executives generally could not cover costs, such as travel expenses, incurred during duty.\textsuperscript{330}

\textbf{18.5.2.2.2 OTHER TRIBAL EXECUTIVES}

\textbf{18.5.2.2.2.1 Opposition in the Waikato}

The Maniapoto Tribal Executive’s initial willingness to organise in response to the msea Act contrasted with areas surrounding the Kāwhia and Whāingaroa Harbours, as well as northern parts of the inquiry district around Pirongia, Te

\textsuperscript{322.} Notes of representations made to Minister of Māori Affairs, 13 March 1950 (doc A146, p 539).
\textsuperscript{323.} Document A72, p 124.
\textsuperscript{324.} AJHR, 1950, G-9, p 11 (doc A72, p 136).
\textsuperscript{326.} Document A72, p 136.
\textsuperscript{327.} Emery, annual report to district officer, Auckland, 28 March 1957 (doc A72, p 138).
\textsuperscript{328.} Emery, annual report to district officer, Auckland, 9 June 1956 (doc A72, p 138).
\textsuperscript{329.} Emery to Under-Secretary, 4 May 1953 (doc A72, p 137).
\textsuperscript{330.} Document A72, p 138.
Awamutu, and Wharepuhunga. In these areas, Māori did not engage with the Act until the Kīngitanga accepted the legislation in 1949.\(^{331}\) In addition, some committees that had been operating under the MWEO did not immediately accept the Act as they wanted to read and consider the legislation in Te Reo Māori.\(^{332}\) By 1956 however, many of the committees that had previously been operating under the MWEO had come to work within the legislation. Where this was not the case, alternative committees had formed, which did accept the Act.\(^{333}\)

The Kīngitanga leadership significantly influenced the rate and extent to which districts within the Waikato embraced the MSEA legislation. Because influential figures within the movement such as Te Puea Herangi were initially opposed to the MSEA Act, tribal districts were slow to form throughout Te Rohe Pōtæ. The stance of Princess Te Puea and the Kīngitanga leadership stemmed from a view that ‘there was not sufficient provision for influential District Māori leadership’ within the MSEA Act.\(^{334}\) Kīngitanga leaders were also concerned that the MSEA Act would undermine the existing regional unity within the Kīngitanga. In June 1950, however, the Kīngitanga changed its position and reluctantly approved the legislation. Acceptance of the MSEA Act was driven primarily by an awareness that the mechanisms of the MSEA would provide a more effective means of controlling the consumption of alcohol within Māori communities, and could be effective in combating the liberalising effects of the Licensing Amendment Act 1948 (the role alcohol and licensing in the district will be addressed in a forthcoming chapter).\(^{335}\)

Once the Kīngitanga accepted the legislation in 1950, districts throughout Te Rohe Pōtæ adopted the MSEA Act. Unfortunately, the evidence presented to the Tribunal contains relatively little detail about the operation of these district executives.

### 18.5.2.2.2 Waipā Tribal District

The formation of the Waipā Tribal District began with a hui in Te Awamutu in 1949. Representatives from Whatawahata, Pirongia, Parawera, Owairaka Valley, Maungatautari, and Kāwhia attended. At the hui, Te Puea’s support of the MSEA Act was confirmed. Those present consequently decided to form committees under the MSEA Act. Discussions began around the formation of a Waipā tribal district that would cover an area between Cambridge, Pirongia, and Wharepuhunga. The hui concluded that six committees would come under the Waipā Tribal District Executive: Maungatautari, Wharepuhunga, Parawera, Mangatoatoa, Kahotea, and Pirongia. In March 1950, the boundaries of the Waipa Tribal District were gazetted in accordance with the Act.\(^{336}\)

---

\(^{331}\) Document A72, pp 113–114; doc A72(b), p 8.

\(^{332}\) Document A72(b), p 8.

\(^{333}\) Memorandum 2.6.77, p 1055.


\(^{335}\) Document A72, pp 113–118.

\(^{336}\) Document A72, p 114.
18.5.2.2.3 Kāwhia Tribal District

Discussions around the formation of the Kāwhia Tribal District began slightly earlier than Waipā, in 1947. However, Māori participation in this region was also delayed until the Kingitanga leadership had accepted the legislation. In addition, the unwillingness of various groups within the Kāwhia area to cooperate with one another, and affiliation concerns, meant that the Kāwhia Tribal District took some time to form. Eventually, the Kāwhia Tribal Executive and District became established in 1955 when the Department of Māori Affairs renamed the Aotea Beach Tribal Committee the Kāwhia Tribal Committee and vested it with the powers of an executive. The establishment of an executive strengthened cooperation between Māori groups within the area.

18.5.2.2.4 Taumarunui District Tribal Executive

The Taumarunui District Tribal Executive appears to have administered an area ranging south from Ōngarue to the Taumarunui township. However, in the evidence presented there is very little information as to the creation and operation of the executive.

18.5.2.2.5 Tribal executives in and around the district

Despite the contribution of executives and committees – particularly the Maniapoto Tribal Executive – to multiple areas of local life, these bodies were unable to fulfil all the broad welfare functions set out in the MSEA. Tē Ao Hou, the magazine for the Department of Māori Affairs, noted in 1954:

They have in many places provided leadership and initiative. They have improved many maraes. This is a necessary beginning for the development of Māori communities. It establishes a basis of Māoritanga. Many committees have also helped in fighting social abuses such as drunkenness. This also can be a useful and necessary beginning. But how do we move from these beginnings to the expressed purpose of the committees: social and economic advancement of the people? What opportunities have the committees to improve farming, housing, education? The committees, being young, may not yet have fully explored these opportunities, yet their strength and leadership may lead to the introduction of a wide variety of new interests and social improvements.

MSEA Act bodies faced several challenges in implementing the legislation, stemming from issues around funding, as well as limited opportunities for political engagement, and to enact social and political change. Some executives also struggled with keeping accurate records and were not provided training in this area, which affected their ability to apply for funding. Lastly, the ability to pass and enforce bylaws was also rarely taken up by MSEA Act bodies. The following section...
reflects on these challenges to discuss whether tribal executives were able to enact a significant degree of Māori autonomy.

Financial resourcing primarily prevented the tribal executives and committees from effectively pursuing ‘social and economic advancement’. As voluntary organisations, executives and committees were reliant on fundraising and donations, which for certain approved purposes could then be subsidised pound for pound by the Government. While section 26 of the Act stated that funds could be raised and subsidised for anything that would contribute to the ‘physical, economic, educational, social, and moral benefit and advancement in life of Māoris within its district or area’ the criteria of the Department of Māori Affairs were strict. From 1954 onwards, the department increasingly favoured subsidising clearly defined ‘projects’ rather than ‘subsidising revenue’ and approval processes were increasingly restrictive.

The vast majority of subsidy applications to the Department of Māori Affairs involved marae and other community development projects. The department’s restrictive criteria stymied many of these applications. Successful subsidy applications for other purposes were also rare. For example, under section 27 of the MSEA Act, travel expenses and other administration costs could be subsidised. However, these types of costs were considered ‘a drain on funds available for marae projects’. From 1955 these were no longer approved. The department also took a restrictive approach to approving subsidy applications regarding education. In 1951, department officials decided to only consider education funding for groups rather than for individuals. The department also introduced restrictions around what forms of revenue raised by tribal committees and executives were eligible for subsidy. Consequently, from 1955 the MSEA Act was amended to exclude donations from Māori trust boards and Māori land incorporations as eligible for subsidy. Within Te Rohe Pōtae, approval for subsidies followed the national pattern described above. As the executives and committees became established between 1947 and 1951, they made subsidy applications for administration costs. Housing was another strong focus in the district. From 1950 onwards, Department of Māori Affairs subsidy applications sought funds for discrete marae building and community development projects.

Establishing a regular line of communication between Māori organisations and the Government was a key purpose of the Act. Within the inquiry district, however, MSEA committees and executives, including the Maniapoto Tribal Executive, were rarely used to communicate the views of Māori to the Government. Section 12 of the MSEA Act provided for such communication, specifying that MSEA bodies were to make recommendations to the Minister regarding issues affecting the general ‘well-being of the Māori race’. Two factors have been suggested as to why the MSEA bodies within Te Rohe Pōtae rarely made recommendations or expressed concern to the Government. First, the reports of the welfare officers

---

341. Document A72, pp126–133.
342. Document A72, p133.
to the Department of Māori Affairs were expected to focus on the activities and views of the welfare officer, rather than the activities and views of the committees and executives. As these reports were the formal liaison point between the MSEA bodies and government, this ‘did not provide a lot of scope for the communication of committees’ views to the [department]’. Secondly, where concern and protest were voiced, they were ‘not well received by the [department] and avenues for expression were curtailed’. From the evidence before the Tribunal, it appears that only in the course of visits from politicians were such opportunities available. For example, in 1950 the Minister for Māori Affairs, Ernest Corbett, visited Te Kūiti in respect of government policies. On this occasion tribal committees did make representations to him concerning issues affecting the district.

In some instances, government policies over which it had no control obstructed the efforts of the Maniapoto Tribal Executive. For example, a major post-war policy was the resettlement of the land with ex-servicemen. The settling of Māori ex-servicemen, administered through the Māori Rehabilitation Finance Committee, is discussed in chapter 17, but briefly returned to here in relation to autonomy. The powers of the Māori Rehabilitation Finance Committee were delegated under sections 10 and 11(1) of the Rehabilitation Act 1941. The committee was effectively the delegate of both the Rehabilitation Board and the Board of Māori Affairs. In turn, the Māori Rehabilitation Finance Committee enlisted the assistance of the regional tribal executives, including the Maniapoto Tribal Executive. However, within the inquiry district only 14 Māori ex-servicemen had been assisted onto land by 1958. The efforts made to settle returned Māori ex-servicemen were ‘impeded at best and frustrated at worst by the policies adopted respectively by the Rehabilitation Board and the Board of Māori Affairs’. These policies and their implications in the inquiry district are addressed in chapter 17. In addition, as the tribal executives were not delegated any substantive powers by the Māori Rehabilitation Finance Committee, they were limited in what they could achieve. The general expectation of the regional executives was that they would just ‘assist’ the Māori Rehabilitation Finance Committee, rather than exercise any delegated powers ‘with respect to selection and grading, the provision of land, and support’.

By the middle of the twentieth century, Te Rohe Pōtae Māori were able to exercise a limited degree of district autonomy through institutions such as tribal executives. In most respects, however, this was far removed from the mana whakahaere envisioned in the Te Ōhākī Tapu agreements. As established in part III of this report, Te Rohe Pōtae Māori had by this stage lost significant control over land management and had little consistent voice in or with local government (see

343. Document A72, p 121.
344. Transcript 4.1.17, p 1058 (Andrew Francis, hearing week 11, Wharauroa Marae, 3 April 2014).
349. Document A69(d) (Hearn responses), p 3.
chapter 19). And as discussed in this chapter, the self-government Te Rohe Pōtæ were able to exert was confined largely to welfare issues and framed by policy developed on the Crown’s terms. Mana whakahaere, had in many ways, been reduced to a shadow. In the second half of the twentieth century, however, new avenues for autonomy and self-government began to emerge. These are explored in the subsequent sections.

18.5.3 The Māori Women’s Welfare League

The Māori Women’s Welfare League was another institution significant to Māori self-government at a national level and within Te Rohe Pōtæ. Founded in Wellington in 1951, the league had its origins in the female welfare and liaison officers appointed by the MWEO to assist tribal committees in providing social welfare. It was constituted as a ‘non-partisan’ and ‘non-political’ forum for the discussion and advancement of ‘issues of regional or nationwide significance – such as education, health and housing’. It grew rapidly in the mid-twentieth century. By 1954, 303 branches operated throughout 64 district councils, and the organisation had 3,842 members nationwide. The first Te Rohe Pōtæ branch was established in Mōkau in 1949. By 1953, it had spread throughout much of the inquiry district.

The league focused on issues related to alcoholism, health, education, justice, social welfare systems, and, most particularly, housing, in the pursuit of Māori social and economic development. At local levels, it worked to improve domestic issues including housekeeping, childcare, and gardening. The first president of the organisation, Whina Cooper, encouraged women to take their rightful place as leaders in the home of our people. Take care of your children, see to their education, make the home the centre of your family life, be real helpmates to your husbands and assist them in their efforts to provide happy and contented homes.

The League produced reports assessing these issues in their districts, and coordinated regional competitions fostering development in these areas. For example, the Waikato Winter Show was held annually and three district councils (Hauraki,
Waikato, and Maniapoto) participated. The competition involved the districts competing for supremacy in a range of fields, including modern home-craft and Māori arts and crafts.

The league was both a highly influential body within Māoridom and a bridge between the Māori world, the Government, and wider New Zealand. During the mid-twentieth century and beyond, it was an important Māori conduit to the Government on regional and national issues, becoming ‘the main arena of discussion for issues of regional and nationwide significance’. While not established by statute, the league received administrative and financial support from the Department of Māori Affairs. Later, it became known as the ‘sister organisation’ of committees established under the MSEA Act. This rather ambiguous official position, ‘neither in nor out’ in regard to its relationship with government, created some problems for the organisation, but also facilitated opportunities and assisted it in achieving success in some areas. Some historians suggest that this was likely because for some Te Rohe Pōtāe communities (and Māori generally) the league was not immediately associated with control by the State.

There was nevertheless considerable debate amongst Māori communities as to what the nature of the relationship between the league and the Government should be. Despite the benefits of being perceived as autonomous, members in charge of the organisation remained aware that the financial assistance of the Government (through the Welfare Division) was essential to its operations. It was therefore imperative to maintain a significant connection with the Government.

In our view, the support for the league demonstrates the willingness of the Crown by 1951 to work with, facilitate, and ‘even encourage Māori self-organisation and self-determination on welfare and community development at a national level.’

The success of the league was later used to advocate for a national organisation for the tribal committees and executives of the Māori Welfare Organisation. This organisation would become the New Zealand Māori Council. When the Bill to establish the New Zealand Māori Council (discussed in section 19.7.1.2) and associated district Māori councils was introduced to Parliament, Minister JR Hanan referred to the league and stated:

The setting up of a New Zealand council of tribal organisations can, I think, infuse into those organisations something of the spirit of enthusiasm and enterprise that has made the Māori Women’s Welfare League such a strong influence for good among the

357. Hill, Māori and the State, p 72 (doc A72, p 145).
358. Document A72, p 139.
361. Waitangi Tribunal, Whaia te Mana Motuhake, p 64.
Māori people. In this case we perhaps acknowledge that the Māori women of New Zealand have pointed the way.362

It is important to note, however, that, while a productive self-improvement organisation enabling direct communication with the Government, the league’s practical emphasis on community development was in many respects a far cry from the mana whakahaere enshrined in the Te Ōhāki Tapu agreements. Despite its benefits, the league was not established as a local self-government entity of the sort Te Rohe Pōtæ Māori expected as a result of the Treaty partnership and the Te Ōhāki Tapu agreements.

18.5.4 Māori trust boards
The ability of Māori to regulate their own communities, particularly financial interests, received a boost during the middle of the twentieth century from the introduction of Māori trust boards. In the 1920s, the Crown had piloted a model of iwi trust boards, operating under general trust legislation.363 The Crown established these trusts essentially as vehicles for tribes to receive and manage payments it was beginning to make in compensation for land confiscation.364 In 1926, the Crown established a royal commission of inquiry into raupatu (confiscated lands). Known as the Sim commission after its chairman, Supreme Court Judge William Sim, the commission recommended an annual payment of £3,000 for what it described as the ‘excessive’, albeit ‘justified’ confiscation of Waikato lands following its 1863 invasion of the district.365

Ngāti Maniapoto leader Pei Te Hurinui Jones played a key role in subsequent negotiations. Jones assisted in preparing the Waikato-Maniapoto Māori Claims Settlement Act, passed on 7 October 1946 ‘to effect a final settlement of certain claims relating to the confiscation of Māori Lands in the Waikato District, and to provide for the Control and Administration of Moneys granted as Compensation’.366 Section 3 of the 1946 Act provided for an annual grant of £6,000 for no more than 45 years and £5,000 thereafter in perpetuity. Section 5 of the 1946 Act established an entity, the Tainui Māori Trust Board, to receive and administer these funds. Importantly, Jones was Māori King Korokī’s nominee on the Tainui Māori Trust Board, emphasising the enduring links between Maniapoto and the Kingitanga.367

363. Hill, Māori and the State, p 47.
364. Hill, Māori and the State, p 47.
Mana Wāhine in Te Rohe Pōtæ

Te Rohe Pōtæ wāhine had an active role in governance and community organisation within the district. The legacies of these women have continued for generations. They are only some women among many from Te Rohe Pōtæ who had a significant role in asserting not only their own autonomy, but also that of Te Rohe Pōtæ Māori in the face of encroaching government and settler interference in the district. While their influence in the inquiry district has been immense and continues today, the particular contributions of several wāhine are highlighted here.

As mentioned in chapter 14, for 15 years Kahutopuni Ripeka Ngatai, or Granny Burgess, persistently lobbied the Waikato-Maniapoto District Māori Land Board and Government for fair payment for the sale of her land interests, including those in Pukenui 273 and Rangitoto–Tuhua 7282. The registrar accused her of being too generous in spending money she received from the board, which was one reason given as to why she would not receive outstanding money owed to her. In 1934, the Commission on Native Affairs determined that Granny Burgess had just cause for complaint and so ordered that she be immediately paid what was owed to her.

Dame Rangimarie Hetet was a founding member of the Māori Women’s Welfare League and a leading figure in the Māori cultural revival of the mid-to-late twentieth century. Both Dame Rangimarie and her daughter, Diggeress Rangituatahi Te Kanawa, were tohunga raranga (master weavers) who taught generations of women the traditional art form within schools and the wider community. Hetet participated in several significant exhibitions across New Zealand and internationally, including in Washington DC at the Smithsonian Institute and in the travelling exhibition of the Te Waka Toi contemporary collection, which toured the United States in 1992–93.

Tuaiwa Hautai ‘Eva’ Kereopa (known as ‘Eva Rickard’) followed in the steps of her tūpuna following her mother’s death, fighting for whānau land at Te Kōpua that was taken by the Government at various points in the nineteenth and twentieth centuries. She was involved in negotiations for the return of this land, which included the Raglan Golf Course, between 1976 and 1990. Her arrest for wilful trespass, along with 16 others, in 1978, was dismissed on a technicality, but media coverage had a significant impact on the Māori land movement. Once Te Kōpua was returned, she helped to establish educational facilities and emergency housing on the land and remained politically active for some years to come. More detail about Rickard’s life can be found in chapter 20.

Sister Heeni Wharemuru was a close confidante of Te Arikinui Dame Te Atairangikaahu, her niece, and therefore a loyal devotee to the Kingitanga. She

---

In October 1955, Parliament passed dedicated legislation to rationalise and codify the boards, the Māori Trust Boards Act 1955. This move partly reflected the increasing influence of Māori figures within the public sector, particularly Tipi Tainui Ropiha, administrative head of the Department of Māori Affairs between 1948 and 1957. The Act constituted 12 regional Māori trust boards, including under section 7, the Tainui Māori Trust Board. The organisation was a continuation of the Tainui Māori Trust Board set up by the Māori Claims Settlement Act 1946. No board was established specifically for Te Rohe Pōtae (see chapter 19, section 19.8), while, as mentioned, Pei Te Hurinui Jones occupied a position on the Tainui board nominated by King Korokī. However, the 1960 Māori Trust Board Regulations did not list Maniapoto among the specific sections or divisions of Tainui beneficiaries empowered to elect a member to the board.

Under section 9 of the 1955 Act, the boards would be body corporates, capable of holding real and personal property. Under section 15(2) of the 1955 Act, trust board members were appointed for three years, but could be reappointed. Each board was also required to elect a board chairman from amongst its members. The appointment of a deputy chairman was optional. Boards were also able to appoint advisory groups such as board committees or councils of elders or young people. Councils of elders might advise on matters of tikanga, while councils of young people might advise on the needs and interests of their demographic amongst the beneficiaries. The only member of the board whose appointment required ministerial approval was the secretary. Appointment of all other members was solely the responsibility of the boards, facilitating their autonomy.

---

Section 24 and 24A of the Act set out the range of activities to which boards could apply their funds. These included the promotion of health, social and economic welfare, education and vocational training, and any other additional purposes the boards determined.\textsuperscript{372} The Act also outlined specific reporting and accountability rules, including requirements to prepare annual reports, to hold annual hui, to present annual reports to beneficiaries at annual hui, and to provide annual reports to the Minister for information purposes only.\textsuperscript{373} As historian Richard Hill has observed, the boards provided Māori a focal point for ‘retaining or regaining a degree of autonomy in a generally unsympathetic environment’ and were represented at the time as a recognition by the state of tribal authority.\textsuperscript{374} The Maniapoto Māori Trust Board, most relevant to the inquiry district, would not be established until 1988. Section 19.7.1.3 examines the genesis, structure, and responsibilities of that organisation.

\textbf{18.5.5 Changing political environment and reassessment of the \textit{MSEA} Act}

The policies and organisations established under the Māori Social and Economic Act 1945 changed little until the mid-1950s. From this point onward, however, Māori and government officials became increasingly aware of several key limitations of the 1945 Act.

First, the Act did not enable coordinated efforts at a district level amongst the tribal executives. This was a major impediment to the operating efficiency of the executives. Secondly, the \textit{MSEA} legislation had been developed when rural Māori moving to the cities to help with the war effort was a relatively new and minor trend. It was unforeseen at that time that urban migration would also increase dramatically as the Māori population grew in the post-war decades.\textsuperscript{375} Attempts were made to remedy these issues, for example the creation in 1959 of ‘Māori District Councils’. Inspired by the success of the Māori Women’s Welfare League structure, these councils were intended to operate as an ‘overarching national council’.\textsuperscript{376} Within Te Rohe Pōtae, there were also instances of successful inter-regional cooperation. In 1956, for example, several inter-regional conferences were convened, at which ‘progressively more complex regional and national issues’ were discussed.\textsuperscript{377}

Despite such dialogue, the absence of district-level coordination and pressures associated with urbanisation continued to generate growing dissatisfaction amongst Māori, in particular a sense that Māori concerns were not being addressed.\textsuperscript{378} This was the state of affairs when the Labour Party returned to power in 1957. Contrary to widespread public expectation, Tirikātene did not become the Minister for Māori Affairs. Instead, Labour Prime Minister Walter Nash took this

\begin{itemize}
  \item \textsuperscript{372} Māori Trust Boards Act 1955, s 24.
  \item \textsuperscript{373} Māori Trust Boards Act 1955, ss 23C, 23D, 31–32.
  \item \textsuperscript{374} Hill, \textit{Māori and the State}, p 47.
  \item \textsuperscript{375} Document A72, p 152.
  \item \textsuperscript{376} Document A72, p 157.
  \item \textsuperscript{377} Document A72, p 145.
  \item \textsuperscript{378} Document A72, p 156.
\end{itemize}
portfolio over and Tirikātene became associate to the Minister of Māori Affairs, despite this role holding 'little official status'.\(^{379}\) Undeterred, Tirikātene submitted to Cabinet a list of Māori issues requiring urgent government attention. Amongst these issues was a request that an independent report on Māori welfare be undertaken. The report, by Jack Hunn, the deputy chairman of the Public Service Commission, was released in 1960. Officially titled *Report on Department of Māori Affairs*, it became widely known as the Hunn report.\(^{380}\)

Chapters 16 and 17 of this report set out the Hunn report’s conclusions on Māori land title consolidation and social assimilation, respectively (see chapter 16, section 16.5, and chapter 17, section 17.3). The report, however, also touched on Māori governance organisations. Hunn believed that Māori required assistance to achieve socio-economic parity with Pākehā and that the efforts of the Department of Māori Affairs were no longer sufficient considering the significant increase in population and the continued trend of Māori urbanisation.\(^{381}\) The report noted that legislation would soon be enacted to establish district Māori councils and a dominion Māori council ‘to speak for the tribal organisation on a national plane’.\(^{382}\) Hunn recommended this action in a 1960 memorandum to Prime Minister Walter Nash.\(^{383}\) The Māori Social and Economic Advancement Amendment Act 1961 was passed soon after, followed by the Māori Community Development Act 1962. The latter legislation and its implications for Māori political organisation are discussed below.

### 18.6 Autonomy and Self-government from 1962

This section considers Māori associations and trusts established from 1962 onward, the extent to which they operated in the inquiry district, and the statutory powers and resources they were equipped with. The Māori Community Development Act 1962 was the major enabling legislation for Māori associations formed during the mid-twentieth century, including those which operated in Te Rohe Pōtae. This section thus begins with a discussion of the 1962 Act.

#### 18.6.1 Māori Community Development Act 1962

Passage of the Māori Community Development Act 1962 followed the conclusions of the Hunn report.\(^{384}\) The Act provided for the constitution of a range of Māori associations, defined their powers and functions, and consolidated and amended its precursor, the Māori Social and Economic Advancement Act 1945.

Under section 8(1) of the 1962 Act, the tribal committee areas of the Māori Social and Economic Advancement Act became Māori committee areas, each of

---

\(^{379}\) Document A72, p 155.


\(^{381}\) Document A72, p 159.

\(^{382}\) Hunn, *Report on Department of Māori Affairs*, p 80.

\(^{383}\) Waitangi Tribunal, *Whaia Te Mana Motuhake*, p 82.

\(^{384}\) Memorandum 2.6.77, p 1062; submission 3.3.980, p 1062.

61
which would have a Māori committee.\footnote{Māori Community Development Act 1962, ss 8(1), 9; Māori Social and Economic Advancement Act 1945, s14.} Sections 10 and 18 stated that the Māori committees had the same functions of the New Zealand Māori Council within their committee area. In section 18, it stated that one of the functions of the New Zealand Māori Council would be, among other things, to encourage Māori ‘to apply and maintain the maximum possible efficiency and responsibility in their local self-government and undertakings’\footnote{Māori Community Development Act 1962, s 18.}

Section 12 of the Act declared that tribal districts under the MSEA Act would now become Māori executive committee areas.\footnote{Māori Community Development Act 1962, s 11(1); Māori Social and Economic Advancement Act 1945, s6.} Similarly, each Māori executive committee area would have a Māori executive committee.\footnote{Māori Community Development Act 1962, s12.} Section 13 stipulated that Māori executive committees would be ‘subject in all things’ to the control of the district Māori council in whose district the committee operated. The addition of district Māori councils under section 14 and 15 and the overarching New Zealand Māori Council established under section 17, added regional and national tiers to the earlier structure of the MSEA Act 1945. The Crown subsidised the bodies established under the 1962 Act, in keeping with the funding provisions of the earlier legislation.\footnote{Submission 3.3.980, p 1065.} However, the Act ‘provided no clear indication as to the types of projects for which Māori could receive state subsidies’.\footnote{Submission 3.3.980, p 1103.} Contributions to costs could be received from the New Zealand Māori Council down through the district Māori councils to the Māori executive committees, and on to the Māori committees.\footnote{Waitangi Tribunal, Whai te Mana Motuhake, p 6.} The councils were thus forced to fund themselves as far as possible.

As noted above, the Māori Community Development Act 1962 provided for a governance and management structure collectively known as Māori associations. These associations included the New Zealand Māori Council, district Māori councils, Māori executive committees, and Māori committees. The Act envisaged overlapping relationships between these tiers of self-government, with the New Zealand Māori Council at the apex.\footnote{Document A72, pp 168–169.}

The first of its kind, the New Zealand Māori Council was a statutory, government-supported, national Māori organisation with the express purpose of advising the Government on Māori policy. Each district Māori council appointed three members to the New Zealand Māori Council. Turi Carroll of Ngāti Kahungunu was elected the first president and Ngāti Maniapoto leader Pei Tē Hurinui Jones was elected vice-president (and president from 1969 to 1972).\footnote{Document A72, pp 168–169.}
The New Zealand Māori Council received widespread support from Māori throughout the country. It demonstrated that the Crown was responding to the conclusions of the Hunn report, discussed in chapters 16 and 17 of this report. Soon after the New Zealand Māori Council’s establishment, however, Māori began raising concerns, particularly regarding its funding. The council could receive funds by donations and by requiring district Māori councils to make contributions. It could also receive parliamentary funds, leading to questions about its ability to oppose the Government, even if it was within its legal right to do so.

District Māori councils were defined geographically, coinciding with the seven Māori Land Court districts (Taitokerau, Waikato-Maniapoto, Waiairiki, Aotea, Tairawhiti, Ikaroa, and Waipounamu), as well as a separate council representing Auckland city. The councils shared the same functions of the New Zealand Māori Council under section 18(1) of the 1962 Act, tasked to ‘advise, direct, and generally supervise’ Māori executive committees and Māori committees in their district. The district Māori councils, in turn, reported to the New Zealand Māori Council, and were required by law to follow its directions. Much like the New Zealand Māori Council, district Māori councils could receive funding through donations, by requiring Māori executive committees in their district to make a contribution for their administrative costs and expenses, and government subsidies.

The Waikato-Maniapoto District Council was formed in April 1962. Its first three representatives were Barney Raukopa (Paeroa), Luke Rangi (Hamilton), and Charles Davis (Te Kūiti). In evidence given during the inquiry’s Ngā Kōrero Tuku Iho hui phase, claimant Te Pare Joseph described a dialogue between the Kīngitanga and Pei Te Hurinui Jones as pivotal to the genesis of the local council (though it is unclear whether he was referring to the Waikato-Maniapoto District Council or the general presence in the district of the New Zealand Māori Council). According to Joseph, meetings occurred at Ngāruawāhia:

hui ētahi o ngā tāngata nei ki Ngāruawāhia. Te Take ō tā rātou hui he whakatū Kaunihera, Kaunihera Māori nā ko ngā tāngata o konei, ā, ko ngā Tāra-o-te-ika mā, Tama Reweti mā, Kingi Wetere mā āe ētahi anō rātou nō roto o Rereahu hui rātou i Ngāruawāhia tō rātou whare hui tēnei taha o te awa. I waenganui te hui, ka haere te kōrero ki a Te Hurinui, e Pei, haere tukua kore atu tō tātou tamaiti e whakatū Kōmiti ana tātou, ko te tamaiti e kōrero tōko nei ko Kingi Korokī, engari ērā wā kore te whakahua ki a ia tā tātou tamaiti, eharo ko te mea e whakaiti i a Korokī kāo he tohu rangatira ki a rātou. Ā ka haere atu Te Hurinui te kōrero atu ki a Korokī me te whakatū Kaunihera te iwi nei, ko te take pea e hiahia ana kia rongo atu rātou te whakaāetanga a Korokī ko tā rātou mahi, ko te whakahokia a Te Korokī ki a Te Hurinui mehemea he

395. Hill, Māori and the State, p.113.
396. Waitangi Tribunal, Whaia te Mana Motuhake, p.7.
399. Waitangi Tribunal, Whaia te Mana Motuhake, p.7; Māori Community Development Act 1962, s16.
400. Document A72, p.166.
painga kei roto mahingia te mahi ka mutu i konā, koirā tana kōrero āe mehemea pai ake kei roto i tērā mahi a koutou mahingia. Ko te roopu nei konā te timatanga o te New Zealand Māori council i waenganui i a Waikato Maniapoto.

[meetings occurred] at Ngāruawāhia and their meeting house was on this side of the river. During the hui some said to Pei, go and talk to our child, our king, that we were establishing a committee and the child they were referring to was Kingi Koroki, but in those days they used to say our child. No, it was not a belittling thing. But it was a token of status and Hurinui went to Koroki and said to him 'We are establishing a Māori Council'. The reason [was] they wanted to hear Koroki's response, and Koroki said to Hurinui 'If there is good within, do the work'. That is all he said, all he said. 'If there is good within your work, do it'. This group was the commencement of the New Zealand Māori Council in Waikato Maniapoto.401

Māori executive committees and Māori committees operated in and performed similar functions to district Māori councils and the New Zealand Māori Council, though on a much smaller scale and focused on their local areas within these regions. Both committees' areas were based on the tribal district areas set out under the Māori Social and Economic Advancement Act 1945. Māori committees were required to report to Māori executive committees which, in turn, reported to district Māori councils. Both associations shared the functions conferred on the New Zealand Māori Council by section 18(1) of the 1962 Act regarding Māori in their respective area, subject to the control of the association overseeing them.402 In addition to these general functions, Māori councils could also give out liquor permits under certain circumstances.403 Both associations were also able to raise funds through donations and government subsidies and Māori executive committees were further able to require Māori committees to make contributions to their administrative costs.

On a national level, Māori associations were by-and-large seen as a means of providing Māori with 'a “modern” and national form of Māori identity’ as urban migration gathered pace and many moved away from tribal homelands.404 Their structure, which provided for a level of ‘local’ participation with the New Zealand Māori Council at the apex, established a new form of Māori autonomy and engagement with each other (and, to an extent, the Crown), that did not exist previously.

In Te Rohe Pōtae, however, the Māori committee system did not come to exert quite the same degree of community influence as in many other parts of the country. This pattern reflected the existence of other organising frameworks, not least of which was the Kingitanga, which remained a strong unifier of Māori in the district. In a paper published from a national conference of Māori committees
in 1978 reflecting on the history of the New Zealand Māori Council system, for example, Waikato-based geographer and future Waitangi Tribunal member Evelyn Stokes noted: ‘It is well known in the Waikato that Māori Committees are not very effective where the Kingitanga is strong for many Waikato people perceive the Kingitanga as a more effective direct means of communication with government.’

While Māori associations likely played a part in providing a conduit for Te Rohe Pōtae Māori voices to engage in dialogue with the Crown, it appears that the Kingitanga, and local forms of tribal-based identity and coordination, remained central to Māori of this district in retaining and asserting autonomy on their terms. One significant local form of tribal-based organisation that took hold during the late twentieth century (that would prove influential) was the Ngāti Maniapoto Marae Pact Trust, explored in the following section.

18.6.2 The Ngati Maniapoto Marae Pact Trust

The Ngati Maniapoto Marae Pact Trust’s own historical summary states that a perception existed within the iwi up until the late 1970s that ‘Maniapoto identity and mana was in decline.’ In an effort to address that ongoing concern, Maniapoto whānau established a marae-based collective intended to ‘rekindle whanau connectedness to their Maniapoto marae.’ This collective, in turn, established the Ngati Maniapoto Marae Pact Trust in 1980. Initially, the trust’s main purpose was to help raise and provide funds for marae development and maintenance. By 1986, it had broadened its focus and began offering training and education programs. The marae pact trust has continued to grow since then, and now provides services for a diverse range of health, disability, and social services to iwi and whānau in the district. Unlike many of the other frameworks for self-government, this trust was entirely developed outside of a direct government initiative to officially provide for self-government.

In response to the growing diversity of its operational activities, the trust established four ‘divisions’ to harmonise these different responsibilities. Since 1991, it has established and run the Maniapoto Training Agency, which provides education and training programs, particularly in the areas of forestry, agriculture, and employment skills; the Maniapoto Community Services Division, which provides a range of health, disability, and social services; the Maniapoto Trades

406. Submission 3.3.980, p 1064.
and Services Division, which secures and manages contracts for those who completed programmes with the Maniapoto Training Agency; and the Maniapoto Administration Services Division, which manages much of the trust’s administrative functions.\textsuperscript{410}

18.6.3 The Maniapoto Māori Trust Board

The Māori Trust Board Act 1955 (mentioned in section 19.6.4) established Māori boards for 12 broad geographical-iwi groupings: Te Arawa, Aorangi, Aupouri, Ngāi Tahu, Ngāti Whātau o Ōrākei, Tainui, Taranaki, Tūhoe-Waikaremoana, Tūwharetoa, Wairoa-Waikaremoana, Whakatōhea, and Tai Tokerau. As already discussed, while the 1955 Act did not create a dedicated trust board for Maniapoto or Te Rohe Pōtæ, Pei Te Hurinui Jones, as a key Māori leader of this district, participated at a high level in the Tainui governance structure through his Kingitanga-nominated seat on the Tainui Māori Trust Board.

Despite the local absence of a dedicated trust board established by statute, the Maniapoto Māori Trust Board notes in its official history that during the late 1970s and throughout the 1980s, the Ngati Maniapoto Marae Pact Trust (see chapter 19, section 19.7.1.2) nonetheless ‘provided a critical forum to focus on current and emerging key issues for Maniapoto’.\textsuperscript{411} From these origins, ‘a small but dedicated team was formed to identify and develop key strategies for Ngāti Maniapoto’. This team identified the establishment of an iwi trust board as a key objective for the Te Rohe Pōtæ community. Several hui were held in the early 1980s to discuss the importance of forming a trust board, including one at Te Tokanganui-a-Noho Marae in Te Kūiti.\textsuperscript{412}

The growing demand for a dedicated Maniapoto trust board aligned during the 1980s with the policies of the fourth Labour government, elected in 1984. The new government sought to devolve some authority and services to iwi authorities and associations, in service of the State’s plans to address and provide reparations for Māori historical grievances.\textsuperscript{413} It should be noted that as Minister for Māori Affairs, Koro Wetere of Ngāti Maniapoto, played a key role in this process. This ‘iwi devolution strategy’, amongst other intended effects, would provide targeted funding to iwi authorities to address a range of issues including Māori education, employment, and health.\textsuperscript{414}

These political currents assisted in realising long-term Maniapoto goals in 1988, when the Maniapoto Māori Trust Board was established under the Maniapoto Māori Trust Board Act 1988, to operate ‘within the meaning and for the purposes of the Māori Trust Boards Act 1955.’\textsuperscript{415} Under section 8 of the 1988 Act, the trust


\textsuperscript{412} Wetere, The Maniapoto Māori Trust Board, pp 6–7.

\textsuperscript{413} Hill, Māori and the State, pp 199–201.

\textsuperscript{414} Wetere, The Maniapoto Māori Trust Board, p 6.

\textsuperscript{415} Maniapoto Māori Trust Board Act 1988, s 4.
board was structured in significant part around regional management committees. There were initially six committees (Mōkau-ki-Runga; Tuhua/Hikurangi; Tokanganui-a-noho; Nehenehenui; Hauauru-ki-Uta; and Rereahu). These committees each represented several marae. A seventh regional management committee (Ngā-Tai-ō-Kāwhia) was later added at the instigation of Kāwhia Marae.\textsuperscript{416} The regional management committees comprised two representatives from each of their constituent marae. From their members, the regional management committees subsequently appointed one representative to the trust board.\textsuperscript{417} Section 7 of the Act also provided for the establishment of a Kaumātua Council (Te Kaumātua Kaunihera ō Maniapoto) to ‘advise the board on matters involving tikanga, te reo and kawa’. The 54 marae represented by the regional management committees are listed in table 18.1.

While important, the regional management committees were far from the only groups represented on the trust board. In accordance with section 6(c) of its Act and the Māori Trust Board Regulations 1985, the Maniapoto Māori Trust Board consisted of 15 persons, including:

- six members directly elected by beneficiaries of the board;
- seven members elected by the regional management committees (RMCs);
- one member appointed by the Governor-General on the recommendation of the Minister of Māori Affairs, nominated by, and representing, Māori Queen Te Arīkinui (later Te Arīkinui Tūheitia Paki); and
- one member appointed by the Governor-General on the recommendation of the Minister of Māori Affairs, nominated by, and representing, Te Kaumātua Kaunihera o Maniapoto.

The provision for a representative of the Kingitanga was significant, signalling reciprocation of the Kingitanga’s historical nomination of Pei Te Hurinui Jones to the Waikato-Tainui Māori Trust Board and the enduring relationship between Te Rohe Pōtai Māori, Tainui, and the Kingitanga.

Under section 42(1) of the Māori Trust Boards Act 1955, the trust board was also required to establish and maintain a tribal register (called in the Act a roll of beneficiaries). Under section 15(1) of the 1955 Act, board members are appointed for a term of three years. On 27 January 1989, an interim board was appointed, consisting of Brian Jones (chair), Rongo Wetere (vice chair), John Kaati (vice chair), Dan Te Kanawa, Canon Rua Anderson, Sister Heeni Wharemara, Kingi Hetet, Karena Terry, Ramona Huia, Robert Koroheke, Ngawai Tane, Mariata King, and Mere King. These individuals had all played significant roles in Maniapoto society and would continue to do so through the trust board. Wetere, who chaired the trust board from 1990 until 1997, noted in one of his final reports to the board that during its first eight years of operation, three elections were held. By 1997, only three of the original interim trustees remained on the board and 31 people had served as trustees up to that point.\textsuperscript{418} From its outset, the trust board strove

\textsuperscript{416} Wetere, The Maniapoto Māori Trust Board, p9.
\textsuperscript{417} Wetere, The Maniapoto Māori Trust Board, p7.
\textsuperscript{418} Wetere, The Maniapoto Māori Trust Board, pp10–11, 15.
### Regional management committee

<table>
<thead>
<tr>
<th>Regional management committee</th>
<th>Marae</th>
<th>Marae</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rereahu</td>
<td>Te Miringa Te Kakara</td>
<td>Te Hape</td>
</tr>
<tr>
<td></td>
<td>Mangapeehi</td>
<td>Te Ihingarangi</td>
</tr>
<tr>
<td>Mōkau ki Runga</td>
<td>Maniaroa</td>
<td>Te Kawai Papakainga</td>
</tr>
<tr>
<td></td>
<td>Mōkau Kohunui</td>
<td>Tuhua/Hikurangi</td>
</tr>
<tr>
<td></td>
<td>Napinapi</td>
<td></td>
</tr>
<tr>
<td>Tuhua Hikurangi</td>
<td>Ngā Hapū (Ohura) Kaitupeka</td>
<td>Waipu</td>
</tr>
<tr>
<td></td>
<td>Te Koura</td>
<td>Tuwhenua</td>
</tr>
<tr>
<td></td>
<td>Manu Ariki</td>
<td>Peetania</td>
</tr>
<tr>
<td></td>
<td>Te Rongoroa</td>
<td>Wharauroa</td>
</tr>
<tr>
<td>Hauauru Ki Uta</td>
<td>Marokopa</td>
<td>Te Kauae</td>
</tr>
<tr>
<td></td>
<td>Pohatuiri</td>
<td>Te Korapatu</td>
</tr>
<tr>
<td></td>
<td>Tokikapu</td>
<td>Rere a Manu</td>
</tr>
<tr>
<td></td>
<td>Kapatuhi</td>
<td></td>
</tr>
<tr>
<td>Nehenehenui</td>
<td>Purekireki</td>
<td>Te Kohitanga</td>
</tr>
<tr>
<td></td>
<td>Te Kopua</td>
<td>Ko Te Hokingamai ki te Nehenehenui</td>
</tr>
<tr>
<td></td>
<td>Mangatoatoa</td>
<td>Te Whakaaro Kotahi</td>
</tr>
<tr>
<td></td>
<td>Kahotea</td>
<td>Hiona</td>
</tr>
<tr>
<td></td>
<td>Te Keeti</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Tarewaanga</td>
<td>Kakepuku Papakainga</td>
</tr>
<tr>
<td></td>
<td>Turitea</td>
<td></td>
</tr>
<tr>
<td>Te Tokanganui a Noho</td>
<td>Te Kumi</td>
<td>Mangarama</td>
</tr>
<tr>
<td></td>
<td>Oparure</td>
<td>Te Ahoroa</td>
</tr>
<tr>
<td></td>
<td>Te Tokanganui a noho</td>
<td>Te Piruru</td>
</tr>
<tr>
<td></td>
<td>Motiti</td>
<td>Tane Hopuwai</td>
</tr>
<tr>
<td></td>
<td>Tomotuki</td>
<td></td>
</tr>
<tr>
<td>Ngā Tai o Kawhia</td>
<td>Te Mahoe</td>
<td>Mokai Kainga</td>
</tr>
<tr>
<td></td>
<td>Tokopiko</td>
<td>Rakaunui</td>
</tr>
<tr>
<td></td>
<td>Mokoroa</td>
<td></td>
</tr>
</tbody>
</table>

The 54 marae represented by the regional management committees

to improve Maniapoto community capacity in the ways open to it through legislation. Section 24 of the 1955 Act empowered Māori trust boards to carry out a variety of functions related to the promotion of health, socio-economic welfare, education, and vocational training. By 1994, for instance, the trust board had met an early target of overseeing the development of 10 kōhanga reo, one kura kaupapa Māori, and one wānanga in the rohe.\(^{419}\)

Beginning in the 1990s, supporting a wide range of settlements of Te Rohe Pōtae Treaty issues became one of the trust board’s main roles. In 2006, the trust board

---

\(^{419}\) Wetere, *The Maniapoto Māori Trust Board*, p 16.
became trustee for Maniapoto commercial fisheries under the Māori Fisheries Act 2004. A postal vote in December 2006 returned a 90 per cent majority of support for the trust board to establish a fisheries trust. The Maniapoto Fisheries Trust subsequently received approximately $17 million in assets. \(^{420}\) The trust board later represented Maniapoto interests in the ngā wai o Maniapoto agreement for co-governance arrangements for the Waipā River under the Ngā Wai o Maniapoto (Waipā River) Act 2012.

Since the early 2000s, the trust board has been involved in assisting claimants in the Waitangi Tribunal’s Te Rohe Pōtae district inquiry. Most recently, in December 2016, the Crown recognised the trust board as the mandated entity to negotiate on behalf of the Crown-recognised Maniapoto Large Natural Group.

18.6.4 Opportunities for Te Rohe Pōtae Māori self-government and autonomy from 1962

More than any other time period examined in this chapter, from 1962, Te Rohe Pōtae Māori gained a demonstrable degree of autonomy over many aspects of their affairs, particularly in the fields of community development, tribal governance, and local social service provision. This level of social self-responsibility, however, remained in many respects significantly short of the wide-ranging administrative autonomy and self-government Te Rohe Pōtae rangatira expected when they signed the Treaty of Waitangi and that would later be confirmed in negotiations with the Crown through the Te Ōhākī Tapu agreements.

While the establishment of Māori associations was a postive first step in recognising Māori autonomy in Te Rohe Pōtae, it was evident that the district Māori councils and committees in particular lacked the continued government support they needed to make substantial change at a local level. In terms of recognising Te Rohe Pōtae Māori autonomy, the establishment and operation of Māori trusts was clearly the most successful initiative discussed in this chapter. The trusts, and particularly the Ngati Maniapoto Marae Pact Trust were, however, largely iwi and hapū led and developed with limited Crown support. The creation of the Maniapoto Māori Trust Board by statute in 1988 instituted an organisation with a mandate for wide-ranging tribal development and clearly defined powers and accounting responsibilities. \(^{421}\) This organisation used its high level of organisation and support to increase tribal capacity in areas including governance, record keeping and education, eventually becoming increasingly involved in supporting Treaty claims in the inquiry district.

18.7 Treaty Analysis and Findings

Parts I and II of this report found that prior to the 1880s, Te Rohe Pōtae Māori had exercised mana whakahaere over their lands and resources, governing their communities according to tikanga. With the opening of Te Rohe Pōtae to settlement,
the Crown agreed that it needed to recognise some form of continuing local self-government of the district, most significantly through the provision of native committees. We have discussed the extent to which the Kawhia Native Committee was able to provide for continuing mana whakahaere in our earlier chapters and we recap some of that here. As the native committee system became increasingly inoperative and abandoned by the late 1890s, the Crown responded to growing Māori pressure to provide new systems for Māori self-governance into the twentieth century, including for communities of Te Rohe Pōtæ and beginning with the Māori councils established from 1900.

As established in chapter 3, both article 2 of the Treaty and the Te Ōhāki Tapu agreements bestowed upon the Crown a duty to actively protect Māori autonomy and self-governance in Te Rohe Pōtæ. We agree with the findings of the Central North Island and Te Urewera Tribunals that the Crown was obliged to give effect to the Treaty’s recognition of Māori autonomy through models or options available or suggested to it at the time.422 Our assessment of the evidence in Te Rohe Pōtæ leads us to conclude, much in accord with those Tribunal reports, that successive governments failed to realise a workable system of self-government for Māori. In this chapter, we build on our existing findings made in other chapters of this report, relating to a series of lost or partially fulfilled opportunities for the Crown to comply with its Treaty obligations:

- The Crown did not pursue an available option for Māori self-governance when it declined to establish Te Rohe Pōtæ as a native district under section 71 of the Constitution Act 1852. Nor did it allow establishment of a State-sanctioned rūnanga under the Native Districts Regulation Act 1858 due to unsubstantiated concerns regarding the involvement of the Māori King.

- The Kawhia Native Committee, established under the Native Committees Act 1883, was another lost opportunity for the Crown to fulfil its Treaty obligations. The 1883 Act did not fund the committee; empower it to collect fees that might have enabled self-funding, or allow it to determine title within the rohe boundaries. The paucity of these and other statutory powers frustrated committee members. The committee was at first able to leverage the Crown’s need to access the district to acquire prerogatives exceeding its statute. As the balance of power shifted in the Crown’s favour following the Te Ōhāki Tapu agreements, this leverage disappeared and the committee was consigned to relative obscurity.

- In regard to the Māori councils established by the Māori Councils Act 1900, we confirm the conclusions of the Central North Island Tribunal that this system was potentially Treaty-compliant to the extent that it provided an opportunity for the Crown to ‘give effect to its Treaty guarantees of Māori autonomy and self-government’.423 However, we find that potential was not fulfilled in Te Rohe Pōtæ for several reasons:

---

423. Waitangi Tribunal, He Maunga Rongo, vol 1, p 367.
Māori councils lacked sufficient statutory powers to provide for effective local government, including an inability to enforce bylaws on Pākehā and regulate land;

Māori councils were underfunded, as a result of a combination of the Crown’s avoidance of paying subsidies for health and sanitation projects enabled under the 1900 Act, the ineffective grants provided for administrative costs, and the failure to provide adequately for an ongoing form of income base, such as from fines or fees;

In 1916, the Crown changed Māori councils from an elected to a Crown-appointed membership. In removing the ability of Māori communities to elect the members of Māori councils, the Crown effectively eliminated their status as legitimate representative institutions for Māori.

During the Second World War, the Māori War Effort Organisation enabled significant autonomy for the committees it established to coordinate the war effort and this responsibility extended to areas of social welfare. These gains did not last, however, as the Native Department resumed control following the war.

The tribal executives formed under the Māori Social and Economic Advancement Act 1945 provided an opportunity for Māori communities to exert potentially Treaty-compliant self-governance in some, limited areas. Overall, however, realising the potential of the Act was inhibited by financial, administrative, and other limitations imposed on the executives. The reporting systems imposed by the department also curtailed the executives’ legislated function of communicating with the Government.

The Māori associations established under the Māori Community Development Act 1962 played a significant role in coordinating local leadership functions, in conjunction with the national-level New Zealand Māori Council.

The Maniapoto Māori Trust Board, established under the Māori Trust Boards Act 1955 and the Maniapoto Māori Trust Board Act 1988 was a representative institution with clear legislated functions, reporting requirements, and responsibilities. The board has made major progress in supporting communities of this district to develop.

Despite the important contributions Māori committees, executives, and associations at times made to their communities, in the long run they were not given the opportunity to realise the degree of autonomy and self-government Te Rohe Pōtæ Māori expected. This reflected both limitations in the powers granted to them by legislation and the Crown’s reluctance to commit the resources necessary for them to succeed. For much of the twentieth century, the Crown evidently did not share with Te Rohe Pōtæ Māori a strong interest in preserving autonomy and encouraging meaningful self-government. The Crown’s reticence suggests that it instead saw Māori self-governance institutions as tools to devolve, with minimal investment, administrative control of minor local affairs to Māori communities. The Crown’s actions and omissions in Te Rohe Pōtæ did not provide for, and in some cases actively prevented, the exercise of a significant degree of Māori self-government.
We find:

- The Crown’s failure to advance Māori institutions for mana whakahaere in Te Rohe Pōtae breached the right to self-government guaranteed by article 2 of the Treaty, the Crown’s duty to actively protect this right and the Treaty principles of autonomy, kāwanatanga, rangatiratanga, reciprocity, and partnership.

- By denying Māori a right to representative institutions with powers and resources equivalent to those available to Pākehā local government structures, the Crown also breached the guarantee of equity in article 3 of the Treaty.

**18.8 Prejudice**

Contrary to expectations stemming from the Treaty and the Te Ōhākī Tapu agreements, the evidence before us reveals that, from the late nineteenth century, the degree of mana whakahaere Te Rohe Pōtae Māori were able to exercise in their communities began to erode. As discussed in section 19.9, successive Crown legislation, policy, and other acts and omissions breaching the Treaty and its principles propelled this erosion. Overall, the Crown failed in its duty to actively protect the Treaty rights of Te Rohe Pōtae Māori to autonomy and self-government, using practices and models available or suggested to it at the time. We find that a range of prejudice accrued to Māori in the inquiry district from this breach. This prejudice included, but was not restricted to, an inability to effectively self-govern and to appoint their own representatives on an equitable footing with other British subjects; a diminished opportunity to pursue their own customs and enforce their own laws, as they had done for centuries prior to European arrival in the inquiry district; a heightened vulnerability to the imposition of European systems of land title and management (discussed in parts I, II, and III of the report) that undermined the ability of Te Rohe Pōtae to exercise mana whakahaere and hastened alienation of their rohe, including through compulsory provisions; as well as the effective compulsion, in the absence of meaningful Māori self-government, to participate in and be subject to systems of European-centric local government that became entrenched in Te Rohe Pōtae from the early twentieth century. These systems are explored in chapter 19.
CHAPTER 18 APPENDIX

KO TE KAWENATA

The Kawenata reproduced on pages 74 and 75 was taken from document H9(b), pp 1–2, and the text on pages 77 to 80 was transcribed from it. The English translation on pages 81 to 83 was reproduced from Ngāti Maniapoto, ‘The Kawenata of Ngāti Maniapoto and its Many Hapū’, typescript, [2006], http://www.maniapoto.iwi.nz/wp-content/uploads/2016/10/Ko-Te-Kawenata-o-Ngati-Maniapoto-me-ona-hapu-maha-translation.pdf.
KO TE KAWENATA

Ngati Maniapoto me ona hapu maha.

"Te Kauapa ko Te Maoritanga
"Te Ahuwhenua" ko Te Aranga
"Ke Te Ture
"Me Te Whakapono
Te Whare ko Te Nehenehe nei.

Kupu Whakahumana—

"Te Nehenehe nei— Ko Ngati Maniapoto e tahit ki tena Kawanata.
"Te Aranga o te Maoritanga
"Te Ture a te Parematia o Hei Tirioi.
"Whakapono Mitihana
"Maoritanga Kotahianga. "Kotahi ano."

"Kupu Kawanata— Ngā Kawanata a Whakahumana i rito i tena.
1. Ma te ka he tana Kaiwhata a te Kaiwhata i rito i te Tawhi, a maktora nei ko te Kingi Mauiri.
2. Ma te whai te信息技术 a te whakarero a te Kaiwhata kia rino kai ko nga kaupapa ko nga whakahao a te Whiti.
3. Ko te taku o Ngati Maniapoto i mahara a kia mahia tena Kawanata, he mana he whakahumanganga ki tena whakarerehunga, aku aku ki nga uri whakahere ki muri nei, mo te whakakotahianga a tenei iwi, me nga hapu, me te hokanga ki te hokori i te wairua, me te Kaiwhata kia whakarero, me te rau, me nga takanga i te iwi, me nga whakakore umangi o te Meto, me te mahara nei ki pahi a tonuitia te mohistanga ki te rau, me nga takanga moi i tuitu ki whakahere mea mohistanga ki nga uri ki muri aku nei.
4. Ko te taku o Ngati Maniapoto i mahara a kia mahia tena Kawanata, he mana he whakahumanganga ki tena whakarerehunga, aku aku ki nga uri whakahere ki muri nei, mo te whakakotahianga a tenei iwi, me nga hapu, me te hokanga ki te hokori i te wairua, me te Kaiwhata kia whakarero, me te rau, me nga takanga i te iwi, me nga whakakore umangi o te Meto, me te mahara nei ki pahi a tonuitia te mohistanga ki te rau, me nga takanga moi i tuitu ki whakahere mea mohistanga ki nga uri ki muri aku nei.
5. Ko te taku o Ngati Maniapoto i mahara a kia mahia tena Kawanata, he mana he whakahumanganga ki tena whakarerehunga, aku aku ki nga uri whakahere ki muri nei, mo te whakakotahianga a tenei iwi, me nga hapu, me te hokanga ki te hokori i te wairua, me te Kaiwhata kia whakarero, me te rau, me nga takanga i te iwi, me nga whakakore umangi o te Meto, me te mahara nei ki pahi a tonuitia te mohistanga ki te rau, me nga takanga moi i tuitu ki whakahere mea mohistanga ki nga uri ki muri aku nei.

Kia mahia he Kawanata me tenei iwi me Ngati Maniapoto ake.
Ko te mahia tena Kawanata i te hokori i te taku o nga re a te Waitangi 1840.
Ko Te Kawenata o Ngati Maniapoto me ona hapu maha

ʻTe Kaupapa ko Te Māoritanga
ʻTe nohoanga ʻKo Te Aroha
ʻKo Te Ture
ʻMe Te Whakapono
Te Whare ko Te Nehenehe nui

Kupu whakamarama—

ʻTe Nehenehe nui—Ko Ngati Maniapoto e tuhi ki tenei Kawenata
ʻTe Aroha o te Māoritanga
ʻTe Ture a te Paremata o Niu Tireni
ʻWhakapono Mihinara
ʻMāoritanga Kotahitanga ʻKotahi anoʻ
ʻRopu Kaumatua—nga Kaumatua e Whakahuaina i roto i tenei

1. Me noho tenei Māoritanga me tenei Kotahitanga i raro i te Maru o te Kingi Nui Eruera Te Tuawhitu.
2. Me manaaki me tautoko nga kupu me nga tikanga a Mahuta Potatau Tawhiao, e mohiotia nei ko te Kingi Māori.
3. Me whanui te titiro me te whakaaro a tenei kotahitanga ki nga kupu me nga whakahaeere a Te Whiti.
4. Ko te take o Ngati Maniapoto i mahara ai kia mahia tenei Kawenata, he mea hei whakamaharatanga ki tenei whakatupuranga, ahu ake ki nga uri whakatupu i muri nei, mo te whakakotahitanga o tenei iwi, me ona hapu, me to hokinga ki te hapai i to ratou Mana, me te Māoritanga hei tikanga e kotahi ai nga whakaro, me to reo, me nga tikanga o te iwi, mo runga i nga whakahaeere nunui o te Motu, me to mahara nui kia puritia tonutia te mohiatanga ki te reo, me nga tikanga maori tuturu; kia whakahakea taua mohiotia ki nga uri i muri ake nei.
5. I te mea hoki i otī i nga Rangatira, me te iwi i roto i te Hui nui i tu ki Mahoeunui i te 25 tae noa ki te 28, o nga ra o Tihema 1903. Kia mahia he Kawenata mo tenei Iwi mo Ngati Maniapoto ake.

Koia ka mahia tenei Kawenata i tenei te tahi o nga ra o Hanuere 1904.

6. Na, ko matou ko nga rangatira kaumatua taitamariki, hoki nga tane, nga wahine, me nga tamariki, o Ngati Maniapoto me ona hapu maha ka tuhi nei i o matou ingoa me a matou tohu, ki tenei Kawenata, me te whakahua ano i o matou hapu me o matou kainga nohoanga, i roto i to matou rohe porowhita—Ka mahi i tenei Kawenata i runga i te mana, motuhake, o to matou iwi me o matou hapu—Ko taua mana ano kua oti nei te whakaatu i roto i te whakakaupapa o tenei Kotahitanga me tenei Kawenata.

7. Ka whakapumautia tenei Kawenata, e matou topu, e matou, takitahi hei mea tapu, hei mea tuturu kia waiho hoki hei pou tokomanawa, mo roto i te ngakau me
te hinengaro, hei whakamaharatanga hoki mo te tikanga i whakaarohia nuitia, mo runga i to ratou whakatopu, ki runga ki te hapai i to ratou mana maori.

8. Me whakararangi ki raro nei nga tikanga o tenei Kawenata:—ara
   (a) Ko tenei kotahitanga, mo Ngati Maniapoto ake mo ona hapu maha.
   (e) ‘Te Ngati Maniapoto i runga i te taumata o Te Kingitanga Māori.
   (i) ‘Te Ngati Maniapoto i runga i te Kawanatanga me ona Ture.
   (o) ‘Te Ngati Maniapoto i runga i te taumata o Te Whiti me ona whakahaere, Ko nga taumata tenei o tenei iwi o Ngati Maniapoto—Kotahi tenei iwi, pakaru ake e toru nga taumata o nga whakahaere me nga whakaaro. Koia i kore ai e kotahi nga tikanga, nga whakahaere, me te reo, I roto i tenei wa, me tenei Kawenata Ka kia o matou, kia huihui kia whakatopu matou ki runga i to matou Māoritanga, hei kaupapa mo to matou kotahitanga—me noho i runga i te Aroha, i te Ture me te Whakapono. Ko te iwi he Whare. Koia tenei kupu te Nehenehe Nui.

9. Ka whakapuakina e matou enei kupu he kupu tuturu, hea mea pumau, pono hoki.
   ‘Ko tenei Kawenata he pou whakamaharatanga mo to matou Kotahitanga—na reira ka tino whakaaetia i roto i tenei, enei kupu.
   Kia kotahi te whakaaro, te reo, nga whakahaere, me nga tikanga timata atu i tenei ra ahu ake.’

Paiherea tenei Kotahitanga, ki te Mana o te iwi, i runga i te Māoritanga Motuhake.
   Ko te Mana te ake he whawhau ki a u ai enei kupu me enei whakapumautanga, Ru-na ki tenei kupu tawhito, Ruru-waiakatea.

   Te Iwi—Aukahatia te waka. Hanga te whare me te pa. Honoa nga whakaaro kia kotahi. Kia kotahi ki te hapai tenei Kotahitanga. Kia kotahi ki te rapu, ki te titiro, ki te whakahaere i nga tikanga e whiwhi ai ki te pai, ki te rawe, me te runoatanga, tera e puta mai i roto i nga whakahaere a nga taumata nunui o te motu.
   Tirohia te kupu a Rawiri. ‘Ano te pai, ano teahuareka o te nohoanga tahitanga o nga teina me nga tuakana i runga i te whakaaro kotahi.
   Na te kotahi i puta ai nga tupuna, nga matua, me te iwi, i nga tuatea nunui o roto i o ratou wa. Waihoki ma te kotahi o tenei whakatupuranga e puta i nga rorerore o nga ture, me nga whakahaere a Kewha.

10. Ko nga mahi ma tenei Kotahitanga, hei nga mahi e tupa i te iwi i runga i te pai, i te tika me te rangimarie, me te tumanako ki nga mahi e piki haere ai te mohiotanga, ki nga tikanga e tupa rangatira ai te tangata, nga wahine, me nga tamariki, me te whiwhi ki te whai rawatanga.

11. Me whakaaro nui tenei Kotahitanga, ki te awhina i nga Kura Māori, o roto i te Takiwa. Me hapai, me whakatikatika i nga ture mo te iwi Māori.

12. Hei whare mo te Kotahitanga, o tenei iwi o Ngati Maniapoto. Ka meingatia i roto i tenei Kawenata, kia noho nga rangatira, ka whakahuatia i raro nei hei ropu kaumatua, hei pupuru hei hapai hoki i to mana o te iwi.
   Kua ori i te iwi me nga rangatira kia noho a ‘Te Wherowhero Tawhiao i roto i tuaa ropu kaumatua. Ko ia he tama na Tawhiao, he mokopuna na Potatau Te Wherowhero. Kua tino noho ia ki tenei o ona iwi, kia Ngati Maniapoto.
I puta mai hoki ia i roto i nga pu-Tupuna katoa, o Ngati Maniapoto, na reia he mea tika kia noho tahi ia i roto i te ropu kaumatua rangatira hoki o tenei iwi.

Ko ia tenei taua ropu

Te Wherowhero Tawhiao
Te Rangitutuka Takerei
Taonui Hikaka
Paku Wera
Te Aroa Haereiti
Tarahuia Nahona
Kaahu Huatare
Tu-Mokemoke
Hari Matetoto
Hauokia Te Pakaru
Tupotahi Tukorehu
Hotutaua Wetini
Hona Wahanui
Pohe Rainuha

(Ko nga me e tuhi ki tenei Kawenata, nga mea e tuturu o enei Kaumatua.)

Hei apiti ki to ratou ake mana rangatiratanga, ka uhia atu hoki te mana o te iwi. Ka whakamotuhaketia atu kia rata te mana, me te reo o te iwi, timata atu i tenei wa ahu ake.

13. Ma taua ropu kaumatua, e karanga nga huhiuinga mo te iwi, ma ratou e whakatau, e whakatuturu nga kupu, me nga tikanga e pa ana kia Ngati Maniapoto, ko nga whakatuturutanga a taua Ropu Kaumatua i nga putake katoa e pa ana ki te iwi, ka waiho hei tino kupu, hei Ture hoki i roto i tenei Kotahitanga.

14. Kaua te iwi e takahi i nga kupu whakatau, whakatuturu ranei a taua ropu kaumatua mo nga tikanga katoa e pa ana ki te iwi e whirihiria ana i roto i nga hui.

15. I runga i te whakahaerenga o nga mana, me nga tikanga katoa i roto i tenei Kotahitanga, me te Kawenata hoki, me whai tonu i a te tu naonga o te iwi e kite ai he mea tika, tae noa ki nga whakataunga, me nga whakatuturutanga a te Ropu Kaumatua kua whakahuatia i roto i tenei, me pera ano. Me tango te pooti o te iwi, mo runga i nga tako katoa e whirihiria ana.

16. Ma te iwi e whakatu he riiwhi me nga kaumatua e ngaro ana i runga i te mate.

17. Me tuhi katoa taua Ropu Kaumatua i o ratou ingoa, tohu ranei, ki tenei Kawenata, he tohu mo to ratou whakaae ki ona tikanga. Ko nga mea e tuhi o ratou, nga mea e tuturu ki taua nohoanga.

18. He mea nui rawa, he tika hoki kia purutia e tenei kotahitanga, nga tikanga tuturu a te iwi Māori, kia mau tonu hoki te mahi me to whakahaere, i nga tikanga papai a te maori, me te reo tuturu kei ngaro, me whakaheke ano hoki to mohio-tanga ki aua tikanga maori, ki nga uri i muri ake.

Me whakahaere nga tikanga maori, i runga i te tupato, me te mahara nui, ki a tupu te pai i roto i te iwi.
19. Me whakatu he Pou-Kohatu, hei whakamaharatanga, mo tenei kotahitanga. 
Me tuhi kato nga tangata o Ngati Maniapoto, tane, wahine, tamariki, ki tenei 
kawenata.

Ko nga mea o Ngati Maniapoto e tuhi ki tenei Kawenata, ka huaina ratou ko Te 
Nehenehe nui, i roto i tenei Māoritanga me te kotahitanga.

20. Na, ka mahia ka whakapumautia e matou tenei Kawenata, mo tenei 
whakatupuranga ahu ake ki nga uri whakatupu, a whakamana hoki o matou 
ingoa, me a matou tohu ki raro nei, hei whakaatu mo te pono, me te tika, o a 
matou whakaaro me te tino whakaaetanga ki nga tikanga katoa kua oti nei te tuhi 
ki tenei Kawenata.

He mea tuhi i raro i te mana, e te iwi o Ngati Maniapoto, i tenei, te tahi o nga ra 
o Hanuere, tau tahi mano iwa rau ma wha.
The Covenant of Ngāti Maniapoto and its many Hapū

The Matter at Hand: Māoritanga
The Setting: The Love
The Law
The Faith
The Locality: Te Nehenehe nui

Explanatory note—
Te Nehenehe nui—Ngāti Maniapoto, the authors of this Kawenata
The Love for Māoritanga
The Law of the Parliament of New Zealand
The Faith Christian [as brought here by the Missionaries]
Māoritanga Kotahitanga As one. [In unity]
Rōpu Kaumātua—the elders described below [Council of Elders]

1. Let this [unity of] Māoritanga and this Accord sit under the Protection of Great King Edward Seventh.
2. Let the words and the tikanga [customary leadership] of Mahuta Potatau Tawhiao, ie, the Māori King, be upheld.
3. Let this unity take broad heed of the works and deeds of Te Whiti.
4. The reason Ngāti Maniapoto decided to produce this Kawenata is to remind this generation and those to come about [the importance of] the Accord within this tribe, its hapū, its Mana, and with Māoritanga as the key in unifying our thoughts, trough the language and customs of the iwi, including the addressing of issues of national concern. And to concentrate on using a Māori purity in our language and customs, to be passed on to [and maintained by] future generations.
5. Indeed, the Rangatira and the Iwi decided at the Great Conference at Mahoenui from the 25th to the 28th of December to establish a Kawenata for this Iwi, specifically Ngāti Maniapoto. Hence the launch of this Kawenata on this day, the first of January, 1904.
6. Now, we the elder and younger statesmen, men, women, and children of Ngāti Maniapoto and its numerous hapū affix our names and signatures to this Kawenata, and declare our hapū and our villages in our district—This Kawenata is launched with the autonomous authority of our Iwi and our Hapū—that authority is described and its tikanga [guidelines] set through this Accord, and this Kawenata.
7. As a collective, with one min, we give sanction to this Kawenata for it to be maintained as a ridge-pole for the [house of the] mind and heart, to remind [one and all] of the tikanga which have long been considered, for their union, upon which [is built] the support for their mana as Māori.
8. Here below is listed the tikanga [guidelines within and] of this Kawenata: namely—

81
(a) The Accord is of and for Ngāti Maniapoto and its many hapū
e) Those of Ngāti Maniapoto who support the Māori King Movement
(i) Those of Ngāti Maniapoto who support the Government and its Laws
(o) Those of Ngāti Maniapoto who support Te Whiti and his accomplishments.

These are the spheres of influence of this Iwi, Ngāti Maniapoto—This Iwi is one, broken into three parts, in deed, and of philosophy. That is why the tikanga, the activities, and the voice [of the people] are not one, at this time, which has led to this Kawenata. We say we must meet, consolidate ourselves with our Māoritanga as the base for our Accord—and we should live with Love, within the Law, and by Faith. The Iwi is as [one house] an Institution, hence the name, Te Nehenehe Nui.

9. We declare these words to be sincere, true, in perpetuity.

‘This Kawenata will be reminder of our Accord—and so the works [and sentiments] within it are formally adopted.

Let our minds, our voice, our deeds, and our customary, normal pracice be as one from this time forward.’

Let this accord be bound inextricably to the Mana of the people, along with the Autonomous Authority of Māoridom.

Our Mana is the vine which binds and reinforces these as everlasting, in as much as the expression in this ancient word, ‘Ruru-waiakatea.’

People—Make fast the lashings of the Waka. Build the house and the fortifications. Join thoughts to be of one mind in progressing this Accord. Be one in searching for and enacting the tikanga by which the bounty and abundance is enjoyed by others of [like] importance across the land.

Consider the words of David, ‘It is indeed a sweet and precious things when brothers sit together and are of one mind.’

10. The purpose of this Accord is to ensure that the people grow with integrity in truth, and peaceably, in the hope that understanding frows, and the expectation that the men, women, and children will through our tikanga grow in stature, and prosper.

11. This Kawenata must be very carefully considered as a resource for Māori Schools in the Region. And to reinforce and amend the Laws affecting the Māori people.

12. As an organisation to accommodate Ngati Maniapoto’s Accord, within this Kawenata it is intended that the chiefs named below be installed as a council of elders to maintain and support the Iwi’s mana.

The people and the chiefs have decided that Te Wherowhero Tawhiao will sit as one of that council of elders. He is a son of Tawhiao, a grandson of Potatau Te Wherowhero. He has lived for some considerable time with this Iwi of his, Ngāti Maniapoto.

As he also descends from the aristocratic genealogies of Ngāti Maniapoto it is appropriate that he take his place in this council of elders of Ngāti Maniapoto.

That council is:

Te Wherowhero Tawhiao
Te Rangituatuka Takerei
Taonui Hikaka
Paku Wera  
Te Aroa Haereiti  
Tarahuia Nahona  
Kaahu Huatare  
Tu-Mokemoke  
Hari Matetoto  
Hauokia Te Pakaru  
Tupotahi Tukorehu  
Hotutaua Wetini  
Hona Wahanui  
Pohe Rainuha  

(The authors of this Kawenata are the very core of these elders.)

In support of their own chiefly mana is added the mana of the Iwi. The mana and the voice of the Iwi is bestowed upon them, beginning from this time, and into the future.

13. This council of elders will call major meetings for the Iwi, they will decide and breathe life into the words and tikanga for Ngāti Maniapoto. The decisions of this council of elders will be left as the final work, as Law in this Accord, in all major issues to do with the Iwi.

14. The Iwi are not to breach the decision, or the resolutions of this Council of elders, nor the tikanga of the Iwi decided upon in the meetings.

15. In the organisation of the mana and all the tikanga in this accord, and in the Kawenata also, the majority decision of the Iwi will be adopted, including the resolutions and decisions of the Council of Elders as written here, similarly. A vote of the Iwi must be taken in all issues being considered.

16. The Iwi will appoint replacement for those elders who, through illness [or death] are not able to attend.

17. The Council of Elders should sign their names, or place their marks, on this Kawenata to indicate their acceptance of its tikanga. Those who sign will then be deemed appointed to the Council.

18. It is of prime importance, indeed essential, that this Accord maintain the purity of the tikanga of the Māori people, and that in its deeds and operations, the appropriate tikanga and the voice of the Māori people be maintained, lest they be lost. And the understanding of those tikanga be passed on to the coming generations.

The tikanga must be conducted cautiously, ever mindful of the good for the Iwi.

19. A Stone Monument must be erected to commemorate this Accord.

All of Ngāti Maniapoto who sign this Kawenata will be known at Te Nehenehenui, within this Māoritanga and Accord.

20. Hence we establish this Kawenata, for this generation and into the future for those generations to come, and affix our names and signatures below to attest to the truth and sincerity of our thoughts and assent to all the tikanga written in this Kawenata.

This is written under the mana [auspices] of the Iwi of Ngati Maniapoto this day the first of January 1901.
CHAPTER 19

HE KAUNIHERA HE RĒTI, HE WHENUA KA RIRO:
LOCAL GOVERNMENT AND RATING IN TE ROHE PÔTAE

19.1 INTRODUCTION
The preceding chapter examined Te Rohe Pōtae Māori attempts to maintain mana whakahaere by utilising the succession of structures provided by the Crown to recognise and provide for their autonomy and self-government. This chapter examines a distinct, yet connected, facet of the Te Rohe Pōtae Māori struggle to preserve mana whakahaere in the face of Pākehā-oriented systems of local government and rating that gained increasing traction in this inquiry district from the late nineteenth century. The Crown’s delegation of kāwanatanga functions to multiple local authorities during this period, and the expansion of their reach and powers over this inquiry district, were among those elements of European settlement that most directly affected the livelihood, political identity, the relationship of Te Rohe Pōtae Māori to their whenua, and the other rights guaranteed by article 2 of the Treaty. Accordingly, this chapter examines the Treaty compliance of both the statutory framework and on the ground functioning of local government in Te Rohe Pōtae, from its inception in the 1880s, until roughly the present day.

19.1.1 The purpose of this chapter
As the previous chapter demonstrated, a variety of institutions established for self-government during the late nineteenth and twentieth century did not provide Māori sufficient opportunity and support to exercise the degree of control over their communities and affairs guaranteed by the Treaty and the Te Ōhāki Tapu agreements. Limited statutory powers and inadequate funding, among other factors, frustrated the ability of Māori to exercise tino rangatiratanga through these self-government entities. Because of the Crown’s failure to protect their right to autonomy and self-government, Te Rohe Pōtae Māori became increasingly subject to the demands of a general system of local government and rating. The large number of claims received relating to local government and its rating regimes (see section 19.2.3) reflect the significant impact of this system on the lives of Te Rohe Pōtae Māori. The purpose of this chapter is to inquire into and report on those claims.

19.1.2 How this chapter is structured
The chapter begins with a discussion of how, from the late nineteenth century, the Crown set about delegating specific functions and powers to local government authorities. It then explores how this process of devolution intersected with Te
Rohe Pōtae Māori expectations about issues of consultation, representation, and participation in local government and the rating system. It then assesses whether Te Rohe Pōtae Māori received the benefits expected from participating in local government and the rating system, and Te Rohe Pōtae Māori experience of the legislated powers of local authorities up to 1989. The chapter examines Te Rohe Pōtae Māori experiences following local government restructuring from 1989. Finally, the chapter concludes with the findings and recommendation.

19.2 Issues

19.2.1 What other Tribunals have said

The Tribunal has previously considered the introduction of local government systems and rating in several districts, including Tūranga, Hauraki, Wairarapa ki Tararua, the Central North Island and Tauranga Moana inquiries.

The Central North Island inquiry found that article 3 conferred on Māori a ‘Treaty right to self-government through representative institutions at a community, regional, and national level’. The Tauranga Moana inquiry, when referring to the Central North Island inquiry, concluded that the Crown was under an obligation to facilitate hapū and iwi aims to have a measure of control over their affairs, and a say in local government. This obligation stemmed not only from the text of article 3 and Treaty principles, but also from the more general principle that ‘there should be no taxation without representation’. The Tribunal found that ‘the Crown’s failure actively to facilitate Māori representation at a local level’ constituted a breach of the duty to protect Māori rights and interests.

The Tauranga inquiry also found that the Crown has a duty to ensure that local authorities are acting consistently with the Treaty and a failure to do so is a breach of the duty of active protection. The Tribunal considered it perfectly acceptable for the Crown, in exercising its kāwanatanga responsibilities, to set up a system of local government, and to delegate certain functions to local councils. The Tribunal agreed that local councils are not agents of the Crown and that the Crown, not local government, is the Treaty partner. However, the Crown cannot avoid its Treaty obligations by delegating functions to non-Crown entities. Therefore, in terms of the Treaty duty of active protection:

the Crown must make sure that the rights of local authorities to govern are matched by the responsibilities of those same authorities to recognise Māori rights and values, and to give effect to the duties of the Crown. The Crown thus has a responsibility to monitor the activities of local government, and to audit local government performance in the context of the Treaty relationship between Crown and Māori. This it does through the Auditor-General, who is required to monitor performance as well as

expenditure. But the measure used is the letter of the law, not the Treaty . . . If indeed there is no [mechanism for monitoring] whether community outcomes are Treaty-compliant, we find the Crown to be in breach of its duty of active protection.³

A large section of this chapter focuses on the rating of Te Rohe Pōtae land. The Tribunal has previously agreed that rates should be paid for Māori land. In the Tūranga inquiry, for example, the Tribunal thought that ‘Māori land should bear a fair share of the district’s rates burden.’⁴ The Hauraki report identified that many Māori leaders recognised that Māori land should be rated and noted that the debate over rates did not focus on whether Māori should pay rates; instead the debate usually focused on what category of Māori land should be rated, and when.⁵

However, the Tribunal in earlier reports also considered the effect that rates had on Māori land. In the Tauranga Moana inquiry, the Tribunal noted that while Tauranga Māori accepted (reluctantly) ‘the Crown’s right to impose rates, the Crown appears to have taken little account of the cumulative effect of rating on top of its other actions towards Tauranga Māori, their land, and resources.’⁶

In the Hauraki inquiry, the Tribunal found that much Māori land was sold for rates because the owners did not have any opportunities to develop their land and thus generate the resources to pay their rates. It concluded that, if Māori were to be liable for rates, then the Crown should have been equally careful to ensure that Māori landowners received adequate assistance to develop their land and avoid the problems of fragmented title. Further, the Crown should have considered ‘the considerable, often uncompensated, contribution of land for public works and national and local infrastructure made by Māori, both willingly and compulsorily.’⁷

Similarly, the Tribunal in the Tūranga inquiry was aware of the crippling effect that fragmented title and fractionation of ownership had on the development and use of Māori land and, subsequently, on Māori ability to pay rates. It concluded that no taking of Māori land for non-payment of rates could be justified; although it thought that receivership was understandable.⁸

In the Tauranga Moana inquiry, the Tribunal found that while early on ‘the Crown exercised a measure of active protection in adopting a gradual approach to the rating of Māori land’, it was in breach of the Treaty for ‘failing to mitigate rating pressures that resulted in, or contributed to, non-compulsory sales’ and any forced taking of Māori land for rates debt was unjustifiable.⁹ Further, any actions leading to the forced sale of land to pay rates was ‘directly at odds’ with the plain

⁸ Waitangi Tribunal, Turanga Tangata Turanga Whenua, vol 2, p 653.
text of article 2 in both the Māori and English versions. The Tribunal, therefore, found that, by enacting legislation that permitted receivership sales, ‘the Crown was in direct breach of the Treaty’.\textsuperscript{10}

Having considered what the Tribunal has found in other inquiries, we now discuss the claimant and Crown positions.

19.2.2 Crown concessions
The Crown made no concessions in this inquiry about either local government or rating.

19.2.3 Claimant and Crown arguments
This inquiry received a large number of claims related to local government and/or rating.\textsuperscript{11} The claimants argued that Te Rohe Pōtae Māori have suffered immensely through the imposed local government infrastructure and policies that were geared towards facilitating Pākehā settlement. ‘Local government was a vehicle for Pākehā aspirations’ with little regard for how it would affect customary tenure and ‘the desire of Māori to retain self-management and government of their own affairs’.\textsuperscript{12}

In the claimants’ view, local government was imposed on Te Rohe Pōtae Māori without considering the Te Ōhākī Tapu agreements, without allowing for the continued exercise of tino rangatiratanga, and without providing any meaningful role for Māori. The establishment and delegation of powers to local government within the Rohe Pōtae region gradually stripped Rohe Pōtae Māori of their ability to exercise tino rangatiratanga. While individual members of the leadership might have participated, Te Rohe Pōtae Māori were not given the ability to participate collectively and the cohesive ability to exercise rangatiratanga had deteriorated.\textsuperscript{13}

\begin{flushright}
\textsuperscript{10} Waitangi Tribunal, \textit{Tauranga Moana, 1886–2006}, vol 1, p 395.
\textsuperscript{11} Including Wai 551, 948 (submission 3.4.147); Wai 784 (submission 3.4.250); Wai 846 (submission 3.4.251); Wai 986, Wai 993, Wai 1015, Wai 1058, Wai 1105, Wai 1586, Wai 1608, Wai 1695, Wai 2335 (3.4.140); Wai 1469, Wai 2291 (submission 3.4.228); Wai 1482 (submission 3.4.154(a)); Wai 556, Wai 616, Wai 1377, Wai 1820 (3.4.279); Wai 586, Wai 753, Wai 1936, Wai 1585, Wai 2020 (submission 3.4.204); Wai 1824 (submission 3.4.181); Wai 729 (submission 3.4.240); Wai 928 (submission 3.4.175(a), 3.4.175(b)); Wai 1255 (submission 3.4.199); Wai 1640 (submission 3.4.191); Wai 1704 (submission 3.4.279); Wai 48, Wai 81, Wai 146 (submission 3.4.211); Wai 366 (submission 3.4.205); Wai 987 (submission 3.4.167); Wai 1064 (submission 3.4.205(a)); Wai 1147, Wai 1203 (submission 3.4.151); Wai 1230 (submission 3.4.168); Wai 1447 (submission 3.4.187); Wai 426 (submission 3.4.146); Wai 614 (submission 3.4.142(a)); Wai 870 (submission 3.4.202); Wai 1122, Wai 1113, Wai 1439, Wai 2351, Wai 2353 (submission 3.4.226); Wai 1410 (submission 3.4.216); Wai 1448, Wai 1495, Wai 1501, Wai 1502, Wai 1592, Wai 1804, Wai 1899, Wai 1900, Wai 2125, Wai 2126, Wai 2135, Wai 2137, Wai 2183, Wai 2208 (submission 3.4.237); Wai 1450 (submission 3.4.196); Wai 1498 (submission 3.4.193); Wai 1534 (submission 3.4.217); Wai 1588, Wai 1589, Wai 1590, Wai 1591 (submission 3.4.143); Wai 1908 (submission 3.4.236); Wai 1995 (submission 3.4.144); Wai 2134 (submission 3.4.214); Wai 2352 (submission 3.4.219); Wai 125 (submission 3.4.210); Wai 775 (submission 3.4.244); Wai 1327 (submission 3.4.249); Wai 2345 (submission 3.4.139).
\textsuperscript{12} Submission 3.4.185, pp 1, 4.
\textsuperscript{13} Submission 3.4.185, pp 1, 4. 15.
\end{flushright}
Counsel for the claimants noted Jane Luiten's report showed that subsequent attempts to accommodate Māori were not really directed at ensuring Māori participation, but more towards the collection of rates. Counsel submitted that the failure of the Crown to actively facilitate Māori participation and representation at a local level should be found to constitute a breach of the duty to protect Māori rights and interests.\footnote{Submission 3.4.185, pp 15, 23.}

Claimant counsel also submitted that the Crown failed to ensure that local authorities established a relationship with Māori that was consistent with the Treaty of Waitangi and ensure that Māori interests were incorporated and protected. Instead, local authorities were permitted ‘to focus on Pākehā settlement and revenue gathering endeavours’. Consequently, Te Rohe Pōtae Māori were marginalised and Pākehā interests were served.\footnote{Submission 3.4.185, pp 2, 15.}

Counsel argued that the lobby for local government was largely driven by the need for better roads. However, despite significant contributions from Te Rohe Pōtae Māori towards the establishment of roads in the district, requests by Māori for roads were often disregarded. Similarly, the Crown failed to ensure that local authorities worked with Te Rohe Pōtae Māori to develop sewerage and other infrastructure for their benefit. Counsel submitted that the lack of services resulted in devastating economic and social consequences for Te Rohe Pōtae communities.\footnote{Submission 3.4.185, pp 5, 9, 10.}

Regarding the Crown’s position that its Treaty responsibility is limited to ensuring that the statutory framework within which local authorities operate is consistent with the principles of the Treaty,\footnote{Submission 1.3.001, p 313.} claimant counsel submitted that the Crown cannot disassociate itself from the actions of local government. Any attempts by the Crown to ‘limit or divest itself of its obligations is a clear departure from established Tribunal jurisprudence’.\footnote{Submission 3.4.185, pp 2–3.}

Furthermore, counsel argued that recent efforts by Te Rohe Pōtae Māori to work within the local government framework have been hindered due to a distinct lack of recognition, representation, and funding.\footnote{Submission 3.4.185, p 30.}

On the issue of rating, claimant counsel agreed with previous Tribunal findings that rating of Māori land is not an inherent breach of Treaty principles, provided it ‘forms part of a common sharing of the burden of maintenance and development of resources in a region’. Counsel submitted that breaches occur ‘if this burden is not commonly shared and rating becomes an intolerable burden on Māori landowners, with no effective means of reducing them’.\footnote{Submission 3.4.123, p 3.}

Counsel argued that rating was extended into Te Rohe Pōtae without considering historic circumstances, such as the effects of raupatu, or land gifted for...
the North Island main trunk railway, or Crown pre-emption, and without aiding Māori landowners to develop their land.\textsuperscript{21}

As counsel emphasised, the claimants felt especially aggrieved due to what they believed had been promised to them about rates at meetings to discuss the introduction of the railway into Te Rohe Pōtāe. While counsel accepted that there might have been ‘a degree of ambiguity’ in the statements at that time, they submitted that the rating laws should have, at the least, applied only if land was near a road or a railway and was either being leased, under cultivation, or could be sold at a market rate. The Crown should also have retained the ability to control whether Māori land was rated or not. According to counsel, however, any promises made were not kept. The ‘government exempted very few areas from rates, many undeveloped areas were rated, it did not retain control over which areas were rated or not, and legislation applying in the district continued to rate based on distance to road or rail, whether it was used or not’.\textsuperscript{22}

Claimant counsel also submitted that the Native Land Rating Act 1924, Māori Purposes Act 1950, Noxious Weeds Act 1950, and Māori Affairs Act 1953 were passed without proper consultation or regard to Māori objections. Counsel argued that the legislation allowed land to be leased compulsorily and sold for arrears, thereby making Māori land significantly more vulnerable to alienation.\textsuperscript{23} The claimants view the ratings laws as a breach of the Treaty principles.\textsuperscript{24}

While acknowledging the significance of local government issues to the claimants, the Crown raised a jurisdictional issue. Crown counsel submitted that local authorities are not part of the Crown, therefore, the Tribunal cannot make findings of Treaty breaches concerning them.\textsuperscript{25} Instead, ‘the Crown’s responsibility in a Treaty context lies with the statutory framework within which local authorities operate and with ensuring that framework is consistent with Treaty principles.’\textsuperscript{26}

With this significant caveat in mind, the Crown maintains that local government is essential to providing local communities with a stake in their own affairs. Local government ‘reflects the philosophy that it is preferable for decisions affecting the local community to be made by that community’. Here, the Crown faces a complex balancing exercise, weighing the ‘rangatiratanga rights of Māori’ against the Crown’s kāwanatanga responsibilities to govern on behalf of all New Zealanders. Furthermore, the Crown submitted, any system of local government that ‘draws all citizens under the same institutions and rules is consistent with Treaty principles.’\textsuperscript{27}

Crown counsel noted that local government in New Zealand ‘represents a genuine, good faith endeavour to implement a national, uniform, independent,
and largely self-funding system’ for developing the country’s regions. Further, the process of establishing a system of local government consistent ‘with the Treaty and its principles was a novel situation.’

The Crown accepted that the Treaty principle of equity requires it to ensure that Māori have the same opportunities to participate in local government decision-making as non-Māori. It acknowledged that local government legislation in the nineteenth and twentieth centuries generally did not contain provisions for specific Māori representation in local government.

However, the Crown did not accept that ‘the absence of specific provisions for Māori representation’ in local government, on its own, caused prejudice to Te Rohe Pōtae Māori or prevented them from participating in local government decision-making. On this matter, the Crown considered that opportunities for increased Māori representation have been created by the current legislative regime and ‘recent developments’.

The Crown viewed the present legislative regime for local government and rating as Treaty-compliant and provides ‘adequate mechanisms’ for ensuring Māori are offered equal opportunities to participate in decision-making as non-Māori. In fact, the Crown submitted that recent developments in the legislation have created opportunities for increased Māori representation.

On rating, Crown counsel submitted that ‘the principle of rating Māori land is not inconsistent with Treaty principles’ and that the Crown’s responsibility lies with ensuring, through review and monitoring, that the legislative regime is consistent with Treaty principles. The Crown accepted that in 1885, Native Minister Ballance ‘represented’ to Te Rohe Pōtae Māori that their land should become liable for rates only when it was leased or sold, or was in cultivation. However, the Crown submitted that subsequent Crown actions need to be considered in the light of ‘considerable social and economic changes.’ Further, the actions of the Crown suggest that it was seeking to balance the interests of Te Rohe Pōtae Māori with the rest of the population and the demands of local government. In this respect, the Crown’s focus remained on making land productive and thus able to meet its rating liability.

In terms of providing services, the Crown argued that ‘user-pays’ was the guiding principle during the formative years of local government. Priority was given to providing services (in the form of road access) to lands where rates were paid, or which had the prospect of being paid. Crown counsel submitted that this approach was reasonable, given ‘the economic conditions that governed the amount of

29. Submission 3.4.290, p 2.
30. Submission 3.4.290, pp 14, 16.
31. Submission 3.4.290, p 16.
32. Submission 3.4.306, p 1.
33. Submission 3.4.306, p 1.
34. Submission 3.4.306, p 2.
funding that was available and the very considerable demands for spending that decision-makers faced.”

19.2.4 Issues for discussion

Based on the arguments advanced by claimants and the Crown, previous Tribunal findings, and the Tribunal Statement of Issues, we focus on the following questions in this chapter:

- To what extent did the Crown and local authorities consult with Te Rohe Pōtae Māori on the structure of the councils, and to what extent did the legislation enable representation and participation of Māori or require councils to have regard to issues of concern to Māori up to 1989?
- To what extent did any lack of representation or incentive to participate result in poor outcomes for Te Rohe Pōtae Māori in terms of rating issues, and for receiving services such as sanitation, roading, and other infrastructural services?
- Did the 1989 restructuring, and amendments, of local government improve the situation for Te Rohe Pōtae Māori?

19.3 The Introduction of Local Government and Te Rohe Pōtae

Prior to 1989, Pākehā local government in New Zealand can be interpreted as evolving in two main phases. Under the 1840 Royal Charter, New Zealand was divided into three provinces; New Ulster, New Munster, and New Leinster. The New Zealand Constitution Act 1846 subsequently reduced these largely autonomous provinces to just New Ulster and New Munster (the Act itself was subsequently suspended).

The New Zealand Constitution Act 1852 (UK) divided New Zealand into six provinces: Auckland, New Plymouth (later renamed Taranaki), Wellington, Nelson, Canterbury, and Otago. Four additional provinces were later established before 1875. Each province was required to have an elected council and an elected superintendent. By 1873, there were three more provinces: Hawkes Bay, Southland, and Westland.

Provinces were divided into electoral districts for the election of members of the provincial council. The members of the councils were elected by all people in the province who were qualified to vote. Only men who were 21 years of age or

41. New Zealand Constitution Act 1852, s 5.
The 1852 Act provided for a move towards more centralised responsible colonial government in also establishing a central General Assembly, to consist of the Governor, a Legislative Council, and House of Representatives alongside provincial government. The same model for electoral participation used by the provinces was used for central government. While provincial governments carried out most local government functions, a handful of municipal councils in major settlements were responsible for some local administration, and road boards were responsible for road building. In 1876, there were 36 municipal councils and 314 road boards.

The provinces were abolished from 1876, replaced with counties who took over local government functions from provincial governments. Municipal councils continued and grew in number, numbering 129 at their peak in 1920. Alongside these territorial authorities, a number of ‘special purpose authorities’ were gradually introduced under the new county-based system, including harbour boards (1870), river boards (1884), hospital boards (1885), education boards (1877), and electric power boards (1918). These would, it was reasoned, relieve the burden on ‘the many relatively small territorial authorities [that] had neither the resources nor the inclination to undertake and develop many newly required services and activities.’ In 1950, there were 537 special purpose authorities in existence.

In previous chapters, it was established that prior to the Te Ōhākī Tapu agreements, Te Rohe Pōtae Māori exerted control over most of this inquiry district, as they had done for centuries. Up to the mid-1880s and the opening of the district, Te Rohe Pōtae Māori systems of government remained largely intact, as did the practical authority of Māori leaders, who maintained oversight of the tribal economy and systems of local governance.

The only places in Te Rohe Pōtae to feel any influence of Pākehā local government in this early period were around some of the northern and eastern edges of the district, and this influence was relatively minimal. Dating from the early 1850s, the area around the Whāingaroa Harbour was the most significant location of early European settlement and local government in this inquiry district. Pākehā settlers who came to the region had to accept they would live for most part under chiefly authority. The Te Ōhākī Tapu agreements of the 1880s signalled that while the Crown accepted a degree of Te Rohe Pōtae Māori autonomy, it expected that, over time, forms of Pākehā local government would eventually become more prominent.

Indeed, by the mid-1880s when the aukati was lifted and Pākehā presence in Te Rohe Pōtae began to increase, European local government had developed to the point where central and local government authority had largely been settled

42. New Zealand Constitution Act 1852, s 7.
43. New Zealand Constitution Act 1852, s 32.
on, with the abolition of the provinces and creation of the county system and the numerous special purpose authorities. That included system of representative local government and financial support for local government activities through payment of rates.

19.4 Rating and Te Rohe Pōtai Land

19.4.1 Financing local government

Rates, a tax based on ownership of property, the property’s capital value and land use, have traditionally been the primary source of funding for local government in New Zealand. Rates could be general, that is, charged for general services, or separate, imposed on specific ratepayers deemed to benefit from the proposed work or service. Rates, in this context, ‘were seen as an exchange for a benefit, or service’.

Under section 37(4) of the Rating Act, 1876, Māori customary land and Māori freehold land (occupied by Māori) continued to be exempt from all local body rates. Māori land had been exempted since the first Municipal Ordinance of 1844. From the 1870s, however, Māori land became liable for rates if occupied by someone other than its Māori owners, essentially if leased to Pākehā.

Exempting Māori land from rates continued under the 1882 Rating Act. Another piece of legislation passed in the same year, the Crown and Native Lands Rating Act 1882, expanded the rating liability of Māori land. This legislation provided for the designation of native rating districts and pronounced all Crown and Māori lands lying within five miles of a public road to be rateable. Owners of Māori land were to be informed via Kahiti (the official government gazette for Māori). If rates were unpaid for three months, the Colonial Treasury would pay local bodies the amount owed, and a stamp duty would be imposed, when the land was sold or leased, to recoup the cost.

However, the 1882 Act had relatively little effect in the inquiry district as the counties of West Taupō and Kāwhia were still exempted from paying rates by the Act, and while Māori land located in borough districts was designated rateable property, Te Rohe Pōtai did not have any boroughs until the twentieth century. Further, when the Act was repealed in 1888, Māori land reverted to being largely exempt from rates.

19.4.2 Te Rohe Pōtae Māori protest rates being imposed
From the mid-1880s, Te Rohe Pōtae Māori were increasingly concerned about their lands becoming subject to rating should they open their district to settlement, and it was one of the key issues in the Te Ōhāki Tapu negotiations with the Crown for opening up Te Rohe Pōtae to the North Island main trunk railway. At a hui at Kihikihi in February 1885, John Ormsby challenged the Native Minister, Ballance by describing the extension of rating to their lands as the cause of ongoing ‘estrangement’ between Māori and Pākehā in the territory. Ormsby was careful, however, to point out that their objection was to rating, not to roads per se:

Now, with regard to the roads. It has been stated that, as soon as ever a road is formed, then a Road Board is also formed – that is, the Rating Act is enforced. The Act gives the Government power to proclaim within the Rating Act any land, although it may not have passed through the Native Land Court; and our lands, although we might not have used them for twenty years, still the rates would go on accumulating, and whenever we use them, the accumulation of rates would be demanded from us.

Ormsby went on to underscore that the objection of Te Rohe Pōtae Māori to ‘the roads and the railway’ was due to ‘the fear that we may be rated in connection with them’. Ballance responded by saying that he did not think that Māori lands connected to the railway should be subject to local body rates until they were leased, sold, or being cultivated, when rates to pay for roads to those lands would be necessary.

Ormsby sought further assurance from Ballance, who responded:

Mr Ormsby has asked me to tell him at once that the Crown and Native Lands Rating Act should not be put over the lands – that is to say, for the railway, and for the roads which lead to the railway – made for the use of the railway. I think that is a very proper request, and if Mr Ormsby will address to me a letter upon the point I will send to him an official reply, which will be recorded in the department, which will be kept on record for future reference, and will be binding on future governments.

Ormsby, summing up the discussions, made clear what Te Rohe Pōtae Māori had understood from Ballance’s statements about rating:

One thing we are clear has been settled by him – that the Rating Act will not be enforced in this district, because he has promised to answer a letter which we will write to him stating that it will not be done . . .

58. Document A24, p 67; ‘Notes of a Meeting between the Hon Mr Ballance and the Natives at the Public Hall at Kihikihi on 4 February 1885’, AJHR, 1885, G-1, p 14.
59. AJHR, 1885, G-1, p 15.
60. AJHR, 1885, G-1, p 17.
61. AJHR, 1885, G-1, p 19.
The meeting yesterday was highly pleased with the replies that the Native Minister made to the subjects which had been laid before him. The sting of the scorpion has been broken off: the road we look upon as the scorpion, and the rates as the sting from it. Yesterday that sting was destroyed; now we have changed that insect, the scorpion, into one that we can utilize.62

Ballance had also noted that what he was saying that day was being taken down ‘word by word in shorthand’ and would be published. The events were later published in the official publication *Appendix to the Journals of the House of Representatives.*63

Later that month, Te Rohe Pōtae Māori agreed to the construction of the railway, and the first sod of the main trunk line was turned in March 1885.

Te Rohe Pōtae Māori may have had good reason to believe that their concerns had been addressed, as for much of the nineteenth century, most Māori land was exempted from rates. Over time, however, the trend was for more and more categories of land to be drawn into the rating system, including Māori land.64 The question of how to extract rates from Māori land became one of the key preoccupations of Pākehā local government from the early twentieth century.

### 19.4.3 Pākehā and local body pressure to have Māori land included in rating

Pākehā who supported the broadening of rating to include Māori land argued that Māori benefited from the roads and bridges built and maintained by local body rating, as well as from higher land values that resulted from road development and should, therefore, contribute their ‘fair share’ to local body revenue.65 These arguments, of course, failed to take into account the substantial contribution of land from Māori towards government roading, or to consider if Māori were benefiting as described. But pressure continued to grow from Pākehā local governments and in 1910, Parliament passed the Rating Amendment Act.

This Act was aimed exclusively at Māori land – all Māori freehold land was now liable for rates on the same basis as general land.66 Under section 3 of the Act, customary land remained exempt. Section 8 stipulated that for land owned in common, rate demands could be sent to nominated owners or occupiers, ‘or to any one of them,’ who could also be sued on behalf of all the owners. Under section 14, if judgements were not satisfied within a month, the debt could be charged against the land and registered on the title by the district land registrar. Under section 15, local bodies could then apply to the Native Land Court to have the charge enforced either by appointing a Māori Land Board or the Public Trustee or any other person as a receiver of the rents and profits of the land or by vesting the land in a Māori Land Board or the Public Trustee.

62. AJHR, 1885, G-1, pp 20, 22.
64. Transcript 4.1.17, pp 1560–1561 (Dominic Otimi, hearing week 11, Wharauroa Marae, 4 April 2014).
65. Document A24, p 47.
The 1910 amendment did little to meet the demands of local bodies, who had little enthusiasm for dealing with the Native Land Court. An amendment in 1913 cut out the court, and local bodies could apply direct to the district land registrar, but it too failed to meet local body expectations. Following the First World War, local body agitation over the non-collection of rates from Māori land intensified.

The Native Land Rating Act 1924 provided for land to be compulsorily leased and even sold for rent arrears. Under section 9(2) of the Act, local bodies could lodge a rates claim with the registrar of the Native Land Court no later than two years after the due date. Such claims were to be treated as applications for charging orders, to be heard by the court. Under section 9(5), if satisfied that the rates should be paid, the court could make an order granting a charge over the land in favour of the local authority for the rates owing. The owners were then prevented from dealing with their land until the amount had been paid.

Charging orders could be enforced through the court appointment of a receiver, in terms of section 31 of the Native Land Act 1909. If a charge remained unpaid after one year, the court could order, subject to the consent of the Native Minister, that the land be vested in the Native Trustee for sale, either the whole or any part, to pay the charge. Under section 10(2) of the Native Land Rating Act 1924, the Native Trustee could also mortgage the land to pay the rates.

Te Rohe Pōtae Māori objected to the lack of consultation about the 1924 Act. John Ormsby telegraphed the Native Minister:

> [A v]ery large meeting of chiefs and people was held here yesterday when I was directed to wire you following resolutions that a protest be forwarded to govt expressing regret that the Ngāti Maniapoto people were not given an opportunity of being heard against the Native Rating Act before it was passed[.] That this meeting view with alarm the far reaching effect of provision under which local bodies may now recover rates on alienation of native lands under court order.

The Minister’s response was that he had ‘carefully considered the whole question’ and consulted with various representatives of local bodies ‘and Natives’ and taken the Native Rates Committee’s report on the East Coast into consideration. ‘I think Ngāti Maniapoto will admit when the law is being administered that it is an honest attempt to do the right thing by everyone concerned.’

The Native Land Rating Act 1924 continued unchanged into the Rating Act 1925. There was, however, a distinction between legislating about rates and collecting them. As Luiten describes it, the efforts to ‘extract rates from Māori land’ was ‘the single-most enduring feature of King Country local government.’

68. Document A24, p 44.
70. Ormsby to Native Minister, 7 November 1924 (doc A24(a), pp 877–878).
71. Native Minister to John Ormsby, 11 November 1924 (doc A24(a), p 879).
19.4.4 Trying to collect ‘native rates’

When evidence about rates was being heard in this inquiry, in a highly symbolic gesture, the historic wheelbarrow used at the turning of the first sod of the North Island main trunk railway through Te Rohe Pōtæe was put before the Tribunal. The wheelbarrow had also been taken to Parliament, in 1927, for a meeting with the Native Minister to remind him of the promises that had been made about rates on Māori land during the discussions about the railway. Claimant counsel submitted that the meeting was Te Rohe Pōtæe Māori leaders’ response ‘to loud and long complaints’ from local authorities.75

In 1927, the issue of rating Māori land was the subject of a local body conference in Te Kūiti. In August of that year, local authorities from around Te Rohe Pōtæe and the wider North Island gathered in Te Kūiti. In a significant departure from earlier meetings, Te Rohe Pōtæe Māori were also invited to be present.74 Māori presenters explained that Māori landowners were too impoverished to be able to afford to pay rates and argued that they had already paid their rates by providing land at low prices for settlement. Some Māori presenters were cut short in their presentations, causing some to walk out in protest. Following the conference, Te Rohe Pōtæe Māori sent a deputation to Wellington, in the ‘famous “wheelbarrow” meeting’.75

At the meeting, they presented a petition to Prime Minister and Native Minister Coates. They framed their appeal in terms of both the Treaty of Waitangi, as well as the 1884 negotiations, and Ballance’s promises at Kihikihi in 1885.76 ‘Our great trouble today’, the petition said, ‘is the question of Rates on our lands and the treatment of the Treaty of Waitangi as a “joke” by the Pakeha.’77

Coates responded to the Māori petitioners by stating that it was his duty as Prime Minister to stick to the spirit of these earlier agreements ‘as far as one can. However, he also acknowledged the immense pressure the Government was under from Pākehā due to Māori non-payment of rates: ‘One has to try and be strictly honourable and fair to the minority, and at the same time hold one and a half million back, on the grounds that these are definite arrangements – well, it is a little difficult at times.’78 Despite this significant qualification, the petitioners left Wellington seemingly satisfied that Coates would address their issues and that Māori would not be liable for rates because of the historical agreements they had with the Crown.79

Local bodies also sent a delegation, headed by Te Kūiti Mayor W V Broadfoot. On 6 October 1927, they presented Coates with their resolutions of the Te Kūiti conference, including that all native land should be classified into two divisions:

73. Submission 3.4.123, p 2.
76. Document A24, p 130.
77. ‘Memorial to the Hon J G Coates’, 22 August 1927 (doc A24(a), p 901a).
78. ‘Māori Deputation from Te Kūiti, re Rating Matters’, 1 September 1927 (doc A24(a), p 904); doc A24, p 131.
Resolutions of the Te Kūiti Conference, 1927

1. That the present law in regard to native rating is unsatisfactory, particularly in regard to [the] establishment and enforcement of liens. It should be amended to provide fullest powers of sale and the veto of [the] Native Minister should be abolished.

2. All native lands should be classified into two divisions:—
   (a) Land being used or required for use by the owners:
   (b) Land not so used or required, that
      (1) should be treated as European land in all respects, and
      (2) where required and where suitable for settlement, should be taken over by the Crown at valuation, based on production, made available for settlement. The same facilities for balloting, financing and supervision should be available to the natives as are now available to the Europeans.


land being utilised by the owners; and land not being used by them. They proposed that land not being used should, where suitable for settlement, be acquired by the Crown.80

The delegation further proposed that the Government either provide local bodies with a better mechanism to recoup unpaid Māori rates or meet local authorities’ liability for unpaid rates through general taxation.81

Āpirana Ngata, who would become Native Minister in December 1928, responded negatively to the local body proposals and reiterated the reasons why the present system created difficulties for Māori. Specifically, he noted the challenges presented by titles, valuation rolls and the general lack of development. Ngata’s view on classification was that it would have to consider the productive potential of the land, not simply whether the land was being utilised. In fact, he argued that if a classification scheme was implemented in Waitomo County, ‘it would be found that the council was rating on “quite a lot of land which should not be rated at all.”’82

Meanwhile, Coates dismissed the idea that the Government would take responsibility for paying rates on Māori land, while also maintaining the view that selling Māori land for rates would be unfair.83 The government had been working on a

82. Ngata, ‘Non-payment of Native Rates’, 6 October 1927 (doc A24, p 133).
83. Document A24, p 133.
solution ‘which would be fair to the Māori, and which would say that gradually, but definitely, the Māori would have to take up exactly the same burden as the Pakeha, and, as the difficulties were got out of the way, there would be the one law for both races.’ This statement indicates that, in addition to raising revenue the assimilation of Māori into a Pākehā framework was a motivation.

19.5 CONTINUING EFFORTS TO COLLECT RATES, 1928–67
19.5.1 The introduction of consolidation and rates compromise to Te Rohe Pōtae, 1928
19.5.1.1 Political responses to non-payment of Māori rates

Local bodies continued to be frustrated by Te Rohe Pōtae Māori non-payment of rates. Figures on the rates collected by local bodies from Māori and Europeans between 1924 and 1932 show persistently low levels of Māori rates payment, compared with relatively high rates of collection among European landowners. For example, in 1927, 88 per cent of rates owed by Europeans were collected, compared to only 5.7 per cent of rates from Māori.

By late 1927, Prime Minister Gordon Coates had announced the Government’s remedy to the twin concerns of Māori land title and Māori rates: title consolidation. First implemented by Ngata on the East Coast in the early 1920s, consolidation was enacted with the Native Land Amendment and Native Land Claims Adjustment Act 1927 and the Maniapoto Consolidation scheme, which Coates announced in Parliament in November 1927. Consolidation is discussed in more detail in chapter 16.

In April 1928, Ngata and others travelled to Te Tokanganui-a-Noho Marae to discuss consolidation and outstanding rates. At the meeting, Ngata sought a mandate to negotiate a rate payment compromise with local bodies. Introducing consolidation first required any rating debt and other charges to be cleared. Ngata suggested, as a guideline, that the Crown reimburse the local bodies for 25 per cent of the amount that would be due to them as at 31 March 1930. In return for such payments, local authorities would be required to agree not to take any action intended to recover rates due up to March 1928, and for the two years to the end of March 1930. Their incentive to accept the compromise payments would be the introduction of the consolidation schemes that would ‘settle the problem permanently.’

This payment would come out of the Native Land Settlement account and be recovered in the form of land taken from the owners to the value of the sums paid. Ngata asked for a similar mandate to negotiate a compromise of outstanding survey liens.

---

84. Coates, ‘Non-payment of Native Rates’, 6 October 1927 (doc A24(a), p 551); doc A24, pp 133–134.
89. Document A24, p 46; doc A69, p 45.
Initially, Ngāti Maniapoto were opposed to consolidation and the rates compromise: ‘The main grounds for opposition were the historic government promises of exemption from rates, the fact that land had been taken for road and railway without compensation, and the inequitable service by local bodies to Māori, even when they paid their rates.’

The Ngāti Maniapoto representatives, accompanied by Pei Te Hurinui Jones, continued to debate the issue after the conference had been adjourned. The next morning, they presented the committee with their counter-offer. They agreed to pay rates in future on the basis that a half-rate on the improved value of lands was used.

Their counter-offer contained several other caveats, including that all rates accumulated up to the end of March 1930 would be written off in the following counties and town boards: Ōtorohanga, Kāwhia, Ōhura, Waitomo, Taumarunui (the Waikato Maniapoto portion), Clifton, Kaitieke, and Waipā (on the south side of the Pūniu River) counties, and Taumarunui, Te Kūiti, and Ōtorohanga town boards. If the Government wished to reimburse local bodies for part of these rates, it would do so from its own funds, as it had done for soldier settlers. Lands ‘lying idle’ and ‘not served by roads’ should be exempt from rating.

In the case of leased lands, lessees would pay all the rates for which the lands were liable, and if unpaid by lessees, rates should not accumulate against the land. In recognition of its historic promises, they wanted the Government to pay Ngāti Maniapoto hapū £1,500 each year ‘as a token on the part of the government for the agreement of our ancestors to allow the roads and railway to traverse within the King Country’.

Their offer was consistent with the position on rating that Te Rohe Pōtae Māori had outlined and maintained since the aukati was lifted. Nonetheless, Ngata requested that the Māori attendees reconsider their offer, re-emphasising the importance of gaining a ‘clear mandate’ for a rates compromise that the committee could take to local bodies.

Following a further adjournment, Ngāti Maniapoto returned to the meeting and ‘announced that they had agreed to the Consolidation Committee’s proposals’. They agreed to the sum of £13,000 being offered for unpaid rates, which would be distributed amongst the local bodies. Of this amount, the Waitomo, Ōtorohanga, and Kāwhia counties would receive the most substantial sums, with the former receiving £7,000, and the latter two receiving £2,000 each. They also agreed to support the consolidation scheme.

---

91. Document A24, p 139.
92. ‘King Country Consolidation Scheme’, Te Kūiti conference, minutes, 12–14 April 1928 (doc A24, p 139; doc A69(a) (Hearn document bank), vol 9, p 212).
93. Document A24, p 139.
94. ‘King Country Consolidation Scheme’ (doc A24, pp 139–140).
95. ‘King Country Consolidation Scheme’ (doc A24, p 140).
96. ‘King Country Consolidation Scheme’ (doc A69(a), vol 9, p 213).
97. Document A69(a), vol 9, p 213.
Chapter 16 of this report reproduces Ngata’s account of the hui to Te Rangi Hiroa, where he describes how the actions of the ‘young Maniapoto’ had broken down ‘the conservatism of the kaumatua.’ Pei Te Hurinui Jones particularly impressed Ngata: ‘The torch-bearer will I think be Pei Jones – a good man, with plenty of vision, a first-rate Māori scholar, steeped in West Coast folk lore &c and a very competent master of English . . . And he has the fire that kindles hearts.’

In April 1928, local bodies affected by the Ngāti Maniapoto Consolidation scheme agreed to be paid £16,950 as a compromise for the rates owing. In exchange, Māori land was exempted from rates for two years to allow the consolidation scheme to be implemented. Local bodies also promised to remove marginal lands from their district valuation rolls.\footnote{Bruce Biggs, ’Pei Te Hurinui Jones’, The Dictionary of New Zealand Biography, Ministry for Culture and Heritage, https://teara.govt.nz/en/biographies/4j11/jones-pei-te-hurinui, accessed 14 August 2019.}

The rates compromise was based on the idea that Māori land would be subject to rates in the same way as general land once consolidation was complete. This might have been workable with a reasonable timetable for consolidation. However, while an earlier timeframe to implement the scheme had been estimated at taking five to six years, the timeframe ended up being reduced to just two years, which was quickly shown to be inadequate.\footnote{Document A24, p 46.}

Fixing the valuation rolls required considerable time and resources. By October 1929, with just months left in the timetable, about 2,541 titles had been investigated prior to being consolidated. However, these were just a small proportion of the titles in the district. In March 1930, just before the deadline, only the first round of consolidation was completed. It comprised just 1,450 acres out of 500,000.\footnote{Document A24, p 150.}

Pei Jones, now a consolidation officer, described what was required to investigate titles and some of the irregularities that they found:

The schedules lodged by the local bodies had to be reconciled with our records; a task which involved a considerable amount of searching, and which revealed the fact that in some cases the rates were owing by Lessees, and that owing to defects in the County rolls lands which had ceased to be Native owned were still being treated as Native lands. In some cases Crown lands have had rates levied and were included in the schedule as Native lands.\footnote{Document A24, p 150.}

In some cases, the knowledge proved useful. After Waipā County Council sent in arrears details in September 1931, Jones was able to correct them, finding that an urupā and pā tuna, which were not supposed to be rated, were incorrectly included in rolls.\footnote{‘The King Country Consolidation Scheme’, no date (doc A24, p 150; doc A69(a), vol 9, p 133).}

\footnote{99. Document A24, p 46.}
\footnote{100. Document A24, p 150.}
\footnote{101. Document A24, p 150.}
\footnote{102. ‘The King Country Consolidation Scheme’, no date (doc A24, p 150; doc A69(a), vol 9, p 133).}
\footnote{103. Document A24, p 150.}
In 1930, Ngata extended the moratorium on rates. In response, local bodies asked for further compromise payments. By that point, the global depression had set in and affected the availability of finance across the country. Ngata refused further compromise payments, arguing that the Government had no money for such a purpose.

While the rates compromise may have provided an economic boost to local authorities between 1928 and 1930, it ultimately proved a failure for Māori landowners. In 1931 and 1932, councils put Māori lands not under land development schemes back on the rolls. By that stage, both local councils and the Government knew that valuation rolls were inaccurate and that rates were being demanded on lands that could not bear them. By April 1932, most Te Rohe Pōtae local authorities had returned to the charging order provisions of the Rating Act 1925. In just a few short years, it was clear that the promises made in 1927 and 1928 were empty.

Instead of insisting on a solution and following through on the promises of the ratings compromise and consolidation, the Government turned to land development to make Māori land productive and provide revenue for Māori to pay their rates. The consolidation agreement had in fact provided for some land development assistance, with £250,000 allocated for Māori land development. Those funds reflected Ngata’s understanding that, even if consolidation was successful, development support was also needed to allow Māori to effectively farm their lands.

The Native Land Amendment and Native Land Claims Adjustment Act 1929 borrowed from the idea of developing Crown land before settlement was allowed. Any type of Māori land or land owned by Māori could now be vested with the Crown, under the power of the Native Minister, for development purposes. While the land underwent consolidation and development, the rights of the owners were suspended, and private alienation was prohibited. By 1932, consolidation ‘had taken a back seat to land development.’ Chapter 17 of this report discussed this program and its effects in full.

However, Te Rohe Pōtae Māori landowners were distrustful of any scheme that looked like it would affect their rights. Although land development offered some benefits, it involved the transfer, albeit temporarily, of proprietary rights from the owners to the Native Minister.

After March 1931, the Crown’s prohibition on alienation was extended to include all Māori land in the district that fell under the consolidation scheme. Luiten found that the prohibition lasted for the next 20 years. As in the past, Māori were unable to freely trade or mortgage their land. The restriction severely limited
their ability to profit economically from the land. At the same time, they were once again expected to meet their ratings liability.\footnote{111}

Over the following decade, consolidation as a priority continued to decline in favour of development schemes. Consolidation was ‘cut short by political expediency and [the] global depression’. In 1939, it was estimated that nationally ‘90 per cent of the scheme was in an “inchoate state”’, while in Te Rohe Pōtae, their combined lands now bore a charge of over £16,000 because of the rates compromise. The scheme was finally abandoned in 1952.\footnote{112}

The rates compromises associated with consolidation were intended to cover the liability of all Māori land in the affected local government districts, including the discharge of existing charging orders. But it was not clear what that meant in cases where vesting orders had been made to enforce charging orders for the non-payment of rates.\footnote{113} As the Auckland registrar admitted in August 1935, the position of the rates that had supposedly been satisfied by vesting orders was ‘a little obscure’.\footnote{114} The following example provides an illustration of how confused the system had become.

\subsection*{Example of a vesting order and the 1928 rate compromise – Te Kūiti 2B1B}

Part Te Kūiti 2B1B was a four-acre block of flat land close to a river and marae. The original size of the block had been reduced because the council had taken 3½ acres for river diversion purposes, streets, and a recreation reserve, and another almost three acres was leased. The block was subject to a charging order made by the Te Kūiti Borough Council in October 1925, under section 109 of the Rating Act 1925, for unpaid rates of £117 11s 8d. The high rates were based on a 1917 government valuation of £900.\footnote{115}

The land was owned principally, but not exclusively, by Tohe Herangi. In January 1927, Mr Herangi appeared in court, before Judge MacCormick, to address the matter. He testified that he had tried, unsuccessfully, to lease the land and did not oppose the application. The charging order was made and sent to the Native Minister for his consent.\footnote{116}

On receipt of the order, the Native Minister queried whether a receiver could lease the place and pay off the rates ‘on such a valuable property’,\footnote{117} causing Judge MacCormick to investigate the matter. On visiting the land with Mr Herangi, a land purchase officer, the district sub-valuer, and two land agents, he found the £900 valuation, on which the rates were based, excessive and ‘preposterous’. He thought the receivership alternative impracticable.
It is possible that someone might take it for grazing, but not at any figure that would meet the rates, 2 years further rates will be due in July next, approximately £60. No doubt the valuation could be reduced but that would not get rid of the accrued rates and in view of the attitude of the natives themselves, I do not see any other course than letting the Native Trustee do the best he can with it.\textsuperscript{118}

Even the Te Kūiti Borough Council admitted that the valuations were ‘excessive’, but so were ‘the valuations on all the other sections in the Borough, and on an equitable re-valuation of the whole Borough these sections will have to bear the same proportion of the total rates as they bear to-day’.\textsuperscript{119}

The council had some years previously borrowed money to drain a swamp in the Te Kūiti 2B block. The lands in the block had since reverted to swamp, or were wet, and unusable for farming. Despite that, the lands were valued ‘by virtue of the improvements’ carried out by the council. Moreover, the council expected the affected landowners to pay for the failed improvements through their rates or dispose of the land ‘to Europeans who will pay the rates’.\textsuperscript{120}

In July 1927, the Native Minister signed the order and the title was transferred to the Native Trustee who set about trying to sell the land with a reserve price of £300. No bids were received and in July 1932, the Te Kūiti Borough Council offered £50 for the land. The offer was accepted by the Native Trustee, and the transfer made, with the trustee later explaining: ‘It was assumed that this money was apart from any rate liability to the Borough so that any rates owing would be wiped out by the Council’. According to the trustee, the purchase money, less ‘expenses incurred in selling’ was paid to the owners in February 1934.\textsuperscript{121}

However, in 1935, despite the trustee claiming that the purchase money had been paid to the owners, Herangi complained to the acting Native Minister that 5½ acres of his land had been taken by the Te Kūiti Borough Council. He claimed that he was not notified of the intention to take the land, therefore he could not oppose its taking. He also claimed that the council was not using the land for any public purpose.\textsuperscript{122}

On investigation, the registrar of the Native Land Court discovered that Part Te Kūiti 2B1B, though vested in the Native Trustee, had been included in the rates compromise of 1928. The schedule submitted by the council, showed that the sum of £277 was due on the block, up from the original £117. A sum of £69 had been agreed on as a compromise and payment of that sum extinguished the rates due, up to March 1930.\textsuperscript{123}

The Native Department and registrar were unaware that the land had been sold to the council and the registrar advised the under-secretary that if the council agreed that the rates had been extinguished then steps could be taken to cancel

\textsuperscript{118} MacCormick to Under-Secretary, 1 June 1927 (doc A24(b), vol 1, p 459).
\textsuperscript{119} Town clerk to Under-Secretary, 2 December 1927 (doc A24(b), vol 1, pp 451–452).
\textsuperscript{120} Town clerk to Under-Secretary, 2 December 1927 (doc A24(b), vol 1, pp 451–452).
\textsuperscript{122} Document A24(b), v1, p 446.
\textsuperscript{123} Document A24, p 157; doc A24(b), v1, p 440.
the vesting order. That approach to the council revealed the 1932 purchase, with the council stating: 'The amount of £277.10.8 shown in the schedule submitted by the Council for the Rates Compromise in 1928 was apparently in respect of this property but it was not intended that the Order should be cancelled.'

The Crown submitted that the block had been alienated 'in order to recover unpaid rates', only after the Native Minister had approved the sale, and only after he had sought further information, including whether steps could be taken to recover the rates without the land having to be sold, and with some evidence that a principal owner did not oppose the sale of the land.

However, the inclusion of the land in the compromise schedules should have meant that the charges were extinguished, and the vesting order cancelled. This was one of the main reasons that the compromise had been accepted by Te Rohe Pōtae Māori – to protect them from rating liability and the risk that liability posed to land rights. Instead, the Native Trustee, unaware that the outstanding rates had been settled, sold the land at a marked-down price to the council, which had already been compensated. As Luiten stated: 'That this rating liability once again became the rationale for accepting a nominal price for the land from the rating authority itself, was the final irony.'

19.5.2 Using land classification to collect rates on Māori land
Following the failure of the ratings compromise, and ongoing complaints from local authorities, a Native Rating Committee was appointed on 18 April 1933 to inquire into the operation of the existing law covering the rating of Māori lands, and any potential improvements to the system for collecting rates on Māori land. The committee consisted of Alexander McLeod, member of Parliament (and chairman) with Robert Nobel Jones, who at the time was also Chief Judge of the Native Land Court, under-secretary of the Native Department and, later that year, the East Coast commissioner and native trustee. The third member of the committee was John Reid, a local body politician.

The committee toured the North Island, visiting Te Rohe Pōtae in June 1933. After meeting with local bodies and Native representatives, it issued a report in September 1933. Overall, the report was brief and mainly reiterated already well-known aspects of the discussion of ratings. The committee acknowledged that non-payment of rates from Māori land, together with Crown land occupied by Europeans, presented a challenge to local body finances. The report recognised

124. Town clerk, Te Kūiti, quoted in registrar to Under-Secretary, 13 September 1935 (doc A24(b), vol 1, p 437).
125. Submission 3.4.306, p 16.
128. AJHR, 1933, G-11, pp 1–2.
130. Document A24(b) vi, p 22.
that significant portions of Māori land had no rateable value and recommended such land be exempt from rates.\footnote{131}

However, the committee also agreed with the principle that developed land should pay rates and suggested that closer cooperation between the Valuation Department, the Native Department, and the Native Land Court would ensure the correct occupiers of Māori land would receive rates demands from the local bodies, facilitating payment.\footnote{132}

Consultation with local bodies covered the fact that Pākehā leasing Māori- and Crown-owned land were also defaulting on rates. In Waitomo County in 1933, approximately 72,000 acres of Māori land was leased to Europeans.\footnote{133} Yet that year, 50 per cent of the rates liable from lessees of Māori land were not paid.\footnote{134}

Collecting rates from both Pākehā and Māori was difficult during a period of widespread financial hardship.

Local bodies sent yearly deputations to the Government, ensuring Pākehā representation and influence. In contrast, Māori land and governance bodies were under-resourced and not able to organise nationally. Individually, they exerted little influence. The Crown and local body debate on Māori rating surrounded but did not directly engage with them.\footnote{135} The views of Te Rohe Pōtae Māori are relatively unknown during this period.

At the same time, the national discourse regarding Māori landowning increasingly ignored the reality that Pākehā leases and Crown land were arguably equivalent contributors to the rates problem. Local bodies frequently depicted Māori land as ‘idle’ and ‘unused’, in contrast to Pākehā land. Most Pākehā believed that the untapped potential of Māori land was key to national economic expansion. Many considered Māori land at its best when owned and developed by Pākehā. There were very few provisions to accommodate tikanga Māori or the special circumstances surrounding Māori land. Ratepayers carrying the burden for large numbers of non-ratepayers fuelled the likelihood of social tensions and Pākehā desire to see Māori land developed.

Throughout this period of increasingly assertive local body actions, the Government argued that unproductive land should not be rated. It called on the cooperation of local bodies and pointed to development schemes as the long-term solution to the ratings issue, despite the land not being fit for development.\footnote{136}

In July 1936, the Native Department under-secretary formulated a proposal for the classification of land that was sent to Native Land Court judges. While the judges disagreed on key aspects of the plan, they did support the concept of the classification of Māori land for rating purposes. They suggested that rates liability should be dependent on factors like what the land could bear, the economic

\footnotesize{\hspace{1cm}}

\footnotesize{131. AJHR, 1933, G-11, p 2.}
\footnotesize{132. AJHR, 1933, G-11, p 3.}
\footnotesize{133. Document A24(b), V1, p 30.}
\footnotesize{134. Document A24, p 164.}
\footnotesize{135. Document A24, pp 178–179.}
\footnotesize{136. Document A24, p 184.}
circumstances of the owners, lack of access, and ‘land required for scenic purposes’. At the same time, however, the suggestions were based on the idea that Māori should be compelled to use their lands productively, or else be at risk of having their lands vested with a Māori Land Board.

Ngata eventually agreed to a proposal that included draft amendments to the Rating Act, 1925 that would:

- extend the court’s power to remit and discharge any rates levied on the grounds of the incapacity of the land in its existing state to provide sufficient net revenue to pay the rates;
- enable local authorities to apply for a ‘classification order’ to classify land for rating purposes, setting out the extent of liability of any land, or exempting it altogether for a period;
- enable the court in making rates payable under such classification orders, to liquidate rates arrears, including charging orders;
- enable the Māori Land Boards to collect rates declared under the classification, for a commission; and
- provide for the vesting of land incapable of paying rates by reason of its undeveloped state or through owner neglect, or deterioration, in the Māori Land Board, to be leased in line with Part 14 of the Native Land Act 1931.

However, local bodies rejected these proposals at the Counties Association conference in 1938.

Instead, the Farmers’ Union countered with a proposal along similar lines, but which would instead place unpaid rates at the feet of the Government. The difference between the two proposals was not how land should be classified, but rather who should pay for the consequences of the classification of unproductive lands. Neither local bodies nor government were willing to accept liability.

While the Government positioned itself as a ‘middleman’ between Māori and local government, in fact Māori were caught in the middle of a debate between local and central government that excluded them. In the end, central government was unwilling to accept the responsibility for addressing Māori non-payment. It was not willing to either prevent the charging of rates and receivership orders on unproductive Māori land, or assume the costs of Māori non-payment. Instead, local body complaints were consistently met with the response that it was unfair to rate land not producing revenue or not in occupation. Consolidation, classification, and development were at various times put forward as the solution.

The secretary of the New Zealand Farmers’ Union summed up Pākehā feeling by writing in 1939 that, while sympathetic to the Government’s policy of trying to provide for ‘an assured and stable future’ for Māori, it was unfair that their section of the community was compelled to bear a disproportionate part of the cost of that

---

139. Document A24, p188.
policy ‘through the accidental circumstances of living in areas with a large Native population’:

National responsibilities should, we contend, be dealt with on a national basis and our responsibilities for the welfare of the Māori race is just as much a national matter as Defence, Education and the upkeep of the Police Force.

The policy adopted by the Government must, as you say, of necessity be a long-term one. It will be many years before it will be brought to complete fruition, or even to anything approaching that state. My Executive suggests that in the meantime – especially since the meantime is likely to be a long time – that the Government should accept the full implications of paternalism and make payment of Native rates through the Native Department, out of the general revenue of the country. Even if this meant a slight increase in general taxation, it would be more equitable than the present arrangement.142

The statement, like others in the period, made it clear that classification proposals and other alternative solutions were feasible and agreeable to local bodies conditional on the Government agreeing to assume the costs of what was ‘essentially a national issue’. Indeed, that option would have been an alternative to the costs of development being moved to individual Māori owners or their land. It would also have accorded with the Government’s repeatedly stated conviction that Māori should not have to pay rates on unproductive land. Instead, the Government continued to avoid responsibility and failed to address the issue, leaving local bodies and communities to carry the burden for undeveloped Māori land.143

19.5.3 ‘Underperforming’ land, noxious weeds and the 1950s legislation

Another issue to emerge during the debates on rates and undeveloped or ‘idle’ lands was the problem of noxious weeds. The threat of noxious weeds being introduced through undeveloped Māori lands consumed local body politics.144 At the heart of these debates lay the Pākehā belief that land was only productive if it was being farmed, particularly by Pākehā farmers. During the 1950s, these debates culminated in a period of activity to pursue Māori rates and enforce ‘productive’ use of the land.

The 1949 election brought National to power with Sidney Holland as Prime Minister. Under Holland’s government, Ernest Corbett became the new Minister of Māori Affairs. Unlike the policy of previous governments, Corbett was not unconditionally opposed to signing charging orders for the lease and sale of Māori land.145

In 1950, Corbett visited Te Rohe Pōtae after an invitation from local bodies to discuss three ‘pressing issues of the day’, namely rating of Māori land, the

143. Document A24, p 199.
settlement and development of Māori land, and the expiry of renewable leases of Māori land.\textsuperscript{146} Corbett was accompanied by the Under-Secretary of Native Affairs, Tipi Ropiha, and the Director General of Lands. They started the visit with a meeting at the marae in Te Kūiti on 13 March 1950. There, the Ngāti Maniapoto Tribal Committee presented a written submission to Corbett. As Luiten pointed out in her evidence, it was the ‘first record of Māori sentiment about the issue for two decades.’\textsuperscript{147}

The submission expressed the immense frustration Ngāti Maniapoto felt with the Crown’s approach to Māori land, development, and ratings. They argued that consolidation and development were the two necessary conditions for progress in the district. They roundly criticised how the ‘involved ownership’ of the existing development schemes made it ‘practically impossible for Māoris being desirous of settling on Māori land and becoming farmers, to do so.’ They complained that the department’s main function must be ‘asking for reports’, as they had filed innumerable reports without any resulting action. They asked for a ‘progressive and active policy’ from the minister.\textsuperscript{148}

The committee also reminded Corbett of the futility of discussing ‘Māoris using their own lands’, when they lacked the finance to develop and bring their lands into production. Indeed, even when Māori placed their lands in development schemes and cooperated with the department’s requests, no action resulted. They emphasised that ‘we want to develop and farm our lands, but we must have assistance, and the best and surest source should and must be through the Māori Land Development avenue.’\textsuperscript{149} On the subject of rating, meanwhile, they stressed the need to make exempt from rates any land not in production, unproductive, or not capable of being productive. They pointed out that most Māori did not have the financial means to pay, with the majority working for wages insufficient to cover rates.\textsuperscript{150}

Corbett’s response foreshadowed the course that the department would take. He reminded the committee that development could only occur with the ‘co-operation of the Māori people themselves.’\textsuperscript{151} He went on to tell them that development was of great importance. However, he qualified that sentiment by warning that ‘if any person, Māori or Pākehā, could not cultivate their lands then it was the duty of the Government to see that those lands were cultivated and made productive.’\textsuperscript{152} At the same time, he assured them that he would not interfere with the ownership of their lands. Regarding rates, he told the assembly that it was their ‘duty’ to make

\begin{itemize}
\item \textsuperscript{146} Document A24, p 220.
\item \textsuperscript{147} Document A24, p 220.
\item \textsuperscript{148} ‘Notes of Representations made to the Minister of Māori Affairs’, 13 March 1950 (doc A69(a), vol 15, pp 98–99).
\item \textsuperscript{149} ‘Notes of Representations made to the Minister of Māori Affairs’, 13 March 1950 (doc A69(a), vol 15, p 99).
\item \textsuperscript{150} ‘Notes of Representations’, 13 March 1950 (doc A24, p 221).
\item \textsuperscript{151} Document A24, p 220.
\item \textsuperscript{152} Document A24, p 221.
\end{itemize}
the land productive to be able to pay rates. Corbett’s response was based on a rejection of the idea that the land could possibly be unproductive. Instead, local resistance to paying rates, collective ownership, and unoccupied land were all to blame. Corbett’s meeting with Ngāti Maniapoto was followed by another with local bodies at the Waitomo County Council offices in Te Kūiti. There, the representatives asserted that the most significant issue in the district, and the reason for Māori rates default, was unproductive land. To solve the problem, they argued, permanent settlers should be promoted through long-term leases, with terms allowing compensation for improvements and rental based on the unimproved value. Furthermore, they advocated legislation to allow non-payment of rates as grounds for vesting orders. Corbett promised to do something about the issue ‘immediately.’

In October, Corbett sent the details of proposed amendments to Section 540 of the Native Land Act 1931. The amendments provided for vesting orders to be extended to include lands where rates were not paid or ‘not being properly used’ or not cleared of noxious weeds. Leases would be granted with respect to these lands that were vested, for terms of 21 years and include compensation for 75 per cent of improvements.

The amendments were generally in keeping with the recommendations of the local bodies at the meeting in Te Kūiti. The Ngāti Maniapoto submission, meanwhile, was ignored. Indeed, Ngāti Maniapoto, unlike the local bodies, was apparently not given the courtesy of being informed of the legislation, which would go on to become the Māori Purposes Act 1950. Corbett explained that Part III of the Act was designed to enable productive use of ‘idle Māori lands which have been subject to much criticism over a large period of time’ and which had constituted ‘a burden on the local bodies so far as rates’ were concerned.

Corbett, to his credit, rejected local government pressure for longer leases or interminable leases, noting that to do so would ‘be going perilously close to a denial of’ owner rights of resumption. Corbett’s commitment to eventual rights of resumption provides some evidence that while he was not opposed to vesting lands, he preferred to leave open the possibility that Māori landowners would eventually resume occupation and use of the lands.

One of the most significant changes in the 1950 Act was that vesting orders in the Māori trustee were allowed if just one of the conditions was met. Previously, all conditions had to apply. The provisions allowed in 1950 were expanded further

156. Document A24, p 223.
159. Minister of Māori Affairs to chairman, Kawhia County Council, 21 December 1950 (doc A24, p 225).
160. Māori Purposes Act 1950, s 34.
with the Māori Affairs Act 1953. Under section 387 of the 1953 Act, orders could be brought against the land if the land was either unoccupied or unfarmed or not kept cleared of noxious weeds or if the owners had failed to pay rates. The presence of manuka, fern, and ‘native grasses’, although not deemed noxious weeds, was used as evidence of a ‘neglect to farm’. Even where owners wished to farm, the court standards were high. Subsistence farming, and indeed ‘anything less than full-scale farming on Pākehā lines rendered the land vulnerable to order’. Non-occupation, meanwhile, could be proven merely by the lack of buildings, fences, or stock.

The county councils of Raglan, Kāwhia, and Waitomo were the most active prosecutors of the 1950s legislation. Under the Māori Purposes Act 1950 and Māori Affairs Act 1953, 283 blocks of Māori land in the inquiry district were subject to applications for charging orders, an area of 36,705 acres. Orders were enforced on 144 titles, amounting to 20,615 acres or 56 per cent. Orders were not made for the remaining 16,090 acres. In cases where orders were not made, it was primarily because the Native Minister did not sign the order or because the application was never forwarded.

The vast majority of the applications were made between 1951 and 1954. For example, the Māori Land Court, sitting at Kāwhia, heard 53 applications in just four days between 9–12 March 1954. Of these, 26 were adjourned in order for the Māori Affairs Department to consider if the land had potential for development, or to enable the owners to arrange a lease. As Judge Prichard explained to Toko Te Mahara, one of the owners of Moerangi 3G5B, whose application was adjourned: ‘Well, the [Kāwhia County Council] is not wanting to steal land. What the County says is “Use it, and if you will develop it then good luck to you” and if you won’t then it will be handed to somebody else.’

Twelve orders were made because either the block was unimproved or infested or, in one case, because the owner ‘was a very indifferent farmer with little or no resources’. The rest of the applications were either withdrawn, struck out, or not heard. One block struck out was found to be already subject to an order. Luiten argued in evidence to this inquiry that it was not coincidental that:

this last, large-scale ‘compulsory dispossession’ of Māori land in the twentieth century was principally invoked in Te Rohe Pōtae, where political resistance to rating was strongest, and where the marginalisation of tāngata whenua left them vulnerable to the new incursions on their title.
And while the chairperson of the Raglan County Council could claim, ‘It was not the desire of the Council to see the land leased to a European if there was a Māori owner willing and reasonably efficient to farm it’, little was done by the councils to help the owners farm their land.\textsuperscript{170}

In 1952, the Raglan County Council clerk wrote to the secretary for the New Zealand Counties Association, with a copy sent to Minister Corbett: ‘It gives me the greatest of pleasure to advise you that as a result of Orders of the Māori Land Court granted on the application of this County 682 acres of Māori land has been leased to eight Europeans.’\textsuperscript{171} The Minister responded that ‘I am firmly of the opinion that if other County Councils take advantage of the provisions of the Act, as your Council is doing, the problem of idle and unproductive Māori land will soon be on its way to a complete solution.’\textsuperscript{172}

That same year, however, the Under-Secretary of Māori Affairs admitted that, from the perspective of the owners, the legislation must be regarded as ‘confiscatory of their rights.’\textsuperscript{173} The New Zealand Farmer questioned ‘why the focus was only on Māori land when there was other general and Crown land idle’. It acknowledged that councils were most active against Māori land because of the rate arrears and that ‘compulsorily occupation’ was necessary to make them productive.\textsuperscript{174}

By 1958, Te Rohe Pōtae Māori had become so concerned about the provisions of the 1953 Act that they set up several ‘Komiti Whenua’ to try to wrestle the control of their own land from the Māori Trustee. They wrote to the Minister of Māori Affairs seeking empowering legislation for the Komiti, and an end to what they saw as the power of the trustee to confiscate their land: ‘No Māori land should be confiscated under the powers exerciseable [sic] by the Māori Trustee and other provisions of the Māori Affairs Act 1953 without first obtaining the approval of the Māori land Komiti controlling the block of land concerned.’\textsuperscript{175}

They also requested a Māori translation of the Act. The Minister’s response was that the Act did not do what they thought it did, he did not see how the ‘Committees’ could assist in the administration of the land, and it would be too difficult to render ‘the formal and technical language of a statute in a form of words which can be understood by people generally.’\textsuperscript{176}

In the decades following the Māori Affairs Act 1953, six ‘ultimate fates’ for Māori land subject to changing order applications were possible.\textsuperscript{177} These included:

- retention as Māori freehold or Māori reserved land;
- alienation by lease;

\begin{itemize}
\item \textsuperscript{170} Notes of Interview’, 2 April 1952 (doc A24, p 239).
\item \textsuperscript{171} County clerk, Raglan, to secretary, New Zealand Counties Association, 28 May 1952 (doc A24), p 241).
\item \textsuperscript{172} Minister of Māori Affairs to county clerk, Raglan, 4 June 1952 (doc A24, p 241).
\item \textsuperscript{173} Under-Secretary, ‘Idle Māori Land’, 15 August 1952 (doc A75, p 241).
\item \textsuperscript{174} New Zealand Farmer, 9 October 1952, p 5 (doc A75, p 241).
\item \textsuperscript{175} Chairman, Rakaunui Komiti Whenua, to Minister for Māori Affairs, 8 July 1958 (doc A24(a), p 1064).
\item \textsuperscript{176} Minister of Māori Affairs to Tuteao, 29 August 1958 (doc A24(a), p 1074).
\item \textsuperscript{177} Document A24(h), p 4.
\end{itemize}
alienation by sale;  
alienation by Europeanisation;  
state development; and  
alienation through Public Works takings.

Once orders were approved, the Māori Trustee would try to lease the land if it was capable of being farmed. Alienation by sale was only to be considered if efforts to lease had failed. Of the 20,615 acres subject to order in Te Rohe Pōtae, about 8,377 acres (or 40 per cent) were leased, seemingly confirming that the 1950s legislation was ‘a last land grab’ effort to transfer land from Māori to Europeans. This rate of leasing is surprising given that the land subject to charging orders ‘tended to be difficult farming propositions, in terms of soil, terrain, and road access, and often only viable to neighbouring farmers.

When the land leases first came up in the 1970s, the owners faced several problems with gaining resumption of occupancy. A 75 per cent compensation clause for improvements presented an immediate barrier. The sinking fund set up by the Māori Trustee to help fund compensation for improvement proved inadequate. When it was used, the amount then became a further debt for the owners, and in some cases led to further leasing or sale of the land.

Approximately 7,912 acres subject to these orders were sold. Proportionately, however, more land subject to these orders remains in Māori ownership: 11,635 acres, or 56.4 per cent of the acreage subject to order, remains Māori-owned. But 61 out of 144 titles (over 42 per cent) were alienated, without the consent of Te Rohe Pōtae Māori, through sale because of the legislation.

Claimant Marleina Te Kanawa described how the whānau and owners of land in Waikeri (Manu Bay) were forced to sell land to the Raglan County Council as payment for unpaid rates in the early 1970s. The land had been leased to a Pākehā farmer by the Māori Trustee. The lessee was responsible for paying the rates but was forced to relinquish the lease when the rates increased, and he could no longer pay them. The owners could not afford the rates or compensation debt. The Māori Trustee and council called a meeting of the owners and ‘the owners ended up reluctantly having to sell.

Bassett and Kay recorded the consequences of the Acts for Ngāti Apakura in Awaroa Block 44B. In March 1954, the Kawhia County Council made an application under section 34 of the 1950 Act to the court for this block. The application was made on the grounds that the block had weeds and was not being properly...

farmed, even though one of the owners was grazing the land and was seeking a formal lease. However, the land was vested in the Māori Trustee in 1955, under section 387 of the 1953 Act. The Māori Trustee failed to secure a lease until 1964 when it was leased to a neighbouring farmer. By this time, the state of the land had degenerated from when it was initially vested.\textsuperscript{186}

In 1983, the Māori Trustee informed the owners of their right to resume possession at the expiry of the lease. The trustee received three responses that the lease should be renewed, and none in favour of resumption. The lease was renewed. Later the trustee was told that the owners were ‘bitterly opposed to the renewal of the lease.’\textsuperscript{187} The opportunity to resume the lease arose again in 1992. Again, the lease was renewed, and again the trustee received criticism about its process of consultation.\textsuperscript{188}

Counsel for the Ngāti Apakura claimants submitted that it was ‘highly likely that a number of owners were not actually notified.’ The standard process was simply to send out letters to those Māori on the lists of owners for whom the trustee had addresses. ‘It is unlikely that the Māori Trustee would have taken steps to ensure that the list of owners were [sic] up to date when consulting the owners’. Thus, adequate steps to ascertain the wishes of the owners were not made. However, counsel noted, this may not have even mattered as, ‘the provisions of the Māori Affairs Act 1953 merely required that the Māori Trustee take adequate steps to ascertain the wishes of the owners. It was not bound to follow their wishes.’\textsuperscript{189}

### 19.6 Other ‘Solutions’ for the Non-payment of Rates, 1967–88

#### 19.6.1 The Rating Act 1967

Despite the passing of the Māori Purposes Act 1950 and the Māori Affairs Act 1953, local bodies continued to be troubled by non-payment of rates from Māori land.\textsuperscript{190} The Waitomo County Council’s rates books of 1959–60, for example, indicated that non-payment from Māori land remained a significant issue for the council well after the implementation of the 1950s legislation. Part of the problem was the ‘fundamental ill-fit of the rating legislation to multiply-owned land’ as well as poor administrative processes.\textsuperscript{191}

Māori land was less likely to have a listed owner or occupier. In Kawhia South Riding, for example, 74 entries had no listed owner or occupier, with the word ‘Māoris’ entered in the column alongside the land description.\textsuperscript{192} In these cases, the

---

\textsuperscript{186} Document A75, pp 279, 282–283.
\textsuperscript{187} Document A75, p 284; transcript, 4.1.19, pp 184–7 (Emma Whiley, Heather Bassett, hearing week 13, Waitomo Cultural and Arts Centre, 9 June 2014).
\textsuperscript{188} Document A75, p 285.
\textsuperscript{189} Submission 3.4.228, p 97.
\textsuperscript{190} Document A24, p 314.
\textsuperscript{191} Document A24, p 316.
\textsuperscript{192} Document A24, p 316.
Valuation Department would often address rate notices to ‘Māoris . . . c/-Māori & Island Affairs Department’.\(^{193}\)

The Rating Act 1967 attempted to deal with some of these issues. It provided that where Māori freehold land was owned by no more than two people, their names had to be placed in the owners’ column of the valuation roll (section 150(7)). For multiply owned land not vested in a trustee, the word ‘Māoris’ was to be entered in the owners’ column, and in the absence of any occupier or nominee, the same ‘Māoris’ was to be entered in the occupiers’ column (section 150(9)). As Luiten says, ‘the Act was no improvement on previous practice.’\(^{194}\)

The 1967 Act kept the provision for securing rates through charging orders, but reduced the timeframe to do so to six months and stipulated a minimum debt of $6. It also required the court to be satisfied that the local body had taken all reasonable steps to obtain payment from the trustee in the case of vested lands. In the case of occupied land, the court needed to be satisfied that the local body had attempted to recover the amount but had been unsuccessful.\(^{195}\)

The 1967 Act also ended the receivership provisions of the 1925 Act. Instead, the 1950s vesting mechanism was reworked and incorporated into this Act. Under section 155(1), on making a charging order, the Māori Land Court was required to consider the future use of the land and the future payment of rates. Local bodies were given an advisory role in the court’s deliberation as to the best use of the land.

If the court was satisfied that the alienation of the land, whether by lease or sale, would not be contrary to the interests of the owner and would assure future rates payment, it could without further application make an order under section 438 of the Māori Affairs Act 1953 (as substituted by section 142 of the Māori Affairs Amendment Act 1967) vesting the land in a trustee for lease or sale (section 155(2)). Ministerial consent to permanent alienation was no longer required.\(^{196}\) Beneficial owners were given two months grace in which the order could be cancelled, providing that outstanding rates were paid and the court satisfied by the owners’ provision for future payment (section 155(5)).

The Crown quoted Luiten saying that she had not seen a lot of evidence relating to the effect of the Rating Act 1967 in Te Rohe Pōtae.\(^{197}\) However, claimant Kingi Pōrima (Ngāti Hikairo) described the effect that the rating policy had on iwi, whānau, and individual Māori:

> I remember in the early 1970s an uncle approached me and asked if I wanted to buy a section in Kāwhia. I recall he said that he had $32 in rates demands for the land and he couldn’t pay. I was in Murupara at the time and I didn’t have the money. I’m told that the section was lost to the iwi. It had to be sold. I think it was in the Kāwhia

\(^{193}\) Document A24, p 317.  
\(^{194}\) Document A24, p 323.  
\(^{195}\) Document A24, p 323.  
\(^{196}\) Document A24, p 323.  
\(^{197}\) Submission 3.4.306, p 41; doc A24, p 324.
township area. I believe that the rates bills put a lot of pressure on our whānau in that time. The rates were piling up, but our people were struggling to earn enough.\textsuperscript{198}

Luiten also notes that no records were kept of forced sales about land that had subsequently been declared European land under the Māori Affairs Amendment Act 1967.\textsuperscript{199} This Act converted to general land any Māori land that had four or fewer owners, without needing the consent or knowledge of the owners (section 4(2), 6). As the local government’s rating inquiry pointed out in 2007, this land, ‘to all intents and purposes’ was ‘still viewed by its owners as Māori land with the same cultural associations and values’.\textsuperscript{200}

Māori were not the only ones to see the unfairness in this. A submission to the Local Government select committee, in 1988, noted that the provision for forcing sales of land to enforce collection of rates was ‘patently contrary’ both to the words and principles, and spirit, of the Treaty of Waitangi:

The promise by the Crown to safeguard undisturbed possession of Māori land, as long as the occupiers individually possess and desire to retain this land in their possession, could not be reconciled with the former power of sale for rating default. At no time in the history of this country have the Māori people collectively consented to the imposition of rating liability leading, upon enforcement, to the risk of loss of land. The imposition of the rating sale option of Māori land can be distinguished from other forms of liability which may result in loss of a property interest or right. The agreement to a mortgage of a property, or the voluntary incurring of debts leading to bankruptcy, with the risk of sale of the property interest, both contain an element of choice, in which the property is used as a security. By contrast, the rating liability charge arises as a matter of status rather than choice.\textsuperscript{201}

This time the Government appeared to listen. The Acting Minister of Local Government, Jonathan Hunt, admitted as much in the House in June 1988:

Submissions made to the committee contended that the provisions in the present Act for the forced sale of Māori land to recover unpaid rates were contrary to the Treaty of Waitangi. It is difficult to refute that view. In addition, it has become evident in recent years that this provision has not proved to be a remarkably effective means of enforcing the payment of rates.\textsuperscript{202}

\begin{flushright}
\end{flushright}
The Rating Powers Act of 1988 ended the forced sale of land for non-payment of rates, but it also provided for the appointment of a receiver again (section 188). In that respect, it was a throwback to the 1925 Act.

19.6.2 The ability to remit rates

The 1988 Act also contained a provision empowering local authorities to remit or postpone the payment of any rates on land owned by Māori. In fact, local authorities had that power since the 1925 Rating Act, although they seldom exercised it.\(^{203}\) The following example provides an illustration of where they did, as a contrast to what seems to have been central government’s attitude to rates remission or exemption.

From 1933 to 1955, Taumarunui County Council exempted ‘unproductive’ Māori land from rating. Unproductive land was removed from rating responsibility on a case-by-case basis from 1966 to 1981.\(^{204}\) Most of the land blocks affected are located outside the inquiry district’s south-eastern boundary, on the western shores of Lake Taupō, although several Rangitoto-Tuhua blocks were included in this strategy.\(^{205}\)

In 1933, over 90 blocks had been gazetted as exempt from rating in Taumarunui County, under section 104 of the Rating Act 1925, as part of the consolidation scheme. They were in an isolated and mountainous region that had long lacked road access or other council services. This remote status began changing in the early 1950s due to local timber milling, which sparked new interest in the potential of farming. In December 1954, the council petitioned the Department of Māori Affairs to have the blanket exemption revoked. Despite the cautions of the district officers in Wanganui and Auckland that the cost of consolidation on these lands would need to be factored in when they were returned to the rating roll, the revocation of their rates exemption was approved.\(^{206}\) The lifting of the exemption is the subject of three claims.\(^{207}\)

In the 1960s, the council was struggling with the effects of its revocation of the exempt status of the blocks in question. Including the unproductive lands on the rating roll meant that the rates burden on partially developed farms in the area was up to three times higher than the rest of the county. To solve the problem, the council agreed in principle to remitting rates of undeveloped Māori land in the Western Shores area in 1966. The county clerk was instructed to advise landowners whose properties might qualify and to prepare schedules for the 1966/67 rating year. The Valuation Department was asked to provide details regarding the separate values of the developed/undeveloped areas of the assessments concerned, and rates were completely remitted on the unimproved portions.\(^{208}\)

\(^{203}\) Rating Act 1925, ss 103–104.
\(^{204}\) Document A24, p 329.
\(^{205}\) Document A24, p 329.
\(^{206}\) Document A24, p 329.
\(^{207}\) Claim 1.2.38 (Wai 1147 and Wai 1203); claims 1.2.35, 1.2.88 (Wai 1447).
\(^{208}\) Document A24, p 330.
Following the passing of the Rating Act 1967, the council invited representative owners to apply for relief. Owners had to apply each year and each application was considered by the council on a case-by-case basis. In the first year, 16 applications were received resulting in rates relief of $3,345. Five years later, 49 applications, amounting to some $24,921 in rates relief, were received. The rates remission scheme continued until the 1980/81 year. The departure of long-term chief executive SA Hunter from council that year appears to have been a key factor in the subsequent lapse of the scheme.

At the same time as the council was beginning its rates remission scheme in 1966, it was also trying to have the same lands declared exempt from rating, under section 104 of the Rating Act 1925. The response to a February 1967 model order in council (forwarded to Internal Affairs for gazettal with a schedule of 84 blocks, which in turn was passed on to Māori Affairs), illustrates the Crown’s perspective:

The Minister of Māori Affairs takes the view generally that unless there is a very compelling reason to the contrary, all lands, both Māori and European should be expected to pay rates and it seems unlikely that he would support the Council’s present recommendation without a very good case being made why the exemption should be granted.

The county council replied that the exemption would ease the rating burden on partially developed Māori land and accelerate development by incorporation. The council also stated that it would review the exempt status of blocks each year and that ‘[t]he Council is unanimous in its decision, and considers the action in the best interests of the County.’

The council’s request was forwarded to the Minister for his consideration. While the Minister had ‘very strong views’ on exempting Māori land from rates, he had indicated elsewhere that he thought that such lands ‘should be acquired by the Crown and held against future needs.’ In this case, though, and ‘[h]aving regard to the present shortage of finance and of the fact that is highly improbable that the Crown in the foreseeable future will be in any position to offer to purchase these lands,’ he was asked to consider the terms for an exception.

However, the Minister was said to still look ‘with considerable disfavour on the . . . application covering, as it does, such a very large area of land.’ Instead, the district officer at Wanganui was instructed to report on which of the lands were capable of development or could be subdivided or were incapable of development. The Minister also suggested that those lands capable of development might be

---

210. Secretary for Māori Affairs to clerk, Taumarunui County Council, 21 March 1967 (doc A24, p 333).
211. Clerk, Taumarunui County Council, to Secretary for Māori Affairs, 17 August 1967 (doc A24, p 333).
212. Secretary for Māori Affairs to director-general of lands, 7 November 1967 (doc A24(a), p 1278).
213. Deputy Secretary for Māori Affairs to Minister of Māori Affairs, 9 October 1967 (doc A24(a), p 1276).
gazetted under part XXIV of the Māori Affairs Act 1953, even though development might not be possible for some years, as that would get around ‘the rating question’ by making them not liable for rates.\(^{214}\)

The lands were duly inspected and reported on, although the amount of work involved meant that the report was not completed until August 1968, and not sent to the Minister of Māori Affairs until April 1969.\(^{215}\) In the report, the land was divided into 10 categories:

- A. European lands.
- B. Lands subject to incorporation.
- C. Leased lands.
- D. Lands otherwise farmed.
- E. Lands otherwise under control.
- F. Lands unoccupied but capable of development.
- G. Lands capable of development only in conjunction with other lands.
- H. Lands with subdivisional potential.
- I. Lands incapable of, or not economic for development.
- J. Lands connected with the Tongariro Power Scheme.

Later, in the same month, Taumarunui County Council was informed of the Minister’s decision.\(^{216}\) The lands in categories B, C, D, E, F, G, and H would not be exempted because they were already being farmed or had potential to be subdivided or developed. The land in category J, being occupied by the Crown for the Tongariro Power Scheme, was already non-rateable. The lands in A, being European owned, were outside the jurisdiction of the Department of Māori Affairs.

Regarding the lands in category I, the Minister had directed that the Crown consider purchasing them as they were incapable of, or not economic for, development. In the meantime, these lands would remain rateable property. However, after enquiring into the matter, the Commissioner of Crown Lands found ‘there is no intention to relinquish title to these lands and in fact the owners were upset at the thought that the Crown might take them over. In view of this attitude it is not intended to take the matter any further.’\(^{217}\) The matter appears to have been left there. The Secretary for Māori Affairs wrote: ‘No action necessary. If the owners do not want to sell, then they must pay rates. There is nothing more we can do.’\(^{218}\)

Despite the Government’s refusal to declare these lands non-rateable, the Taumarunui County Council’s own remission policy from 1966 to 1981 meant that the rates on this class of land did not accrue in this period. In this case, local government action was more beneficial to Māori than central government action.

\(^{214}\) Secretary for Māori Affairs to district officer, Wanganui, 3 November 1967 (doc A24(a), p1277); see also doc A24(a), p1291.
\(^{215}\) Document A24(a), pp1291–1294.
\(^{216}\) Document A24(a), p1296.
\(^{217}\) Director-general of lands to Secretary for Māori and Island Affairs, 24 March 1970 (doc A24(a), p1304).
\(^{218}\) Secretary for Māori Affairs, handwritten note on director-general of lands to Secretary for Māori and Island Affairs, 24 March 1970 (doc A24(a), p1304; doc A24, pp334–335).
Luiten questioned the Minister’s refusal to contemplate exemption. In the end, she put the Minister’s refusal to exempt Māori land down to a philosophical resistance to ‘special treatment’ for Māori lands.  

19.7 Consultation, Māori Representation, and Participation

The demand from Pākehā for roads was a major part of the impetus for extending Pākehā local government into the inquiry district. Thus, when county councils came into being, they were essentially roading authorities, and their activities were exclusively directed at meeting the needs of Pākehā ratepayers. For example, Luiten showed how district roads were formed to access and service Pākehā settlement. Those that governed on these boards were local Pākehā and not Māori.  

There is no evidence that the Crown consulted with Te Rohe Pōtae Māori regarding the introduction of this form of local government into the district. A review of the legislation governing counties, boroughs, towns, and cities also indicates that no provision was made for Māori representation or participation.

As noted above, representation and participation were initially based on a ratepayer qualification that disenfranchised Māori whose customary land was exempt from rating. After their land was processed through the Native Land Court, during the 1880s and 1920s, and after they were awarded freehold or leasehold titles, Māori who wanted to pay rates could also be denied the right to vote, under the nominated owner rule where only one owner of a multiply owned block was allowed to vote.

Administrative issues relating to the maintenance of correct details for Māori assessments on the Valuation Rolls (on which the electoral rolls were based) added to the disenfranchisement of many Māori landowners. The naming of owners on valuation rolls determined whether Māori owners could vote in the region. Because central government neglected to provide management or financial resources to maintain the rolls, they remained inaccurate until about 1944. Māori, therefore, had no ability to vote, either in local body or national elections. ‘So there was taxation without representation’ for most Te Rohe Pōtae owners during that period.

Meanwhile, Pākehā owning properties with a certain level of rateable value were entitled to additional votes. Pākehā ratepayers who owned multiple properties were also able to vote for county councils within each district in which they owned property. This voting system meant that Te Rohe Pōtae Māori were poorly represented on local government. The lack of representation resulted in local authorities often pursuing ‘public interest’ projects, over Māori landowner interests, such as putting roads through Māori land, usually in opposition to Māori wishes,

and public works takings targeting Māori land.\(^{223}\) Providing services to Māori was often only undertaken if the Crown was also contributing to the costs, as discussed below.

### 19.8 Outcomes for Te Rohe Pōtae Māori in Terms of Services Such as Sanitation, Roading, and Rating Issues

Te Rohe Pōtae Māori had no special representation or participation rights in terms of local government in their own territory. They were denied the right to have their own forms of self-government recognised, as discussed in chapter 18.

Te Rohe Pōtae Māori were penalised, however, for not contributing to this euro-centric system of local government. Those who defaulted on paying rates were barred from voting.\(^ {224}\) Non-payment of rates by Māori meant that their interests could be largely ignored.

As demonstrated in chapters 12–15, often it was not the owners of the land who were to blame for defaults, rather it was the Native Land Boards and/or lessees of the land. Interestingly, Luiten argues that the local bodies’ own actions were often to blame:

> One of the saddest ironies in this report is that the inability of Māori to contribute as ratepayers – expressed in the local body clamour over ‘idle’ lands – was arguably of the local bodies’ own making. Many Māori attempts to engage in farming were stymied from the outset for the want of a road.\(^ {225}\)

One of the reasons Te Rohe Pōtae Māori had initially been opposed to consolidation and the rates compromise in 1928 was because of what they saw as the inequitable services they received from local bodies, even when they were paying rates.\(^ {226}\)

Māori in the inquiry district did eventually agree to consolidation and the rates compromise. But, having agreed to the rates compromise, they could have reasonably expected that this revenue would be spent on works of benefit to them. However, the compromise did not guarantee that the money would be used for ‘specifically Māori purposes’. Kāwhia County, for example, passed a bylaw stating that the council was not required to apportion the compromise payment, totalling £3,130, to the lands from which the payment originated.\(^ {227}\)

The Native Land Amendment and Native Land Claims Adjustment Act 1928 confirmed this stance. Under section 16(4), although the compromise payments were to be treated as a pro rata satisfaction of all the rateable properties, the local authority did not have to allocate it to the lands the payment came from; instead,

---


\(^{224}\) Submission 3.4.290, p 14.

\(^{225}\) Document A24, p 8.

\(^{226}\) Document A69(a), vol 9, p 211.

\(^{227}\) Document A24, p 147.
it could spend the revenue where it saw fit. This principle was repeated in section 536(4) of the Native Land Act 1931: ‘In effect, unlike Pākehā ratepayers, Māori were not guaranteed services as a result of the 1928 rates compromise.’

This was the case for the Tahāroa community. Special provision was made for Kāwhia County in response to demands from Tahāroa farmers that part of the funds be used to provide access to their farming operations, and for their children to get to school. Since the council was not required to provide access equitably, it instead planned to use the money, along with a 4:1 subsidy from central government, to improve the harbour road joining the district north to south. The council then expected central government to pay for any road access that would benefit the local Māori population. The county council justified lack of action on the fact that Māori paid no rates, even though council had been compensated. Considering the lack of services, Tahāroa Māori saw no incentive to pay rates.

They did, however, let the Minister of Māori Affairs know of the impact that poor road access had on their settlement:

Last month, June [1959], two young babies died, both these babies would be alive today if it had been possible to obtain a doctor or to take them to a doctor or hospital. Over the years it is possible that many of our people would have lived if road access been available. We wish to point out again that we are cut off from the road by a long narrow lake. A lake bordered by swamps and steep hills at one end and vast iron sands.

\[\text{References:}\]

at the other. It is the three miles of roading around the western end of the lake which we are fighting for.\textsuperscript{233}

It would not be until 1968 that a road was built up to the Tahāroa school, with financial assistance from central government.\textsuperscript{234} However, the length of time it took to complete the project contributed to a continuing sense of grievance from local Māori. Ngāti Mahuta claimants believe that the road was only built to accommodate New Zealand Steel, not for the benefit of the community. Claimant Connie Tuapiki stated that the community still does not receive sufficient services:

In Tahaaroa, we pay rates even though development in our area seems to have been forgotten about by the Council. For example, there are a number of paper roads in and around Tahaaroa, including not only the quarry road, but the main Tahaaroa roads to Albatross Point and to Te Maika. They are roads that have been surveyed, but never properly constructed. For that reason we have no proper access. Despite this, we are still paying rates for our land.\textsuperscript{235}

Kawaroa Road was another example where both local and central government provided money for a road servicing Māori land.

By the 1920s, significant numbers of Māori were dairy farming around the Aotea harbour. In the early 1930s, some of the Aotea farmers put their land under Māori Affairs development schemes, while other farmers continued to farm independently. The land schemes ostensibly offered a path for development and the promise of future access, as Ngata’s personal interest in land development around the Aotea harbour seems to have prompted the completion of the Kawaroa Road linking Makomako to a butter factory at Ōparau. The road serviced five properties. All but one was Māori land, and these four were all farms on unit schemes.\textsuperscript{236}

Local body maintenance of the road, however, proved challenging and by 1940, the road was described as ‘in very bad condition.’\textsuperscript{237} In March 1941, the Native Department granted £300 to the Kāwhia County Council towards re-metalling the road, on the condition that the money was used to pay unemployed Māori to do the work. In April, the county council asked for additional funds to continue the work, noting that the council would still have to pay for other costs.\textsuperscript{238} The Under-Secretary, Native Department, requested advice from the Auckland registrar stating that the only justification for granting an employment subsidy was if the road served Māori land that had not been subject of rates collections or if the local unemployed could not get better work. The registrar recommended support—

\begin{itemize}
  \item \textsuperscript{233} Secretary, Taharoa Settlers’ Association, to Minister of Māori Affairs, 14 July 1959 (doc A24(a), p1445).
  \item \textsuperscript{234} Document A24, p 405.
  \item \textsuperscript{235} Document J8 (Tuapiki (Hepe)), p 8.
  \item \textsuperscript{236} Document A24, pp 369–370.
  \item \textsuperscript{237} Clerk, Kāwhia County Council, to Under-Secretary, Native Department, 3 October 1940 (doc A24, pp 370–371; doc A24(a), p 698).
  \item \textsuperscript{238} Document A24, p 371; doc A24(a), pp 702–703.
\end{itemize}
ing the application as ‘the Kawhia County is an impoverished one financially’ and because it would relieve the Native Department from ‘the pressure’ of having to find work, or otherwise, for ‘the Native Labour’.  

In fact, the registrar could also have recommended that the money be paid on the basis that the road served Māori land where no rates were being collected. In July 1942, the Native Minister received a delegation from the local Waitomo member of Parliament Broadfoot and Colonel Matson, the chairman of Kawhia County Council, asking for help in recovering the rates from the Māori farmers. They advised that the council received rates of only £22 per annum from the single Pākehā owner on the road but as the council spent much more than that each year clearing slips, they ‘badly need the rates’ from the Māori farmers. The Native Minister replied that any surplus revenue that the Native Department might have would be put towards the rates payments, but while the department was willing to help the council, the department could not help with collecting the rates. He also reminded the council that the county had received labour subsidies to assist with their ‘rating situation’.

Central government also contributed to forming the Aotea extension road on the south-east shores of Aotea Harbour, where seven dairy units, under the Kawhia Development Scheme, and several independent properties were being farmed. Admittedly, it took several years (from about 1936 to 1948) to form, but this was during a depression and the Second World War. It was also at a time when local and central government were forming or maintaining other roads to service other Māori farms in the vicinity, using Māori labour.

However, while the road remained incomplete, Māori farmers felt that they were not receiving the benefit of having their lands under the development schemes. A concerned resident wrote to the Chairman of the Kawhia School Committee in 1941 about the effect the lack of a road had on the local Māori children trying to get to school and back: ‘on a cold wet day I have seen these children the tallest shouldering the little ones wading straight out into a half tide on the Aotea beach. This is necessary in order that they may return home before darkness overtakes them.’

These examples show that some efforts were made to provide road access to remote communities. However, they also demonstrate that the road access probably only resulted because some of the land was under the development schemes, which had been aimed at making land productive so that the owners could pay their rates. Without the development schemes, it is debatable whether the Crown or local bodies would have made any effort to form the roads. And the length of time it took to provide the roads, clearly created considerable frustration and anguish for the communities.

239. Registrar to head office, 18 April 1941 (doc A24, p 371; doc A24(a), p 704).
240. Under-Secretary to registrar, 28 July 1942 (doc A24, p 371; doc A24(a), p 706).
244. Aileen McKenzie to chairman, Kawhia School Committee, 8 August 1941 (doc A24(a), p 109).
In some cases, the delays seem to be more a symptom of a rural community in a time of depression followed by the impact of the world war. Luiten agreed under cross-examination that Pākehā in poor ridings were affected by the rating system, as much as Māori in those ridings. But throughout the 1950s, the maintenance of the roads continued to be an ongoing battle and county councils continued to regard the provision of services for predominately Māori communities as the responsibility of either the Public Works or Māori Affairs departments.

19.9 Treaty Analysis and Findings

19.9.1 Participation in local government

From the earliest time of Pākehā government, the Crown began delegating specific functions and powers to local government authorities. Māori were not consulted about the introduction of local government, nor, in Te Rohe Pōtæ, did they participate in early local government decision-making. Apart from section 71 of the New Zealand Constitution Act 1852, the legislation provided little opportunity for Te Rohe Pōtæ Māori to participate in the local government system.

The Crown admitted that local government legislation in the nineteenth and twentieth centuries generally did not contain provisions for specific Māori representation in local government. The Crown accepted that the Treaty principle of equity requires it to ensure that Māori have the same opportunities to participate in local government decision-making as non-Māori. However, the Crown questioned whether the absence of specific provisions would have, on its own, caused prejudice to Te Rohe Pōtæ Māori or prevented them from participating in local government decision-making.

We did see that some individual Te Rohe Pōtæ rangatira participated in local government, and it made a difference for the iwi. But these were rare cases and cannot be construed as an opportunity for Te Rohe Pōtæ Māori to participate, and exercise their tino rangatiratanga, collectively. In general, Te Rohe Pōtæ Māori were shut out of the local government system. Instead, plural voting rights and other discriminatory mechanisms denied Māori landowners an opportunity to participate in representative government, allowing Pākehā to gear the system to their circumstances, interests, and objectives.

As the Tribunal has frequently stated, the Treaty established a relationship akin to a partnership and imposed on both Treaty partners an obligation to act towards each other with the utmost good faith. The principle of partnership itself is expressed through the necessary balancing of the concepts of kāwanatanga and tino rangatiratanga expressed in articles 1 and 2 of the Treaty. The Tribunal

---

245. Transcript 4.1.13, p1017 (Jane Luiten, hearing week 8, Te Kotahitanga Marae, 7 November 2013).
247. Submission 3.4.290, pp 13, 16.
249. The Treaty of Waitangi Act 1975, sch 1, articles 1 and 2.
in the Te Whanau o Waipareira inquiry, concluded that partnership ‘serves to
describe a relationship where one party is not subordinate to the other but where
each must respect the other’s status and authority in all walks of life.’

A further condition of the Treaty relationship is the Crown’s duty to act with
fairness and justice to all citizens. Article 3 of the Treaty confirms that Māori have
all the rights and privileges of British subjects. The Tribunal has found in several
reports that this article gives rise to the principle of equity. It is through article 3
that Māori, along with all other citizens, are placed under the protection of the
Crown and are therefore assured equitable treatment from the Crown to ensure
fairness and justice with other citizens.

As we have already said, ‘the Crown could not favour settlers over Māori at an
individual level, and nor could it favour settler interests over the interests of Māori
communities.’

In our view, the Crown failed to ensure that local authorities established a rela-
tionship with Māori that was consistent with the Treaty of Waitangi and ensured
Māori interests were incorporated and protected. Instead, local authorities were
permitted to focus on Pākehā settlement and revenue-gathering endeavours.
Consequently, Pākehā interests were served at the expense of Te Rohe Pōtai
Māori. The evidence presented to us clearly demonstrated that the system of local
government that took hold in the district from the early twentieth century existed
primarily to advance Pākehā settlement. We find the unequal distribution of bene-
fits from local government to breach equity rights enshrined by article 3 of the
Treaty, as well as the principle of participation.

In our view, the Crown must also ensure that local authorities are acting con-
stantly with the principles of the Treaty. Failure to do so is a breach of the duty of
active protection. The Crown’s policies, legislation, and actions failed to delegate
to local authorities a requirement to give effect to these matters through arrange-
ments worked through in a mutually beneficial manner, in accordance with the
principles we identified in chapter 3. By failing to delegate that requirement, we
find that the Crown acted in a manner inconsistent with the principles of partner-
ship, rangatiratanga, and equity, and it breached its duty of active protection of Te
Rohe Pōtai tino rangatiratanga.

19.9.2 Introduction of the rating system into Te Rohe Pōtai
Another significant grievance in this inquiry is about the issue of rating, a central
means by which local government activity was financed. In the view of many of

250. Waitangi Tribunal, Te Whanau o Waipareira Report (Wellington: Legislation Direct, 2008),
p.xxvi.
252. Waitangi Tribunal, The Napier Hospital and Health Services Report (Wellington: Legislation
Direct, 2001), pp 48, 62; Waitangi Tribunal, The Te Arawa Mandate Report (Wellington: Legislation
253. Waitangi Tribunal, Te Mana Whata Ahuru: Report on Te Rohe Pōtai Claims, Pre-publication
the claimants, the agreements made during the hui at Kihikihi in February 1885 meant that Te Rohe Pōtae lands would not be subject to rates.\(^{254}\)

Claimant counsel submitted that despite the ‘degree of ambiguity’ about Ballance’s statement at the time, Te Rohe Pōtae Māori could have expected that rating would apply ‘only if land was near a road or railways and it was actually in use, for example by way of lease, sale or cultivation within an open market for land’.\(^{255}\) The government, counsel argued, ‘reneged on a specific promise to Rohe Potae Māori that rates would only apply in a situation where they were free to develop their lands under their control in an open market around the route of the North Island main trunk railway’.\(^{256}\)

The Crown accepted that Ballance had shared with the iwi concerns about rating being applied to Te Rohe Pōtae land. It agreed that Ballance ‘represented’ to Te Rohe Pōtae Māori that their land should become liable for rates only when it was leased or sold or was in cultivation. Their land ‘would not become liable to rates merely because it was located within five miles of a road or railway’.\(^{257}\) However, the Crown argued, subsequent Crown actions needed to be considered in the context of changing circumstances. As an example, the Crown listed some of the services that local authorities came to provide, especially in the twentieth century; services ‘that would not have been envisaged in 1885’.\(^{258}\)

The Crown also argued that the extent of prejudice Te Rohe Pōtae Māori suffered because their land became liable for rates also needed to be considered when examining the Crown’s actions. Here, the Crown submitted, caution needs to be exercised. As the Crown pointed out, the rating liability on Te Rohe Pōtae lands ‘was largely theoretical for the first two decades of the 20th century’.\(^{259}\) And the Crown and local authorities undertook some actions to alleviate suffering, or were not always in the position to impose the rates.\(^{260}\) Nor, according to the Crown, is there enough evidence to categorically conclude that Te Rohe Pōtae Māori were forced to sell their land to pay rates debts.\(^{261}\)

The evidence we heard, however, clearly demonstrated that Te Rohe Pōtae Māori were, at times, prejudicially affected by the rating system, well into the 1960s and 70s. And while Māori were expected to take on the responsibility of citizenship through paying rates, local authorities were not so quick to see that Māori received the benefits they were entitled to by being ratepayers. We accept that Māori land should, generally, be liable for rating but the unique situation of Te Rohe Pōtae demanded more effort from the Crown to ensure that the system

\(^{254}\) See, for example, claim 1.2.29 (Wai 443), p 53; claim 1.2.138 (Wai 800), p 20; claim 1.2.45 (Wai 1230), pp 77–79.

\(^{255}\) Submission 3.4.123, p 6.

\(^{256}\) Submission 3.4.123, p 27.

\(^{257}\) Submission 3.4.306, p 1.

\(^{258}\) Submission 3.4.306, p 2.

\(^{259}\) Submission 3.4.306, p 57.

\(^{260}\) Submission 3.4.306, pp 7–9, 15–16.

\(^{261}\) Submission 3.4.306, pp 52–57.
of rating was well understood by Te Rohe Pōtai Māori, and that the level of rating was reasonable.

In our view, expecting Te Rohe Pōtai Māori to pay the same level of rating as Europeans following the agreements made in the 1880s was not equitable, especially given their already generous contribution to the roads and the railway in the district and the state of their land titles, created by the Native Land Acts, that prevented them from borrowing in order to develop their land (and thus be in a position to pay rates).

Nevertheless, Te Rohe Pōtai Māori were held accountable for rates and penalised for non-payment of those rates, particularly from the 1950s. In many cases leasing, rather than compulsory sales, was used to recover rates, but it still meant that Māori lost control of their land and that some land subject to receivership orders under the 1950s legislation was alienated by sale. Underlying the policies and practices of the rating system was the old Pākehā settler demand that Māori land be made available for Pākehā settlement.

Given the lack of consultation about the legislation, and the narrowness of the criteria that could trigger the receivership orders, we find that the Māori Purposes Act 1950 and the Māori Affairs Act 1953, which allowed for vesting orders to be made, were in direct breach of article 2, which specifically guaranteed to Māori that they could retain their ‘Lands and Estates . . . and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession’.

The Crown had other options open to it rather than legislating for, and agreeing to, charging orders. For example, it could have declared certain land exempt from rates, at least until the lands were returning an income. We agree with claimant counsel that this would have been an appropriate balancing of article 1 and article 2.262 We saw instances where local government exempted land. The failure of the Crown to provide for more exemptions is another breach of the Treaty. The failure of the Crown to ensure that councils rated Māori land equitably and to ensure that rates were not charged if no services were provided was also a breach of the Treaty principle of equity.

The Rating Act 1967 that allowed for sales of land for rates arrears was another breach of the Treaty principle of active protection.

### 19.10 The Effect of the 1989 Local Government Restructuring and Later Legislation on Te Rohe Pōtai Māori

The Rating Powers Act 1988, which ended the forced sale of land for non-payment of rates, was closely followed by the Local Government Amendment Act 1989. This Act abolished the county system and replaced it with regional, district, and city councils. Regional councils were given responsibility for resource management and the former functions of special purpose bodies. District and city councils are
responsible for functions such as roading, water supply, sewerage, and rubbish disposal.\textsuperscript{265}

Most of the inquiry district is covered by the Waikato Regional Council. At a district level, the area is divided between the Waikato, Waipā, Ōtorohanga, Waitomo, Ruapehu, and New Plymouth districts.

The Local Government Act 2002 recognises the Crown’s Treaty responsibility. Section 4 states:

In order to recognise and respect the Crown’s responsibility to take appropriate account of the principles of the Treaty of Waitangi and to maintain and improve opportunities for Māori to contribute to local government decision-making processes, Parts 2 and 6 provide principles and requirements for local authorities that are intended to facilitate participation by Māori in local authority decision-making processes.

Part 2 of the Act includes the principle that ‘a local authority should provide opportunities for Māori to contribute to its decision making’ (section 14(1)(d)).

Part 6 sets out the obligations of local authorities in relation to the involvement of Māori in decision-making processes. Section 81(1) states that local authorities must:

(a) establish and maintain processes to provide opportunities for Māori to contribute to the decision-making processes of the local authority; and
(b) consider ways in which it may foster the development of Māori capacity to contribute to the decision-making processes of the local authorities; and
(c) provide relevant information to Māori for the purposes of paragraphs (a) and (b).

Section 82 establishes several ‘principles of consultation’ including that a local authority must ensure that it has in place processes for consulting with Māori in accordance with such principles.

Since the Local Electoral Act 2001 and Local Electoral Amendment Act 2002, local authorities have had the option of establishing Māori wards or constituencies, where only those on the Māori Parliamentary electoral roll vote for the representatives. However, if more than 5 per cent of the electors in the area object to the proposal, then they can demand a poll be held on the issue.\textsuperscript{264}

What this means, in practice, is that since 2002 only the Waikato Regional Council (which did not hold a poll) and Wairoa District Council (where the majority of the population is Māori) have established Māori wards or constituencies.\textsuperscript{265}

\begin{flushleft}
\textsuperscript{263} Document A24, p.14.
\textsuperscript{264} Local Electoral Act 2001, ss 19Z–19ZB.
\end{flushleft}
As Steven Wilson, Manahautū Whanake Taiao (Group Manager Environment) for the Maniapoto Māori Trust Board, outlined:

The current systems of local government representation do not recognise and provide for the representation of the iwi/hapū Treaty partner as of right, nor does it provide for representation that will ensure that Article II and III Treaty responsibilities will be upheld by local authorities. While this has recognition[,] and provision for our involvement has improved somewhat since our co-management legislation, this remains a challenge for us.  

Some councils are making efforts to engage better with iwi. The Waipā District Council has established an Iwi Consultative Committee on its governance structure. This joint committee of Māori representatives, councillors, and staff consider all significant matters relevant to tāngata whenua and can make recommendations to the council. An appointed iwi representative also sits on the council’s Strategic Planning and Policy Committee and the Regulatory Committee. A group called Ngā Iwi Tōpū o Waipā and representing all hapū in the Waipā district has also been established. The group meets monthly to consider resource consent applications and other issues of significance. It also nominates members on the Iwi Consultative Committee.  

During the Ngā Kōrero Tuku Iho hearings in 2010, claimant Wayne Te Ruki, who used to be on Ngā Iwi Tōpū o Waipā and the Iwi Consultative Committee, mentioned the good relationship the iwi had with the Waipā District Council. Nonetheless, he said that the council would make decisions about matters that affected iwi without always consulting them.  

While Ōtorohanga and Waitomo district councils do not have similar arrangements, Ōtorohanga District Council’s policies reflect an active approach to identifying and seeking involvement from Māori constituents and stakeholders.  

Several councils are also party to co-governance or co-management arrangements with iwi (or both) that recognise the iwi’s relationship with their natural resources. For example, the Waikato Regional Council co-governs the Waikato River Authority with each of the river iwi (Tainui, Ngāti Maniapoto, Raukawa, Te Arawa and Tūwharetoa). The authority is statutorily responsible for managing the Waikato and Waipā Rivers under the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 and the Ngā Wai o Maniapoto (Waipā River) Act 2012.

269. Document A24(c)(i) (Luiten additional responses to Tribunal statement of issues), p [2].  
As Steven Wilson acknowledged: ‘Recently and, in particular, following the co-management legislation for the Waipā River, there has been an increased willingness at district council, regional council, and central government levels to engage in these matters.’

The Resource Management Act 1991 also provides opportunities for iwi to participate in decision-making about natural resources. Section 33 of the Act allows for the transfer of functions, powers or duties from a local authority to another public authority, including an iwi authority. Section 33(4) sets out the guidelines local authorities must follow if they are considering such transfers. In particular, they must use the consultation process set out in section 83 of the Local Government Act 2002.

Section 36B of the Resource Management Act provides for the joint management of natural resources between local authorities and iwi and hapū. The section also recognises that such agreements need to be resourced. Section 36B(1)(c) states that any joint management agreement must provide details of the resources that will be required for the administration of the agreement and how the administrative costs will be met.

19.11 Current Issues concerning Rating

19.11.1 The Local Government (Rating) Act 2002

Since the Rating Powers Act 1988 and Te Ture Whenua Māori Act 1993, Māori land cannot be sold to recover rates. This situation was carried over into the Local Government (Rating) Act 2002. However, under section 342(2) of Te Ture Whenua Māori Act 1993, Māori owners are still liable to legal proceedings to recover rates. Local authorities can apply to the Māori Land Court for a charging order to be registered against the title to land and prevent further dealings with the land until the unpaid rates are met. And while the land cannot be sold if the charging order remains unsatisfied, the local authority may apply to the Māori Land Court to have a receiver appointed, or a trust formed to manage the land. The receiver has no power to sell the land but can lease it to make money to discharge the debt.

Under section 63 of the Local Government (Rating) Act, councils may also commence proceedings in a district court to recover unpaid rates, if the rates remain unpaid four months after the due date.

The intention of the Local Government (Rating) Act and Te Ture Whenua Māori Act is that Māori freehold cannot be sold to recover unpaid rates, but some exceptions still exist. For example, the restriction does not apply to former Māori land that has been changed to general land without the consent or knowledge of the owners.

274. Document N24(a) (Comerford appendix).
Claimant Wayne Houpapa described how whānau land in the Rangitoto Tuhua block was sold for the payment of rates, as late as 2011.\(^{276}\) Rangitoto Tuhua 2IB2A2A1 was originally Māori freehold land. The status of the land was changed to general land on 22 July 1971. On 7 December 1989, the title was transferred to John Maunganui Houpapa. On 23 August 2010, the Ruapehu District Council made a rates demand after obtaining a High Court judgement. The land was then sold on 1 November 2011 under section 67 of the Local Government (Rating) Act to the highest tender.\(^{277}\) Mr Houpapa summed up the whānau’s feeling, ‘I thought the confiscation of land was over. I didn’t think it still carried on to this day’.\(^{278}\)

Another exception to the protection from sale appears to apply to land transferred to the Official Assignee after owner(s) are bankrupted. The Official Assignee can sell the land subject to the same restrictions on potential buyers as applied to the former owners.\(^{279}\)

19.11.2 Local council policies on remission, postponement, and exemption of rates

Under section 114 of the Local Government (Rating) Act 2002, local authorities can remit or postpone all or part of the rates on Māori freehold land if the local authority has adopted a rates remission or postponement policy, under sections 109 and 110 of the Local Government Act 2002, and the local authority is satisfied that the conditions and criteria in the policy have been met.

The Local Government Act 2002 sets out the factors to be considered by local bodies in formulating such a policy, one of which is avoiding further alienation of Māori freehold land. How these factors are to be given substance is left to local debate. As a result, whether Te Rohe Pōtae Māori can obtain rating relief depends on which local government district their lands come under.\(^{280}\)

Waikato District Council’s policies provide for the remission of rates for unproductive or unoccupied multiply owned Māori freehold land; land which cannot be developed due to inaccessibility or topography; land protected for historical or cultural conservation purposes; or for natural conservation purposes.\(^{281}\)

The Ōtorohanga District Council’s policy similarly provides for the remission of rates on Māori freehold land that is unoccupied, unproductive, inaccessible, or set aside for non-use for natural conservation.\(^{282}\)

---

278. Transcript 4.1.17, p 675.
Another stated objective of rates remission is for facilitating the development of the land for economic use. Waitomo District Council has a policy based on two categories of Māori freehold land. The first relates to land that is unoccupied or undeveloped and better set aside and protected from use because of its special cultural or natural features, to protect the flora and fauna under a formal arrangement, or where the land has no legal or practical road access. A second category applies where the owners intend to make economic use of otherwise unoccupied and undeveloped land. The policy provides a progressive-stepped application of full liability for the payment of rates over a five-year period.

The Ruapehu District Council rates remission policy for Māori freehold land rates also includes a category to provide an incentive for economic development of potentially productive land. Māori freehold land in multiple ownership with no administrative trust in place, or where the owners’ location is unknown, may have rates remitted at the council’s discretion.

All these councils require owners to lodge annual applications that are considered on a case-by-case basis.

At the time of our inquiry, no evidence was presented to us that Waipā District Council had developed any remission policies.

Under section 116 of the Local Government (Rating) Act 2002, the Governor-General, with the consent of the local authority, and on the recommendation of the Māori Land Court, may exempt Māori freehold land from some or all liability for rates. Several Ngāti Mahuta claimants confirmed that the Waitomo District Council had exempted them from rates, in one case because the land was landlocked. Although they noted that it ‘took a law change and a policy shift’ and begged the question ‘why should we pay rates when we get very little services from the council’?

Despite the rate remission or postponement policies, local authorities and claimants are still struggling with the enforcement and demands for rates, arrears, and penalties.

Under section 342(2) of Te Ture Whenua Māori Act 1993, Māori owners are still liable for any mortgage or charge over Māori land. Claimant Jean Bettina-Nankivell said that the Waitomo District Council has a policy of sending rates arrears immediately to a debt collection agency. Many owners are then forced into mortgagee sales, where their homes are sold at a reduced price and then, often, rented back to them at market rates.

Claimant Edith Dockery described her experiences with the Waitomo District Council:

---

284. Document A24(e) (Luiten answers to questions of clarification), pp 5–6.
288. Transcript 4.1.9, p191 (Averill Tuteao, hearing week 3, Maketu Marae, 4 March 2013).
the Trust pays rates of about $8,000 annually on 49 sections on Te Maika but does not receive any of the services that rates usually cover such as water and power supply, rubbish collection, storm and wastewater disposal, animal control or a rural fire service. We also contribute to a road maintenance levy despite the fact that baches are built on the main road so you cannot drive on it. There is also no road access to the peninsula in the first place; you can only access it by sea, or on foot over neighbouring properties.290

She blamed the Government for their present-day problems, due to the land formerly being part of Te Maika Native Township (see chapter 15):

We continue to suffer the effects of the land use decisions that require us to direct large sums of money to local government to pay for things that we have never done or wanted to do at Te Maika. The situation is the direct result of previous and continuing Treaty breaches by the Crown and its instruments, especially local government.291

Similarly, claimant Hoane Wi asserted that the Crown had failed to ensure that local government worked with the people to develop proper sewerage, roading, and other infrastructure in Ngāti Urunumia’s rohe.292

Claimant Grace Ngaroimata Le Gros explained her understanding of the Ruapehu District Council’s policy and its effect on local Māori:

I understand that Ruapehu District Council under their current rating policy are effectively forcing multiple-owned land onto one person ownership in order to retrieve unpaid rates. The Council do this by only corresponding with one owner, occupier or a person who has paid the rates previously. This is happening throughout the Ruapehu District Council boundaries, including at Taringamotu and to my whanaunga up in Waimiha.

It is just another process of disconnecting people from the land.293

Mrs Le Gros expanded on this during cross-examination:

The council wrote us a letter indicating that they want one owner that they can correspond to. Now on that land we consider that there are many owners not one owner and they have forced people to say you only need one owner or if their unpaid rates aren’t paid they will put it up as abandoned land and eventually sell it.294

Claimant Te Kore Rātū of Ngāti Hikairo described his whānau living off a block of land near Mōkai Kāinga Marae. They struggle to keep up with the rates, and

290. Document J17(b) (Dockery), p 5.
291. Transcript 4.1.9, pp 1270–1271 (Edith Dockery, hearing week 3, Maketu Marae, 4 March 2013).
292. Transcript 4.1.15(a), p 768 (Hoane Wi, hearing week 10, Maniaroa Marae, 5 March 2014).
293. Document R1(b) (Le Gros), p 12.
294. Transcript 4.1.17, p 347 (Grace Le Gros, hearing week 11, Wharauroa Marae, 1 April 2014).
penalties when they fall behind. Members of the whānau are forced ‘to travel far and wide for work to make ends meet. Sometimes we feel that the rates penalise us for living on our whenua.’

Claimant Pearl Comerford of Ngāti Te Wehi also talked about the accumulation of, and demand for, rate arrears on the Moerangi 365A3 block. This land was part of a Māori reservation in 1967 and includes the Ōkapu marae and papakāinga. The land had also been part of the Ōkapu land development scheme, which was discussed in Chapter 17 (section 17.3.4.2). In 1991, the Ōtorohanga County Council sent a rates notice for $1,800, plus arrears of $3,200. Ngāti Te Wehi refused to pay the charges, in part because they did not know that the papakāinga was subject to rates. In their view, the land on which the marae and papakāinga sit should be exempted from rates.

The council sent another rates demand for $5000 in 1999. The claimants had to borrow capital from the Ōkapu farm to meet the demand. The marae later paid the amount back.

However, the arrears continued to accrue. In 2008, the now Ōtorohanga District Council took one of the trustees of the Ōkapu Trust to the district court to recover a debt of $7,683.56 (including solicitors fees). The court found in favour of the council. The trust was ordered to pay $400 per month to the council by automatic payments. Ngāti Te Wehi are now up-to-date with rate payments, but as the claimants point out, they have had to struggle to get to that point.

Current rates are approximately $1,500-$1,600 per year. However, the claimants maintain that the council has not made any improvements or provided any services to the papakāinga, or to the road leading to the land. Furthermore, the papakāinga and marae do not receive rubbish services, and therefore pay over $250 whenever the hapū holds a poukai, wānanga, whānau hui, or tangi in order to get a skip bin. Likewise, the council does not provide water services. Charges of about $400 per year are also demanded by the regional council, even though, according to the claimants, the regional council does not provide any services to the community.

19.11.3 Local Government Rates Inquiry, 2007

In 2007, central government conducted a major inquiry into local government rates. The inquiry was partly in response to the public debate over rates that followed the publication of long-term council community plans. At the time of our inquiry, the report contained the most recent examination of rating law affecting Māori land.

The report pointed out that serious problems concerning the rating of Māori had been raised both currently, and in the past, but had never been dealt with.
successfully. A key issue raised at hui and in the report was whether rates on Māori land were consistent with the Treaty of Waitangi. Participants questioned whether the Treaty, in entitling Māori to ‘full and exclusive undisturbed possession of their lands’, ever ceded the right to the Crown to levy rates. The panel suggested that the relationship between the Treaty of Waitangi and rating law should be addressed by the Government and form part of a work programme on rating and Māori land proposed by the panel.  

The report was highly critical of the present system for valuing Māori land for rating purposes. It noted that the system was based on a ‘willing buyer-willing seller’ premise but because the Court of Appeal had held that Te Ture Whenua Māori Act constrained the alienation of Māori freehold land, then that premise ‘was inappropriate’. A new approach to valuing Māori freehold land for rating purposes was therefore needed.  

The report stated: ‘Māori land is different from general land – historically, legally, and culturally. Māori regard themselves as custodians or kaitiaki of the land across generations and consider that the land is part of them. Land is not viewed primarily as a commodity.’

The report also called for a different approach to local authorities’ remission policies for Māori land because councils had adopted inconsistent approaches and the policies had had limited success in encouraging the development of Māori land.

The panel made 96 recommendations in total on rating in New Zealand, such as removing rating differentials and introducing a common rating system based on the capital value of land for general rates. Seven recommendations specifically covered Māori freehold land. The panel recommended that:

- the relationship between the Treaty of Waitangi and rating law be addressed by the Government and form part of the work programme on rating and Māori land;
- a new basis for valuing Māori land for rating purposes be established that explicitly recognises the cultural context of Māori land, the objectives of Te Ture Whenua Māori Act 1993, and the inappropriateness of valuations for rating purposes being based on the “market value” of Māori land;
- the Government establish an explicit programme of work aimed at addressing the entrenched problems of rating on Māori land and that this be undertaken in partnership with local government and Māori;
- the work programme proposed in the previous recommendation be linked to programmes assisting the productive development of the land;
- as part of this programme of work, the Government collaborate in a joint exercise with local government and Māori in developing a coordinated and consistent approach to rates remission policies for Māori land;

301. Local Government Rates Inquiry Panel, Funding Local Government, p 211.  
303. Local Government Rates Inquiry Panel, Funding Local Government, p 211.  
Māori freehold land that was made general land in the 1967 amendment to the Māori Affairs Act and is still in Māori ownership should be permitted to revert to Māori freehold land enjoying the same rates remissions policies as existing Māori freehold land. Further, there should be no restriction on changing the status of this land back into Māori freehold land; and

the Society of Local Government Managers, in consultation with Local Government New Zealand, central government, and Māori, develop a programme of training and development that can build capacity and knowledge within local government to effectively address rating and other related issues on Māori land.306

Some of the claimants were critical of the Crown’s subsequent failure to address the report’s recommendations, including the recommendation to develop a coordinated and consistent approach to rate collection and remission policies.307

Claimant counsel recognised many ‘worthy’ features of the ratings inquiry. However, they also noted that the Crown did not appear to have progressed any of the recommendations, such as adopting a new basis for valuing Māori land for rating purposes, as well as developing a consistent approach to rates remission policies for Māori land.308

Claimant counsel recorded Luiten noting that the inquiry ‘did not contemplate the removal of unproductive Māori freehold land from rates liability’; despite recognising that remaining Māori land was poorly located and hard to finance.309

Luiten also noted the panel’s opposition to the Government being made responsible for the payment of rate arrears, even though the factors identified by the panel responsible for the non-payment of rates were ‘directly attributable’ to past Crown policies and practices.310

In our view, the Crown had a prime opportunity to respond to the recommendations of this rates inquiry. Its failure to do so fully has meant that rating issues raised by claimants exist to this day.

19.12 Treaty Analysis and Findings

The local government legislation passed in 2001 and 2002 provides opportunities for Māori to contribute to, and participate in, local government decision-making. It requires local authorities to set up processes for consultation with Māori; it encourages relationships between local authorities and iwi; and it encourages councils to foster Māori participation through information-sharing and capacity-building. The legislation does not provide direct Māori representation, but the opportunity exists to also establish Māori wards or councillors and standing or

307. Claim 1.1.122, p 3 (Wai 1495); claim 1.2.44, p 56 (Wai 1448, Wai 1495, Wai 1501, Wai 1502, Wai 1592, Wai 1804, Wai 1899, Wai 1900, Wai 2125, Wai 2126, Wai 2135, Wai 2137, Wai 2183, and Wai 2208).
308. Submission 3.4.123, pp 24, 29.
joint committees. In that respect, the legislation is an improvement in providing opportunities for consultation and participation.

However, the Treaty is still clearly seen to be the responsibility of central not local government. Local authorities are not held accountable for failing to provide opportunities for Māori to participate. Nor for failing to establish Māori wards or constituencies. Consequently, only the Waikato Regional Council (in the inquiry district) has established a Māori ward. The provisions in the Local Electoral Act 2001 that allow for the establishment of Māori wards or constituencies are undermined by the provisions, in the same Act, that allow a minority to demand a poll to decide the issue, which can then be defeated, especially where Māori are the minority.

Te Rohe Pōtae Māori then are not adequately represented on councils, and this usually means that they are excluded from many of the decisions for which local authorities are responsible. The Crown seems to be aware of this as much of its post-Treaty settlement legislation is putting more responsibility on local authorities to partner with Māori over the management of natural resources.

The Resource Management Act 1991, which provides opportunities for iwi participation in resource management, is also an improvement on previous legislation. In 2017, the Act was amended to include Mana Whakahono a Rohe, iwi participation arrangements (sections 58L-58U). The purpose of these arrangements is to provide a mechanism for iwi authorities and local authorities to discuss, agree, and record ways in which tāngata whenua may participate in resource management and decision-making processes under the Act. The arrangements are also intended to assist local authorities to comply with their statutory duties under this Act, including through the implementation of sections 6(e), 7(a) and 8.

Mana Whakahono a Rohe were introduced into the Act after our hearings had concluded but their introduction mitigates some of the prejudice suffered by Te Rohe Pōtae Māori up to this point; they provide for further opportunities for iwi and local authorities to consult.

But all the different arrangements and opportunities are ad-hoc and the various legislation that provide for these opportunities lack coherence. In some cases, such as section 33 of the Resource Management Act, while offering Māori the means to exercise their authority to manage natural resources, local authorities have discretion whether to agree or not; they are not obliged to transfer any power to iwi.

We recognise that some local authorities in the district have taken steps to improve Māori representation and participation in local government decisions, but these are largely dependent on the 'good-will' of the local authority and local community. In our view, having to rely on the discretion of the local authority and good-will of the community is another breach of the principle of partnership. We find, in particular, that sections 19ZA to 19ZG of the Local Electoral Act 2001, which allows for polls of electors to decide on whether Māori wards or Māori constituencies can be established, are inconsistent with the principles of the Treaty and breach Te Rohe Pōtae Māori tino rangatiratanga.

The Crown is obliged to ensure that local authorities reflect Treaty principles. In failing to do so, the Crown is acting inconsistently with the principles of the Treaty.
of Waitangi, namely the principles of partnership, rangatiratanga, and equity and has breached its duty of active protection of Te Rohe Pōtae tino rangatiratanga.

The lack of coherence indicates that specific legislation is needed to fully recognise Te Rohe Pōtae Māori tino rangatiratanga. The Crown should negotiate with Te Rohe Pōtae Māori, or their mandated representatives, to put in place legislation that recognises and gives effect to their tino rangatiratanga in local government.

The current rating legislation is also an improvement in preventing Māori land from being sold to recover rates but issues about rating policies clearly remain within the inquiry district. These include issues about rates arrears, penalties, and recovery, or remission policies, as well as lack of services despite rates being paid. The Crown needs to monitor how the Local Government (Rating) Act 2002 is impacting on Te Rohe Pōtae Māori and take action if required. This responsibility is consistent with the Crown's established obligation to ensure the Treaty compliance of local authority practices.

19.13 Prejudice
Te Rohe Pōtae Māori have been prejudicially affected by the failure of the Crown to ensure that they were adequately represented in the Pākehā local government system. Plural voting rights and other discriminatory mechanisms saw Te Rohe Pōtae Māori marginalised in their own district. They were shut out of the system and watched the system serve as a channel for advancing the interests of current and prospective Pākehā property owners, usually at the expense of Māori.

While Te Rohe Pōtae Māori were repeatedly locked out of the benefits of local government structures, including the provision of roads and other infrastructure necessary for economic development, their land increasingly came within the ambit of the local government rating regime. A failure to pay rates levied on undeveloped land as well as alleged infestations with noxious weeds, and 'neglect to farm', were recurring themes that forcibly alienated Māori from their property, in breach of article 2 of the Treaty. Māori landowners found that merely retaining their property rights required them to exercise a degree of vigilance unfathomable to Pākehā. This chapter has shown what happened when they did not succeed: multi-generational hardship for whānau, hapū, and iwi unable to prosper in a Pākehā-dominated society.

Te Rohe Pōtae Māori continue to be prejudicially affected by the current local government legislation that stops them from fully, and collectively, exercising their tino rangatiratanga.

19.14 Summary of Findings
Our key findings in this chapter have been:

- In the few areas around the district where Pākehā local government could be exercised prior to 1880, and in the district generally after Te Rohe Pōtae Māori communities opened their district to settlement from the mid-1880s, Te Rohe Pōtae Māori were marginalised in the local government system and
Pākehā interests were served. We find the unequal distribution of benefits from local government to breach equity rights enshrined by article 3 of the Treaty.

- In delegating powers to local authorities, the Crown failed to require those local authorities to act consistently with the principles of the Treaty. We find that the Crown acted in a manner inconsistent with the principles of partnership, rangatiratanga, and equity, and it breached its duty of active protection of Te Rohe Pōtæ rangatiratanga.
- We find that the Māori Purposes Act 1950 and the Māori Affairs Act 1953, which allowed for vesting orders to be made, were a breach of article 2 of the Treaty.
- The failure of the Crown to provide for more exemptions from rates is another breach of the Treaty.
- The failure of the Crown to ensure that councils rated Māori land equitably, in particular, that rates were not charged if no services were provided was also a breach of the Treaty principle of equity.
- The Rating Act 1967 that allowed for sales of land for rates arrears was another breach of the Treaty principle of active protection.
- We find that sections 19ZA to 19ZG of the Local Electoral Act 2001, which allows for polls of electors to decide on the establishment of Māori wards or Māori constituencies are inconsistent with the principles of the Treaty.

19.15 

Recommendation

We recommend:

- sections 19ZA to 19ZG of the Local Electoral Act 2001 are removed, in order to enable greater Māori participation in local government.
CHAPTER 20

NGĀ TANGO WHENUA I RARO I TE TURE MURU WHENUA:
PUBLIC WORKS TAKINGS IN TE ROHE PŌTAE

He aha te pai kia matou o nga Rori, o nga Rerewe o nga Kooti Whenua, mehemea ka waiho enei hei ara rironga mo o matou whenua, ka ora noa atu hoki matou ki te noho penei, kaua he Rori, kaua he Rerewe kaua he Kooti, otiia, e kore matou e ora mehemea ki te kahore atu o matou whenua ia matou.

What possible benefit would we derive from roads, railways, and Land Courts if they became the means of depriving us of our lands? We can live as we are situated at present, without roads, railways, or Courts, but we could not live without our lands.

—Ki te Kawana o te Koronui o Niu Tireni ki nga Mema o nga Whare e rua/Petition of Maniapoto, Raukawa, Tuwharetoa, and Whanganui (1883)

20.1 Introduction
The compulsory taking of Māori land for public works is an enduring grievance for claimants in this inquiry district. Numerous claims have been made to this inquiry about compulsory takings of Māori land for public works of both national and local importance over an extended time period. Chapter 9 introduced the first, and arguably the centrally important, public work in this inquiry district: the North Island main trunk railway. This chapter extends that initial discussion to include the entire range of public works issues and takings across the district, from the lifting of the aukati in the mid-1880s, through to the early twenty-first century, including railway takings after 1903.

Excluding takings of Māori land for the main trunk railway up to 1903, compulsory public works measures account for the taking of some 17,000 acres of Te Rohe Pōtae Māori land in the period to 2009. These takings, made by central and local government agencies, covered diverse public works purposes and included some of the largest single takings, in areas of land, ever made for public works in New Zealand. A vast majority of the Māori land takings in the inquiry district occurred in the first three decades of the twentieth century, coinciding with the period of

1. The 1883 petition is reproduced in appendix 1 of chapter 8 of this report: Waitangi Tribunal, Te Mana Whatu Ahuru, Pre-publication Version, Parts I and II (Wellington: Waitangi Tribunal, 2018), pp1074, 1077.
2. This figure is based on the evidence of David Alexander (doc A65 and supporting papers); and Philip Cleaver and Jonathan Sarich (doc A20 and supporting papers).
intensive development that followed the lifting of the aukati and the Te Ōhākī Tapu agreements. Compulsory takings continued in later years, but at a much lesser rate, as the pace of public works development declined. It is worth noting at the outset that none of the data and details presented in this chapter include main trunk railway takings prior to 1903.

20.1.1 The purpose of this chapter
This chapter considers whether the general public works regime the Crown provided in this district complied with its Treaty obligations and the impacts of that regime for Te Rohe Pōtae Māori communities. A range of on-the-ground experience is considered to allow testing of to what extent if at all the well-established Tribunal view of the public works regime as it affects Māori land can be applied to this district. This chapter does not consider every one of the numerous public works claims made in this district but considers sufficient cases and overall trends presented in evidence to address the general claim issues raised with the public works compulsory land taking regime for Māori land in this district. The selected cases are considered in terms of general issues with the regime but more detailed consideration of Treaty breach for these and remaining cases will be provided in the later take a takiwā chapters of this report.

This chapter is concerned with compulsory takings of Māori land for public works purposes. It is not generally concerned with cases where Te Rohe Pōtae Māori willingly gave or sold land for public works except where this is provided as useful context. The exception is where an apparently voluntary transfer was effectively compulsory, such as under legislative requirements for Māori to ‘gift’ land when they wanted a native school to be established. Neither is this chapter concerned with compulsory takings of Māori land for purposes other than public works, such as for rates arrears, which we consider in other chapters.

20.1.2 How this chapter is structured
This chapter begins by summarising the Tribunal’s well-established view of the regime for compulsory takings of land for public works purposes. From that discussion, we identify the relevant issues for public works consideration in this inquiry district and note where the Crown has conceded a Treaty breach. In our discussion of the main trunk railway in chapter 9, we noted that a more detailed legislative overview for public works generally will be provided in this chapter. That overview is provided in two major time periods: the legislative regime that applied from the mid-1880s to 1927, and the regime from the Public Works Act 1928 to the current regime operating under the Public Works Act 1981. That division reflects the major periods of public works development in this district.

Following the legislative outline, the chapter turns to a consideration of how the regime actually operated in this district, using both evidence of takings provided to this inquiry and a number of more detailed cases of compulsory taking of Māori land in Te Rohe Pōtae for public works. The cases help us understand the trends with compulsory takings of Māori land across this district and over time and for a range of public works purposes. They also help establish how the
taking process and various protections worked practically in this district. That also enables us to consider to what extent the long-standing Tribunal view on the general regime might apply to the circumstances of this district or need to be changed or modified. Following our discussion of practical implementation, we then turn to considering our Treaty analysis of the general public works regime for the compulsory taking of Māori land for public works as it operated in Te Rohe Pōtae. We conclude our analysis with any findings of Treaty breach, prejudice, and any recommendations for the public works regime generally.

20.2 Issues

20.2.1 What other Tribunals have said

The Tribunal began developing jurisprudence on the compulsory taking of Māori land for public works some 30 years ago, including in the Ngāti Rangitāneorere and Tūrangi Township inquiries. The Tribunal has continued to extend and develop that view through several inquiries, including more recently in the reports for the Central North Island, Wairarapa ki Tararua, National Park, and the post-raupatu land claims report of the Tauranga inquiry. The following outline sets out the main points relevant to this inquiry.

The Tribunal has established that, on the face of it, the compulsory taking of Māori land for public works purposes directly conflicts with Treaty guarantees to Māori of tino rangatiratanga and undisturbed possession of their lands for as long as they wish to keep them. As the Wairarapa ki Tararua Tribunal explained, any compulsory taking of private land is an ‘extreme act of Government authority’. In addition, the compulsory taking of Māori land not only overrides Māori private property rights as citizens, but ‘also tramples on their whakapapa connection to ancestral land’.

The Tribunal nevertheless accepts that in balancing Treaty kāwanatanga rights and protections, in some exceptional circumstances a compulsory taking of Māori land for a public work can be Treaty compliant. It is not disputed either, that a compulsory taking of private land for a public work is made for reasons of general community benefit. However, reasons of general public interest, convenience, economy, or the small size of the Māori land involved, are not sufficient on its own to justify a compulsory taking of Māori land for a public work.

---


their own to justify infringing Treaty protections for Māori land. Such a serious infringement requires very careful limits and qualifications. Fundamentally, a compulsory taking of Māori land for a public work can only be justified in exceptional circumstances, and as a last resort in the national interest. 

The Tribunal has considered what might constitute an ‘exceptional circumstance’ and ‘last resort in the national interest’ in some detail. It has agreed that it is not helpful to be too prescriptive: it is a matter for the Treaty partners to decide jointly, in partnership, and in the circumstances of the time. As a general guide, however, the Tribunal has noted that such a taking must at least be of a ‘compelling and substantial importance’. Works that appear to have no vital link to a specific site and can readily be located elsewhere than Māori land appear unlikely to meet such a national interest test.

The requirement of a last resort further assumes prior careful consideration of all feasible alternatives to the outright taking of Māori land title. Such feasible alternatives will depend on circumstances, and require consultation, but could involve negotiating a lease, easement, licence, or covenant for the Māori land required, as well as serious consideration of alternative sites for a proposed work.

It follows that if Māori land has to be taken, the area should not be excessive, but involve as little land as is absolutely required for the work.

A last resort in the national interest also requires careful consideration of the cultural importance of the land for Māori. The importance of Treaty protections for taonga and wāhi tapu requires the Crown to give those ‘high priority’ in considering land required for a public work. That includes ensuring that any proposal requires the identification and avoidance of taonga and wāhi tapu in any compulsory taking and using best efforts to safeguard such sites from damage or other adverse effects when constructing or operating the resulting public work.

---

The importance of protections for Māori land needed for public works also requires proposals to carefully consider the Māori owners’ ancestral connections to the land, the impact of any taking on the amount of Māori land left to the owners concerned, and the state of remaining Māori land overall. Even if the taking involves a relatively small area of Māori land, that does not, by itself, mitigate or diminish the careful safeguards required; ‘smallness or insignificance in area is no impediment to consideration of underlying principles’ because Treaty guarantees to protect Māori in their land lie ‘at the heart of the Treaty relationship between Māori and the Crown’.11 Additionally, for Māori communities, ‘[e]ven where not much land [is] taken, the sense of loss is often not proportional to the rood and perches that were involved’.12

It follows that these careful considerations, if properly implemented, rely on full and genuine consultation with Māori communities affected, from early in the process of developing a proposal, during implementation of a taking, and to ensure appropriate redress.13 The ‘high priority’ required for taonga and wāhi tapu also relies on genuine and full consultation with Māori. Full and genuine consultation needs to extend to any public works regime providing for compulsory taking of Māori land, significant developments and changes to that regime having relevance for Māori land, and for each individual case of a proposed compulsory taking of Māori land for a public work.14 Full and genuine consultation requirements also mean the Crown must ensure Māori do not face inequitable barriers to engaging in meaningful consultation over public works.15

It was not Treaty compliant, for instance, for the Crown to unilaterally curtail Māori Treaty rights through legislation while Māori were not represented in Parliament; ‘that was a decision that could only, legitimately, be made jointly’. Even now, Māori have little effective political representation at a local level, where most decisions affecting their land are made, and their representation in national politics remains an area for improvement.16 It was also not Treaty compliant to introduce new powers to compulsorily take Māori land for a public work when the Crown had not provided Māori with effective forms of local self-government (see chapter 18) to enable them to participate and be fully consulted with over new legislation.17

The Tribunal has further found that the Crown cannot opt out of Treaty responsibilities and protections for Māori land when it provides compulsory taking powers for public works to other agencies, including local authorities. The Crown remains responsible for the design of public works legislation, for monitoring the

15. Waitangi Tribunal, He Maunga Rongo, vol 2, p 837.
17. Waitangi Tribunal, He Maunga Rongo, vol 2, pp 841–845.
use of the powers and protections provided in implementing compulsory land taking provisions, and for any prejudice Māori may suffer due to the compulsory takings of their land. The Wairarapa ki Tararua Tribunal, for example, confirmed that the Crown retains its Treaty responsibility to Māori over any compulsory taking of land. The issue of whether takings are carried out by local authorities or central government is a ‘technical detail’.  

The Tribunal has considered the legislative framework provided for compulsory takings of Māori land for public works in some detail. It has found that such legislation must provide for equitable outcomes for Māori. That includes a requirement to adequately address barriers to any protections provided in the taking process when it comes to Māori land held in multiple title. The Tribunal has confirmed that separate and different legislative provisions for Māori land are not necessarily discriminatory and in Treaty breach. Such differences can be reasonable and Treaty compliant in some circumstances, such as when they address the complexities of Māori land title or specific Māori cultural concerns. However, it is not Treaty compliant to provide lesser protections or otherwise disadvantage Māori landowners in comparison with other property owners. Provisions that disadvantage owners of Māori land, and that encourage active targeting of Māori land for public works, breach the article 3 guarantees to Māori of the same rights and privileges as other British citizens.

Equitable treatment for Māori land requires provisions that are not centred solely on the needs and interests of general landowners, but also recognise and provide for Māori interests in their land including Māori cultural values relating to their lands. Such matters can include protecting wāhi tapu and taonga, considering the impacts on holdings of remaining Māori land and impacts for exercising Treaty development rights in remaining Māori land.

Such equitable provisions need to be reflected in any formal process by which a compulsory taking of Māori land as a last resort is implemented. That includes a process for full and meaningful consultation with Māori owners prior to a taking decision being made. This process will need to adequately ascertain owner views and concerns, as well as likely impacts and feasible alternatives. The formal taking process also requires sufficient notice of any taking and for owners to have an opportunity to formally object. Any further inquiry into objections also needs to properly take account of Māori concerns and interests in their land, including such factors as impacts for taonga and wāhi tapu on the land, and for the state

---

of remaining holdings of Māori land. The legislative process for compensation or redress for taking Māori land must also be properly responsive to Māori interests and concerns, including allowing for exchanges of land when preferred.²³

Once the taken Māori land is no longer required for the original public work, the Crown has a ‘high level’ of Treaty obligation to return it ‘at the earliest opportunity’ and ‘at the least cost and inconvenience to the former owners.’²⁴ That duty acknowledges the serious infringement on Treaty guarantees caused by the original taking and the need to enable Māori to re-establish their tino rangatiratanga over the land and their whakapapa connections as soon as possible.²⁵ The Tribunal has found that Māori ancestral connections with land do not stop at the point of a compulsory taking, or even at the point compensation is paid. As the National Park Tribunal explained, if ancestral Māori land must be taken in the national interest for a public work, there must also be a recognition that ‘the relationship between tangata whenua and their lands has not been severed’. Such land should only be taken for the time needed for the work and then returned, so that the exercise of tino rangatiratanga can be resumed.²⁶

In some cases, the Tribunal has recognised that requirements for Māori to ‘gift’ lands, such as for native schools, were in reality close to compulsion. In those cases when the land ‘gifted’ is also no longer required for the school, the Crown must take serious account of:

- the compulsory nature of the transaction and the absence of an equivalent requirement for Pākehā communities wanting rural schools to donate or gift their land;
- that both Pākehā and Māori children were able to attend and benefit from native schools;
- the generosity of the landowner in gifting the school site; and,
- that no rent was paid for the use of the gifted site while it was a school.²⁷

The Crown must also consider that no or only minimal payment was made for gifted native school sites and, in cases where the native schools were transferred into the public system, Māori were given no say about that or the disposal of the land.²⁸

The duty to restore Māori land as quickly as possible once it is no longer needed for the original purpose also means that it is not reasonable for the Crown to use Māori land taken for one public purpose for another unrelated purpose without

---

first carefully considering the interests of the former Māori owners. That careful consideration also logically requires consultation. Otherwise, while such a practice might be legal, the Tribunal has found that it is ‘patently unfair’ to Māori and their continuing ancestral connections to the taken land, and a ‘lamentable’ breach of the Crown’s duty to actively protect Māori interests.

The Tribunal has found that much of the public works legislative regime relevant to compulsory taking of Māori land has had serious failures, right up to and including the current Public Works Act 1981. The Central North Island Tribunal found ‘sustained and systematic Treaty breaches’ with legislative provisions for compulsory taking of Māori land for public works over the period from 1882 to 1974, when Māori land was subject to ‘sustained and serious discrimination in public works legislation.’ That included legislative discrimination, when land that Māori highly valued was not given adequate legislative protection or compensation when compared with the provisions afforded to lands valued by settlers. Legislative provisions for offering back or returning lands taken from Māori and no longer required for the original public work have also been seriously deficient.

The Tribunal has also considered the special regime, from the early 1860s to 1927, that enabled up to 5 per cent of a block of private land to be taken for road purposes (extended to rail from 1873), without any compensation being payable. That regime, now known as the 5 per cent rule, did not at first apply to Māori land. However, once the Native Land Court became operative from 1865, all new titles provided by the Court for Māori land became potentially subject to the rule and it was later extended to include Māori customary land. The Tribunal has consistently found that the 5 per cent regime failed the Treaty requirements for compulsory takings of Māori land. It failed Treaty protections in not requiring compensation and was discriminatory and inequitable. That included that taking authorities were given longer time periods during which they could apply the provision to Māori land than were available for application to general land and the process for applying the provisions, through the Native Land Court for Māori land meant that Māori land was made more generally available to the provision than was ever the case for general land. Those factors, combined with poor monitoring of takings under the rule, meant that the impacts of the provision were relatively greater for Māori land. The Wairarapa ki Tararua Tribunal found that such circumstances amounted to the provision being an ‘effective confiscation’ of Māori land.
The Central North Island Tribunal confirmed that the 5 per cent rule was discriminatory for Māori land and especially inappropriate for customary Māori land, given that the provisions were originally developed for new land titles in a new colony. That Tribunal found the 5 per cent provisions breached Treaty principles of active protection, equity, partnership, and reciprocity. The breach was further compounded when such provisions clearly breached the careful limits and qualifications required for any compulsory taking of Māori land to be Treaty compliant and additionally failed to provide for compensation or redress for such takings.

The Tribunal has considered the twentieth century legislative framework for compulsory land takings for public works in detail, including the major Public Works Acts of 1928 and 1981. The Turangi Township Tribunal described the 1928 Act provisions as ‘draconian’ for Māori land, failing to provide adequate protection for formal notice and failing to require adequate consultation or alternatives to taking Māori land and failures in returning taken Māori land once it was no longer required for the original work. The Tribunal has acknowledged some improvements with the 1981 Act, including greater emphasis on negotiating an agreement for the land rather than relying on compulsory taking powers as a first resort. The 1981 Act provides for greater Māori Land Court supervision of compulsory takings of Māori land to assist owners, and the original concept of an ‘essential’ work had the potential to encourage more careful consideration of compulsory taking proposals, although that was abandoned due to difficulties in finding a practical definition of ‘essential’. As a result of public pressure, the 1981 Act also re-introduced the original principle of requiring taken land to be offered back to former owners once it was no longer required for the work. The offer-back requirement was also potentially an improvement for taken Māori land.

The Tribunal has nevertheless found that overall, the improvements are too limited and the protections of the 1981 Act do not meet the standard of Treaty-compliance for Māori land. The Tribunal has consistently found that the 1981 Act fails to require adequate consultation with Māori over taking proposals, fails to require careful consideration of Māori interests and concerns, including the impacts of severance of ancestral connections with the land, the priority that is required to exclude and prevent loss or damage to taonga and wāhi tapu, requirements to consider the state of owner holdings of Māori land and the state of Māori landholdings overall. The Act remains too limited in the provision for compensation or redress for Māori land and for returning lands to the former owners or their whānau once the land is no longer required. The Tribunal has found that provisions originally requiring market value to be paid for returned lands and improvements also unfairly burden former Māori owners. Although that requirement was potentially softened by a 1982 amendment that allowed payment at less

---

than market value, that remains entirely at the taking agency’s discretion. The provisions for returning land no longer required include provisions specifically for returning Māori land, but these fail to adequately address difficulties in determining successors in title to land held in multiple title and fail to require alternative options of returning land to wider whānau or hapū groups with connections to the land, where agreed.\textsuperscript{39}

In more recent inquiries, the Tribunal has highlighted that the 1981 Act is now decades old and urgently requires a full overhaul that takes better account of recent developments in Treaty understanding. The Wairarapa ki Tararua Tribunal went so far as to report on recommendations to improve the current Act in some detail. That Tribunal noted a review of the 1981 Act in 2000 but raised serious concerns that no further progress has since been made. That has left the outdated 1981 provisions still operative, even while they contain none of the basic requirements for Māori land that the Tribunal has now been recommending for over 30 years.\textsuperscript{40}

The Tribunal has noted the apparent continuing political resistance to remedying what is clearly now outdated and defective legislation for Māori land. In some isolated cases, the Crown has appeared willing to negotiate specific redress with selected Māori groups that better reflect the recommendations the Tribunal has been making, such as negotiating leases over certain lands. However, such steps remain limited to those groups and are not required more generally for Māori land through improved public works legislation.\textsuperscript{41}

\textbf{20.2.2 Summary of the Tribunal view relevant to this inquiry district}

This section contains a summary of the main points of the established Tribunal view on the compulsory taking of Māori land for public works purposes. This summary follows that undertaken in chapter 9 of our report, regarding the railway. It is now completed to cover the public works regime generally as it is relevant to this inquiry district. With this summary in mind, the evidence for the general regime as it applies to this inquiry district is considered. The main points summarised are as follows:

\begin{itemize}
  \item Māori land can only be taken for public works in exceptional circumstances, as a last resort in the national interest. What is in the national interest will depend on the circumstances of the time and is for the Treaty partners to
\end{itemize}


\textsuperscript{41} Waitangi Tribunal, \textit{Te Kāhui Maunga}, vol 2, pp 776–777.
jointly decide, but the work for which the land is required will at least need to be of substantial and compelling importance.42

- There must be full and genuine consultation with Māori over any public works land taking regime and significant changes to it likely to impact Māori land. This requirement for consultation extends to each proposed taking of Māori land with the Māori owners affected. The Crown must ensure that Māori do not face inequitable or unreasonable barriers to participation in that consultation.43

- Where Māori land is taken for a public work, no more Māori land should be included in the compulsory taking than is essential for the work. Even if only a small amount of Māori land must be taken, the same principles and protections must apply as for any compulsory taking of Māori land.44

- Where Māori land is proposed to be taken for a public work, any planning must take careful account of the cultural importance of the land to Māori, the location on the land of any sites of importance to Māori, including taonga and wāhi tapu, and that consideration will require genuine consultation with Māori. Such consideration must give high priority to the protection of taonga and wāhi tapu on the land or likely to be impacted by the work.

- Any decision over compulsory taking of Māori land for a public work must take serious consideration of the impacts for the owners, including their ability to exercise Treaty development rights for the land, the state of owners’ remaining holdings of Māori land, any barriers the taking might create for the continued use and enjoyment of the remaining property not taken, and the impact of the taking on the diminished overall state of the land base in Māori title.45

- Any decision over compulsory taking of Māori land for a public work must include careful consideration of all feasible alternatives to compulsory taking of Māori land title, including possible alternative sites for locating the

---


- The Crown must ensure that the legislative regime provided for compulsory taking of land for public works, including taking mechanisms, process, and protections, operates equitably for Māori land and does not unfairly discriminate or disadvantage owners of Māori land as compared to owners of general land.

- The Crown must ensure that the methodology and process provided for awarding compensation or redress for the compulsory taking of Māori land operates equitably for owners of Māori land, in a timely manner, and adequately takes account of Māori concerns and interests for their land, including the impact of lost ancestral connections for the time the land is required for the work. Where Māori landowners agree, the Crown should, in consultation with owners, consider forms of compensation other than monetary payment including exchanges of land.\footnote{Waitangi Tribunal, \textit{The Ngati Rangiteaorere Claim Report}, p 48; Waitangi Tribunal, \textit{Turangi Township Report}, p 373; Waitangi Tribunal, \textit{He Maunga Rongo}, vol 2, p 841; Waitangi Tribunal, \textit{Tauranga Moana 1886–2006}, vol 1, pp 291–292; Waitangi Tribunal, \textit{The Wairarapa ki Tararua Report}, vol 2, pp 796, 801–802; Waitangi Tribunal, \textit{Te Kāhui Maunga}, vol 2, pp 752–753.}

- The Crown must provide for recognition of the continuing interest of Māori in their ancestral land even after it has been taken for a public work, and even though compensation might have been paid. The Crown must provide mechanisms where possible, and in consultation with the Māori owners, that recognise the continuing interest of the former owners and their whakapapa connections with the land, such as by affording rights of membership on a board of management for a scenery or recreation reserve, or a partnership arrangement in a work.\footnote{Waitangi Tribunal, \textit{Tauranga Moana 1886–2006}, vol 1, pp 291–292; Waitangi Tribunal, \textit{The Wairarapa ki Tararua Report}, vol 2, pp 796, 801–802; Waitangi Tribunal, \textit{Te Kāhui Maunga}, vol 2, pp 752–753.}

- The Crown must return Māori land that has been compulsorily taken or gifted for a public work to the original Māori landowners or their descendants, or, in consultation, with the whānau community with ancestral links to the land, as soon as is practicable after the land is no longer required for the
work for which it was originally taken, or in some cases required to be gifted, and at the least cost and inconvenience to Māori.\(^5\)

### 20.2.3 Crown concessions

The Crown has made two specific concessions of Treaty breach for individual cases in this inquiry district. Both concessions acknowledge Treaty breach through the compulsory taking for a public work of an excessive amount of Māori land.

- The Crown conceded that a lack of ‘sufficiently detailed planning’ in 1910 led it to acquire more Māori land than was needed for the Tokanui Mental Hospital. In taking the ‘excessive amount’ of land, the Crown acknowledged it caused ‘significant prejudice to the Māori owners whose land base had already diminished as a result of raupatu and extensive Crown purchasing’, and as such its taking of land for the Tokanui hospital breached the Treaty and its principles.\(^5\)

- The Crown conceded that its taking of the Mangoira Block in 1912 for the Mōkau River Scenic Reserve under the Scenery Preservation Act 1908 involved ‘an excessive amount of land’. Despite only requiring ‘a few hundred acres for the purposes of scenery preservation’, the Crown took the entire block of some 3,000 acres. This was a breach of the Treaty of Waitangi and its principles.\(^5\)

Additionally, the Crown acknowledged that there is some evidence to support the contention that it failed to consult adequately with Māori owners before acquiring other Māori land for the Mōkau River scenic reserves.\(^5\)

Although not expressed in terms of Treaty breach, Crown counsel referred us to Crown policy generally in addressing claims concerning compulsory takings of Māori land for public works. We explain that further in the next section.

---


\(^{51}\) Submission 3.4.284, p 15.

\(^{52}\) Submission 3.4.310, pp 55–56.

\(^{53}\) Submission 3.4.310, p 57.
20.2.4 Claimant and Crown arguments

In this inquiry, the Tribunal received a large number of claims relating to compulsory Public Works takings of Māori land. Most claimants in this inquiry support the generic claimant submission on compulsory taking of Māori land for public works. That submission alleges that the public works regime applied in Te Rohe Pōtae was flawed in both principle and practice and breached article 2 guarantees protecting the Māori right to tino rangatiratanga over their lands. The Crown failed to consult with Te Rohe Pōtae Māori before introducing and applying the regime across the district, and failed to consult about subsequent legislative developments with the regime, causing them prejudice. The Crown also remains ultimately responsible when it delegates compulsory powers to take Māori land for public works to other agencies, such as local authorities. In those cases, the Crown must oversee and monitor those authorities, and take responsibility for any prejudice Te Rohe Pōtae Māori suffered as the result of those agencies implementing those powers.

The claimants alleged that in Te Rohe Pōtae, the Crown routinely opted to utilise compulsory measures as a first resort for Māori land required for public works, rather than consulting first with Māori owners and negotiating with them over possible alternatives to compulsory taking. The Crown also overwhelmingly opted to take the full freehold title of the Māori land concerned, instead of

54. Wai 440 (submission 3.4.198); Wai 457 (submission 3.4.238); Wai 551, Wai 948 (submission 3.4.250); Wai 784 (submission 3.4.147); Wai 846 (submission 3.4.251); Wai 1016, Wai 1095 (submission 3.4.140); Wai 1098 (submission 3.4.137); Wai 1099, Wai 1100, Wai 1132, Wai 1133, Wai 1136, Wai 1137, Wai 1798 (submission 3.4.189); Wai 1360 (submission 3.4.150(a)); Wai 1469, Wai 2291 (submission 3.4.228); Wai 1482 (submission 3.4.154(a)); Wai 1523 (submission 3.4.157); Wai 1593 (submission 3.4.230); Wai 1599 (submission 3.4.153); Wai 2014 (submission 3.4.208); Wai 2345 (3.4.139); Wai 556, Wai 616, Wai 1377, Wai 1820 (submission 3.4.279); Wai 586, Wai 753, Wai 1396, Wai 1385, Wai 2020 (submission 3.4.204); Wai 1910 (submission 3.4.138); Wai 1500 (submission 3.4.160); Wai 1606 (submission 3.4.169(a)); Wai 1824 (submission 3.4.181); Wai 1894 (submission 3.4.184(1)); Wai 2017 (submission 3.4.188); Wai 478 (submission 3.4.155(a)); Wai 729 (submission 3.4.240); Wai 762 (submission 3.4.170); Wai 928 (submission 3.4.175(a), 3.4.175(b)); Wai 1255 (submission 3.4.199); Wai 1309 (submission 3.4.220); Wai 1455 (submission 3.4.156); Wai 1640 (submission 3.4.191); Wai 48, Wai 81, Wai 146 (submission 3.4.211); Wai 366 (submission 3.4.305); Wai 845 (submission 3.4.166); Wai 987 (submission 3.4.167); Wai 1064 (submission 3.4.205(a)); Wai 1147, Wai 1203 (submission 3.4.151); Wai 1196 (submission 3.4.239); Wai 1230 (submission 3.4.168); Wai 1447 (submission 3.4.187); Wai 1803 (submission 3.4.149); Wai 788, Wai 2349 (submission 3.4.246(a)); Wai 849 (submission 3.4.194); Wai 868 (submission 3.4.247); Wai 2088 (submission 3.4.224); Wai 870 (submission 3.4.202); Wai 1112, Wai 1113, Wai 1439, Wai 2351, Wai 2353, Wai 1230 (submission 3.4.226); Wai 1409 (submission 3.4.197); Wai 1438 (submission 3.4.183); Wai 1448, Wai 1495, Wai 1501, Wai 1502, Wai 1592, Wai 1804, Wai 1899, Wai 2125, Wai 2126, Wai 2135, Wai 2137, Wai 2183, Wai 2208 (submission 3.4.237); Wai 1497 (submission 3.4.203); Wai 1499 (submission 3.4.171(a)); Wai 1588, Wai 1589, Wai 1590, Wai 1591 (submission 3.4.143); Wai 1898 (submission 3.4.200); Wai 1974 (submission 3.4.192); Wai 1978 (submission 3.4.232); Wai 1995 (submission 3.4.144); Wai 2084 (submission 3.4.174); Wai 2134 (submission 3.4.214); Wai 2352 (submission 3.4.219); Wai 125 (submission 3.4.210); Wai 1327 (submission 3.4.249).

55. Submission 3.4.117, pp 7–8.
56. Submission 3.4.117, p 80.
57. Submission 3.4.117, pp 4, 25.
considering or opting for arrangements that would have lesser impact and allow Te Rohe Pōtae Māori to maintain a relationship with their lands, such as leasehold or easements.\(^59\) In failing to consult or negotiate over public works taking decisions, the Crown effectively relegated Māori landowners to the role of objectors in the taking process, rather than equal Treaty partners.\(^60\) The Crown also often expressly targeted Te Rohe Pōtae Māori land for public works and failed to ensure that no more Māori land was taken than was necessary for the work.\(^61\)

According to the claimants, the Crown failed to require decision making over compulsory taking of Te Rohe Pōtae Māori land for public works to consider the cumulative burden of compulsory takings, and the impacts of takings in the context of overall pressure for land alienation. It also allegedly failed to consider the impact on Māori participation in commercial opportunities, whether the taking would leave Māori owners with sufficient lands, the impacts of the takings on issues of cultural concern to Māori (such as for wāhi tapu and ancestral connections with the land), and the impact of the taking on the overall decline of Māori landholding in Te Rohe Pōtae.\(^62\) In practice, the Crown prioritised efficiency, economy, and expediency for the taking authority over the interests and concerns of Māori landowners.\(^63\) The claimants alleged that compensation paid for taking Māori land, when it was required or paid at all, was often inequitably low or delayed and that monetary compensation was favoured over land exchanges.\(^64\)

Further, when Māori land taken for public works was no longer required for the original work, claimants allege that the Crown failed to require its return to former Māori owners as quickly and affordably as possible.\(^65\) As a result, the claimants submitted that Te Rohe Pōtae Māori have been disproportionately impacted by the public works regime implemented in this district and have had to pay a heavy price for the provision of public works, while experiencing few of the benefits.\(^66\)

In reply, the Crown rejected the general claim that the introduction of the public works regime into this district was a Treaty breach.\(^67\) It regarded the ability to compulsorily acquire privately owned land for public works as essential to article 1 duties of kāwanatanga. Compulsory taking for a public purpose, the Crown submitted, is a legitimate exercise of that kāwanatanga right.\(^68\) Crown counsel referred us to the words of the Privy Council:

> The Treaty of Waitangi guaranteed Māori the full, exclusive and undisturbed possession of their lands and estates, forests, fisheries and other properties which they

59. Submission 3.4.117, p 38.
60. Submission 3.4.117, pp 31–32.
62. Submission 3.4.117, pp 41–43.
63. Submission 3.4.117, p 38.
64. Submission 1.5.1, pp 2, 8, 33–35.
65. Submission 3.4.117, p 35; submission 1.5.1, p 2.
66. Submission 3.4.117.
67. Submission 3.4.284, p 11.
68. Submission 3.4.284, p 2.
desired to retain. While, as already mentioned, this cannot exclude compulsory acquisition (with proper compensation) for necessary public purposes, it and the other statutory provisions quoted do mean that special regard to Māori interests and values is required in such policy decisions as determining the routes of roads.\textsuperscript{69}

Accordingly, the Crown can use compulsion to take Māori land for public purposes and that is not, in itself, inconsistent with the Treaty or its principles. The Crown submitted that governments face a difficult task in balancing article 1 responsibilities with the article 2 guarantee to actively protect tino rangatiratanga over Māori land. That balancing nevertheless means that compulsory takings of Māori land may be necessary in cases of high public need when there is no ‘reasonably practicable alternative’ to taking Māori land.\textsuperscript{70}

The Crown submitted that compulsory taking of land for public works applies to all private lands, and affects both Māori and non-Māori landowners.\textsuperscript{71} Furthermore, the benefits of public works takings have been enjoyed by Māori and Pākehā citizens alike.\textsuperscript{72} The Crown submits that this point is particularly relevant to Te Rohe Pōtae due to the relatively undeveloped nature of the district and the need to provide infrastructure to a rapidly growing population.\textsuperscript{73} The Crown rejects allegations that the public works regime expressly targeted Māori land for public works takings.\textsuperscript{74}

The Crown rejects responsibility for grievances arising from public works land takings carried out by local government or other statutory bodies.\textsuperscript{75} The Crown submits that local authorities are not the Crown, but bodies created by statute.\textsuperscript{76}

The Crown submits that what is known as the 5 per cent rule was ‘a reasonable means of providing for future legal access to and across the land.’\textsuperscript{77} The first known taking of that kind did not occur in Te Rohe Pōtae until April 1888, under the Native Land Court Act 1886. The Crown submits that means that the application of the 5 per cent rule had a much shorter history in the Te Rohe Pōtae than elsewhere.\textsuperscript{78} The acquisition of Māori land under the 5 per cent provisions in this district amounted to just over 3,000 acres, and most occurred in the first few decades following the opening up of the district. This was not surprising given the area’s relatively undeveloped state and the need for roads, coupled with the fact that Māori owned most of the land in the inquiry district. The relatively large amount of land taken through those provisions merely reflects the circumstances of Te Rohe Pōtae, rather than being an indication of ‘a confiscatory approach on

\textsuperscript{69} McGuire v Hastings District Council [2002] NZLR 577, 594 (submission 3.4.284, p10).
\textsuperscript{70} Submission 3.4.284, pp12–14.
\textsuperscript{71} Submission 3.4.284, p 2.
\textsuperscript{72} Submission 3.4.284, pp1–2.
\textsuperscript{73} Submission 3.4.284, p 2.
\textsuperscript{74} Submission 3.4.284, p 24.
\textsuperscript{75} Submission 3.4.284, p 15.
\textsuperscript{76} Submission 3.4.284, p 14.
\textsuperscript{77} Submission 3.4.284, p16.
\textsuperscript{78} Submission 3.4.284, p16.
the part of the Crown'. In comparison, ‘a rough calculation’ estimates that up to 66,663 acres could potentially have been taken that way.\textsuperscript{79}

The Crown further submits that public works takings have not been a significant cause of Māori land loss in Te Rohe Pōtae, accounting for ‘no more than one percent’ overall of all Māori land alienated.\textsuperscript{80} The Crown accepts that the alienation of some sites may have had an impact for Māori that is not revealed by its size in hectares or acres, but this needs to be considered in the context of overall figures.\textsuperscript{81} The Crown submitted that the return of Māori lands taken for public works but no longer required, including railway land, is adequately catered for under existing legislative provisions in the Public Works Act 1981, the State-Owned Enterprises Act 1986, and the mechanisms for land-banking administered by the Office of Treaty Settlements.\textsuperscript{82}

The Crown cautioned us against making general findings of Treaty breach stemming from Crown public works legislation. Rather, it urged us to focus on whether Crown policies ‘were actually unjust as they operated on the ground’.\textsuperscript{83} Moreover, the Crown submitted that we need to examine each public work taking ‘on a case by case basis’ in this inquiry district to ascertain whether a Treaty breach has occurred.\textsuperscript{84}

For this inquiry district, the Crown also counsels care when assessing the evidence provided for public works. It is important to bear in mind the limitations of that evidence, and the extent to which the evidence, especially Mr Alexander’s report, can be relied on to provide a comprehensive picture of the application of public works legislation in Te Rohe Pōtae. The Crown contended that where details are not available for a particular case, then there is insufficient evidence from which to draw conclusions about the Crown’s conduct.\textsuperscript{85}

While the Crown would not make any further specific concessions of Treaty breach for public works claims in this inquiry, the Crown referred to its policy concerning public works generally, developed from the mid-1990s. That policy restates the Crown position that compulsory taking of Māori land for public works might be necessary in cases of high public need and when there is no ‘reasonably practicable alternative’ to taking Māori land.\textsuperscript{86} While that policy rejects any general or systemic factors for Treaty breach with public works land taking, it does provide for the possibility that the Crown could accept that Māori have

\textsuperscript{79} Submission 3.4.284, pp 18–19.
\textsuperscript{80} Submission 3.4.284, pp 7, 15.
\textsuperscript{81} Submission 3.4.284, pp 5–7.
\textsuperscript{82} Submission 3.4.293, pp 148–149.
\textsuperscript{83} Waitangi Tribunal, \textit{He Maunga Rongo}, vol 2, p 846.
\textsuperscript{84} Waitangi Tribunal, \textit{Te Kāhui Maunga}, vol 2, p 722.
\textsuperscript{85} Submission 3.4.284, pp 3–4.
\textsuperscript{86} Submission 3.4.284, pp 12–14.
‘well-founded’ public works grievances in some circumstances and as long as the Crown is satisfied that ‘significant damage’ was suffered by Māori as a result.\textsuperscript{87}

That could include where, with a compulsory taking of Māori land for public works, the Crown failed to:

- pay Māori the market value for the land taken;
- pay Māori compensation in a timely fashion; and
- adequately consult with Māori landowners.\textsuperscript{88}

The Crown policy provides that inadequate consultation with Māori might include:

- not providing Māori with sufficient information on a public work;
- not providing Māori with sufficient time to consider a public work in advance of a taking;
- failure to ‘genuinely and conscientiously’ consider points made by Māori prior to any decision being made; and
- failure to willingly consider alternatives to a compulsory taking.\textsuperscript{89}

The Crown agrees that ‘significant damage’ can occur to Māori interests for such failures when the result of the compulsory land taking:

- leaves Māori ‘landless or without sufficient endowment’;
- significantly reduces ‘an iwi, hapū, or whanau’s land of special historical, cultural, or spiritual significance’;
- involves more land taken compulsorily than is necessary;
- the land taken is never used for the purpose for which it was acquired or for another ‘legitimate public work’;
- there is a failure to offer land no longer required back to the former Māori owners in reasonable time; or
- the Crown acquires Māori land in preference to non-Māori land because it is more expedient to do so in terms of either cost or convenience.\textsuperscript{90}

The Crown did not respond in detail to most specific public works cases made to this inquiry. Where it commented for cases discussed in this chapter we note that in each case.

\textbf{20.2.5 Issues for discussion}

Based on the arguments advanced by claimants and the Crown, the findings of previous Tribunals and the Tribunal’s Statement of Issues, we focus on the following general questions for this chapter:


\textsuperscript{89} Submission 3.4.284, pp 12–14.

\textsuperscript{90} Submission 3.4.284, pp 12–14.
‣ Was the compulsory taking of Māori land for public works in Te Rohe Pōtae consistent with Treaty principles?
‣ Did the Crown consult over the introduction of the public works regime across the Te Rohe Pōtae inquiry district, or specifically for each individual public work for which Māori land was required?
‣ Was the process for implementing compulsory public works land taking provisions discriminatory for Māori land, or inequitable in application to Māori land in Te Rohe Pōtae?
‣ Were special regimes for compulsory taking of private land for public works, such as the 5 per cent rule or lesser protections for defence and railways, discriminatory or unfair in their application to Te Rohe Pōtae Māori land?
‣ Were compulsory takings of Māori land for public works in Te Rohe Pōtae applied in a way that unfairly targeted Māori land and/or placed more importance on economy and efficiency for the taking agency than on having fair regard for Te Rohe Pōtae Māori interests?
‣ Are public works provisions for returning taken lands once they are no longer required sufficient for the restoration of taken Māori land to Te Rohe Pōtae Māori owners and their communities?

20.3 The Public Works Legislative Regime

In chapter 9, we noted that we would provide a more detailed account of the relevant public works legislative regime in this general public works chapter. That outline follows. The Tribunal has already considered the legislative regime in some detail in previous inquiries.91 This outline is limited to the major developments relevant to this inquiry district. As discussed in chapter 9, the Crown did not introduce the general public works regime to this district until the mid-late 1880s, considerably later than in other districts. That introduction was only possible for most of this district once the negotiations between Te Rohe Pōtae communities and the Crown over the main trunk railway had taken place and the district aukati was lifted. This outline is also divided into the two time periods that reflect the two very different stages of public works development in this district.

20.3.1 The legislative regime, 1880s–1927

The Public Works Act 1882 provided the main legislative framework for public works when the regime was introduced. The main Act was already amended by 1888 when the first recorded compulsory taking of Māori land was made in this district.92 That taking was for the purposes of a road reflecting what would be a

---


92. Document A63, p 114. The taking, in August 1888, was for a road in the Mohakatino–Parininihi 2 block.
major source of compulsory Māori land taking for the next few decades. The 1882 Act was originally provided in response to Māori resistance to road building at Parihaka and contained some especially harsh and discriminatory provisions for compulsory takings of Māori land. The 1882 Act introduced what would become a long-lasting tradition of separate taking provisions for Māori land. The Act also began a tradition of separate provisions for roads with lesser protections for landowners than was usual. That also began a tradition of separate less protective provisions for special kinds of important works later extended for such purposes as railways and defence. The original provisions for taking Māori land were soon made less harsh and that was the case already by the later 1880s. However, the provisions remained more discriminatory for Māori land and especially for customary Māori land. The pattern of generally harsher and less protective provisions continued through subsequent provisions until at least the late 1920s, coinciding with the most intensive period of settlement and infrastructure development in this inquiry district.\footnote{Waitangi Tribunal, \textit{The Wairarapa ki Tararua Report}, vol 2, p 749; Ward, \textit{National Overview}, vol 2, pp 311–312, 318.}

The Public Works Act 1882 provided compulsory land taking powers for a range of works related to basic infrastructure, including for roads, railways, bridges, lighthouses, waterworks, and the telegraph. As new technology developed, or new needs were identified, powers were accordingly extended. Powers for which compulsory land takings could be made by the early twentieth century included electric lighting by the late 1880s, defence (1885 amendment to Public Works Act 1882), lunatic asylum (1892 amendment to Public Works Act 1882), ministerial residences and public buildings (1900 amendment to Public Works Act 1894), and schools, scenery preservation, recreation reserves, and plantation forestry from 1903 (Public Works Act 1903, Scenery Preservation Act 1903).\footnote{For example, Marr, \textit{Public Works Takings}, pp 111–123.}

Compulsory land taking powers were extended at a rapid rate through to the late 1920s, after which the rate of new powers added began to slow although new powers continued to be regularly added. The Public Works Acts of 1894 and 1908 both provided consolidations of the many amendments passed almost every year and the rush to amend and respond to needs could create some legislative conflict and confusion. For Māori land that even extended to confusion over definitions of ‘Native Land’ between the various Native Land Acts, Native Land Court Acts, and Public Works Acts by the late nineteenth and early twentieth century. That confusion at times extended to the application of compulsory taking provisions to Māori land. Various legislative efforts to address such confusion were only partially successful through to the Native Land Act 1909.\footnote{Marr, \textit{Public Works Takings}, pp 108, 111, 114–115, 117.}

By 1882, the Crown had already begun to delegate powers to take land by compulsion for public works purposes to local and special purpose authorities. Such authorities included district and county councils and river boards. Once established in this district, such authorities could exercise considerable power.
compulsory land-taking powers, with frequent additions as needs arose. Those powers extended to compulsory taking of Māori land with relatively light central government oversight. The taking purposes were local, including for such purposes as local roads and quarries, rubbish dumps, sewerage, water, drainage, and irrigation works. As well as powers through main public works legislation, taking powers were also provided through a variety of county and municipal corporation legislation. In later years, powers were extended to include such purposes as workers’ dwellings, paddocks for cattle, and recreation grounds.  

While we consider local government issues more closely in chapter 19, we note here that local authorities played an important role in compulsory takings of Māori land in this inquiry district, often in close cooperation with central government agencies.

To add to the complexity, from as early as 1882, a variety of other legislation provided additional compulsory land taking powers for public purposes, including for Māori land. These measures included Native Lands and Native Land Court Acts, and special purpose legislation including the Electric Lines Act 1884, the Coal Mines Act 1886, and various Mining and Railways Acts. Many of these special Acts were intended to address specific settlement needs and reflected the importance accorded to some kinds of works, such as for railways. The several Railways Acts and amendments through this period, for instance, often provided lesser protections than were generally provided, reflecting the overriding public good value accorded to rail. Similarly, the trend continued of providing separate sections within the main Public Works Acts for takings in some cases for railways, roads, and later defence purposes, often with lesser protections. The railways provisions, for example, enabled compulsory land taking for such broad railways purposes as lands for future needs, or adding to lands already acquired and provided early powers to retain and lease lands not immediately required.

Other special purpose legislation that included compulsory land taking powers prior to 1928 included the Native Townships Act 1895, various Land for Settlements Acts from 1895, and the Scenery Preservation Act 1903. While the legislation was often a response to national demands, the rapidly expanding taking powers were very useful at a time of rapid settlement development in this district and were rapidly adopted alongside of the already extensive Crown purchasing. Even the growing concerns to protect remaining ‘pristine’ scenery in the face of rapid national land transformation had important consequences for land taking in this district. Protecting existing scenery was a relatively new concern for a regime normally more focused on creating new ‘works’. The land taking powers provided for scenery preservation from 1903, in both Public Works and Scenery Preservation Acts, relied on the land taking process provided by the public works regime.

The Crown already had a lengthy tradition of setting aside scenic areas of land for public enjoyment from lands the Crown had purchased from Māori. From 1903, in response to concerns about the loss of so much natural area for settlement purposes, new land taking powers were provided to help protect important remaining scenic areas, especially those considered to be of scenic, historic, or thermal interest ‘whether Crown, private, or Native lands’.

The vision was very much to protect ‘pristine’ and tourist–friendly scenery, but with the proviso that such protection could not cut across otherwise ‘productive’ uses for lands. That immediately focused attention on scenic but clearly less productive landscapes; more inaccessible forest areas, rugged mountainous landscapes, and natural curiosities, such as limestone outcrops. Some of those lands were also immensely culturally important for Māori, containing wāhi tapu and taonga and the poorer quality least-developed lands they had managed to retain for their own use. This district, being relatively ‘recently’ settled and with relatively larger areas still to be developed, appears to have become nationally attractive as a ‘last chance’ in some cases, for efforts to preserve more spectacular scenery that had been lost elsewhere while at the same time encouraging an extended tourist trade.

While Māori communities and members of Parliament were generally sympathetic to protections of scenic and culturally important areas, they strongly opposed compulsory taking of their land to achieve it and especially relying on the minimal protections of the public works taking processes. Āpirana Ngata explained to Parliament in 1906, for instance, that Māori were not entirely opposed to scenery preservation in principle, but objected to the ‘manner or method’ of carrying it out, most especially the failure to properly consult Māori when plans were developed, and the failure to consider areas of ‘sentimental’ attachment to Māori.

The term ‘sentimental’ was widely used at the time to refer to matters of immense intrinsic importance to Māori, such as for cultural and ancestral reasons, that were not considered ‘hard-headed’ or commercially based enough to be considered ‘well-grounded’ objections in public works terms.

The original Māori Councils Act 1900 potentially provided a means for Māori participation in consultation and negotiation over scenery and recreation reserves required, as Ngata was calling for. As the Central North Island Tribunal has reported, the 1900 Act enabled the Māori councils to pass bylaws for such matters as the preservation of river banks and ‘river bush-scenery,’ and the protection and management (including control of access) of urupā, and of recreation grounds. That offered an opportunity for cooperation and negotiation with Crown agencies over reserves required as an alternative to compulsory taking. However, new the Scenery Preservation Act 1903 did not require the scenery commission to collaborate with or even seek the views of the Māori councils. As we discussed in chapter 18, concerning Māori autonomy and self-government, the councils struggled with limited powers and finance afforded to them to fulfil their aims. Instead of

---

101. Scenery Preservation Act 1903, s 3.
103. Waitangi Tribunal, He Maunga Rongo, vol 2, pp 841–842.
pursuing collaboration, from 1907, the Government also provided the reorganised Māori land boards powers to sell lands to the Crown for scenic purposes regardless of the presence of wāhi tapu. From 1916, the elected Māori representation on Māori councils was replaced with appointed members, further reducing the potential for those bodies to provide for Māori self-government, including in the management of lands for scenery.

Māori members had some success in helping force the exclusion of Māori land from the land taking powers provided in the new Scenery Preservation Act 1906. It was only a partial victory, being considered likely to be temporary, and leaving the taking powers for scenery (including for Māori land) still intact in the Public Works Acts. The resulting official and legal confusion only delayed rather than ended consideration of compulsory takings of Māori land for scenery preservation. The Scenery Preservation Amendment Act 1910 then confirmed the extension of compulsory taking powers to Māori land again, and retrospectively legalised any takings of Māori land for scenery that had been made in the interim.

The 1910 Act also attempted to clear up the long-standing legislative confusion over the definition of ‘native land’ from 1894, at least for scenery preservation purposes. The 1910 Act also provided some small concessions to Māori concerns, providing a right for Māori to continue traditional hunting of birds and to continue burying their dead within urupā on lands now taken for scenic reserves. When Māori complained about the public works regime taking process and protections, they were referring to the processes and mechanisms provided in the legislation for the implementation of the compulsory takings. That general process was already well established by 1882 and continued in its main features through this period to the late 1920s. Those processes and protections largely reflected the principles and assumptions regarding the needs of private landowners adopted from England and amended where needed to meet the needs of settlement in a new colony. They assumed the affected private landowners would hold land in individual ownership, would be able to actively defend and pursue their legal property rights, and would be interested mostly in the commercial value of their land, with some extra protections for lands that the owners were most likely to have a special attachment to. In Eurocentric views, such special lands included orchards, pleasure gardens, and private burial grounds.

Other protections considered essential by private landowners of the time were that the main public agreement to such kinds of taking (by other landowners) had to be provided through Parliament and by statutory authority. Additionally, each landowner affected had to be properly notified of an intention to take their land, be given a right to make a ‘well-grounded’ objection (usually where the property meant that the normal financial compensation for land was not sufficient), a right to a formal inquiry in that case, a right to have any compulsory taking formally

proclaimed, and a right to fair and reasonable compensation for the land taken. That usually meant financial compensation (so a landowner could promptly purchase other similarly valued land) and set at a level so the owner was placed in the same (financial) position as before. The protections recognised the serious private infringement and inconvenience suffered by a private property owner subject to a compulsory land taking regardless of the fact that they might also share in the expected public benefit. That same reasoning underpinned a final protection accorded to the affected owners or their successors, of a right of first refusal to re-purchase the taken land once it was no longer required for the original public work. The series of Public Works Acts and amendments provided during this period continued those same basic protections and processes, although their coverage and effectiveness was varied to meet what were considered settlement needs.

As the Tribunal has noted over several inquiries, while these protections had potential to accommodate Māori concerns, on their own they were narrowly focused on general land ownership and settler interests. While they failed to also address Māori concerns and interests, and the form of multiple title in land the Native Land Court was providing for Māori land they had the potential to be far less effective for Māori and their land. 108 There were legislative amendments provided to address some of what were considered Māori equivalents to settler concerns, such as urupā and kāinga. Some more protections were also available if Māori were able to also register their Māori land under the Land Transfer Act, a rare occurrence given the costs and difficulties. However, such areas as urupā had to conform to settler expectations and, in some cases to be formally recognised as burial grounds, in order to satisfy officials and protected cultivations also had to conform to cultivated crops recognisable to settlers. The Public Works Act 1908, for example, defined ‘Native cultivations’ as only those Māori had in regular cultivation for crops for their own consumption, excluding both commercial and customary harvests. 109 The special protections did not, however, extend to areas of special concern only to Māori such as the significance of ancestral and whakapapa links to their lands, and for taonga and wāhi tapu not recognised by officials. Nor was the retention of the unique form of Māori land title regarded as grounds for protection.

The extra protections for areas of special value to private landowners required additional consideration and taking steps in many cases, but they were not a complete bar to a compulsory taking. The impacts could be mitigated to a degree by the increasing emphasis in legislation from the early twentieth century on negotiation with owners over their lands. Section 85 of the Public Works Act 1905, for example, provided opportunities to agree in some cases to land exchanges rather than have land taken and financial compensation. Such agreements nevertheless remained entirely at the discretion of the taking authority and Compensation Court. Other developments, such as section 27 of the Public Works Act 1908, 108. For example, Waitangi Tribunal, The Wairarapa ki Tararua Report, vol 2, chapter 8; Marr, Public Works Takings, pp 17–20 and chapter 9. 109. Public Works Act 1908, s99.
allowed for greater opportunity for prior negotiation with owners whose land was required to avoid the use of compulsory taking processes. Such encouragement was effectively less available when it remained generally more difficult to contact legal owners in Māori land.

A kind of lesser legislative equivalent was provided for Māori land in recognition of the difficulty of identifying owners. Where Māori land containing urupā was involved in a proposed taking, for example, taking authorities were to obtain either the written consent of the landowners to the taking or the prior consent of the Governor in Council. Since for many years it was often assumed to be too difficult to contact the owners, the other option of obtaining what was practically ministerial consent was an option. However, that was over to officials to include in their paperwork as part of the taking and did not require Māori owner participation.

The process for formal notice of an intention to take was generally to follow two main steps to try and reasonably inform private owners. One of the steps required was to post a general ‘public notice’ which required public display of a survey plan with a publicly displayed notice of intention to take that also described the land by its legal title. That notice had to be printed in the New Zealand Gazette and/or its te reo Māori equivalent the Kahiti, a local public newspaper if available, and/or by posting the notice in a public place, usually a local Post Office. There was no similar requirement to post at an equivalently accessible place for Māori such as local marae. The second step required service of the notice of the intention to take on the individual property owners concerned, ‘so far as they can be ascertained’.

For private general land and the relatively small amount of Māori land registered under the Land Transfer Act, owner contact details were relatively easily found. For the majority of Māori land held in multiple title under Native Land Court administration, the process of locating, identifying, and contacting all individual legal owners could be potentially much more challenging. That made the ‘so far as they can be ascertained’ qualification much more significant. Generally, customary Māori land, covered by separate provisions, required lesser notice. Some compulsory takings for special purposes, such as for railways and defence also weakened or removed the general protections provided, such as for notice and for rights to object and seek further inquiry.

Once notified of an intention to take land, the general legislative regime provided owners with a 40-day time period in which to make a formal objection. Officials had responsibility during this time to decide if any formal objection met the test of being what was considered ‘well-grounded’. If so, a formal inquiry into the objections could be provided. Officials then recommended the appointment of the inquiry and where it would be held. The legislation assumed that ‘well-grounded’ objections were largely concerned with matters of property that might be additional to usual commercial land values, such as buildings on land.

110. Marr, Public Works Takings, p138; see also Public Works Act 1908, s2.
111. For example, section 2 of the consolidated Public Works Act 1908.
112. Document A63, p75; see, for instance, section 90 of the consolidated Public Works Act 1908.
or lands requiring special protections. The concerns were narrowly focused and mainly concerned with additional private, usually monetary, loss. Even while owners in Māori land might have their objections meet the narrow well-grounded test sufficient to obtain further inquiry, that inquiry could only take account of a very narrow range of concerns. Such ‘sentimental’ concerns as cultural values and ancestral connections to land were not recognised as within that scope.

Once well-grounded objections were addressed, or if none were considered to have been received in the time allowed, the compulsory taking could then be formally proclaimed and gazetted. The general legislative regime through to the late 1920s then assumed that all owner interests in the land ended, apart from the exercise of rights to compensation and offer-back for the now former owners. Generally, it was expected that by then private owners would be well aware of the taking and would actively pursue their rights to compensation and over time a specialist Compensation Court was provided. Awards were usually limited to financial compensation, at a level intended to ensure the former owner was left no worse off (financially) than before the taking. In the case of compensation for taken Māori land, the legislation recognised the difficulty of identifying owners and the need for taking authorities to complete the taking process. The taking authority was made responsible for making application for compensation for taken Māori land; the Māori owners could not. The Native Land Court was responsible for determining the compensation award for Māori land and distribution of any award.¹¹³

The legislative provisions up to 1927 provided little in the way of ensuring taking authorities carried out their responsibilities to apply for compensation for Māori land. Section 91 of the consolidated Public Works Act 1908, for example, provided that with central government takings, the Minister was to make application for compensation for the taken Māori land ‘at any time’ while a local authority was required to do so for taken Māori land within six months. The Act provided no further requirement for monitoring that such requirements were followed and nor did it provide for any penalty or redress to Māori if authorities failed to do so in a reasonable time, or at all.

In the case of taken Māori land, having the Native Land Court made responsible for determining the compensation award was potentially helpful for Māori owners in that the court could be expected to be more familiar with Māori land title, ownership, and concerns. However, the court was still required to follow general public works requirements for compensation including the focus on financial compensation. As compensation awards and law quickly became complex, Native Land Court judges were required to reach decisions on compensation where they had less experience and specialist knowledge than was the case for the specialist Compensation Court for general landowners.¹¹⁴

The final protective principle for compulsory takings of private land for public works that was incorporated into the 1882 Act and provided subsequently through

---

this period was the right for former owners whose land was taken to be offered a
first right to purchase back the land once it was no longer required for the original
public work. That right of ‘offer-back’ as it became known provided the former
owner or their successor to have a first opportunity (should they wish to exercise
it) to re-purchase the land. The ‘offer-back’ protections were developed on the
assumption of individual ownership and in this period of intense development
were a relatively rarely encountered issue.

As well as the general public works regime and taking process outlined above,
governments also provided several additional regimes intended to respond more
closely to particular needs of settlement, including the circumstances settlers
found themselves in when in a new colony. Those special responses tended to do
away with many or all of the normal protections enjoyed by private landowners
when compulsory taking of land was required, in the interests of the perceived
wider needs of settlement and often the wider settlement needs of those same
private landowners. Although the special regimes were often geared to specific
settlement needs, their extension to Māori land had potential for major weakening
of protections. Some of the special regimes were incorporated within separate sec-
tions of the main public works legislation, as was the case for defence and railways
takings. However, further special regimes were provided through a frequently
confusing variety of public works and native land legislation. The most important
practice for this district has become known as the ‘5 per cent rule’, which enabled a
percentage of land to be taken from a title for a set period without compensation.
Another less used, but potentially important provision for this district, enabled
road routes being used by the public to be declared roads vested in the Crown,
again without compensation being payable.

20.3.1.1 The 5 per cent rule
What has become known as the ‘5 per cent rule’ was developed to meet the require-
ments for transport routes in a new colony and was always intended to have a
selective impact for a temporary period while the colony was in an early stage of
development. The rule was available by the mid-1880s and was finally abolished at
the end of the critical period of settlement development in this district, in 1927. The
rule was a response to the urgent need to provide vital transport routes in a new
colony and originally only applied to taking land needed for road routes before
being extended to rail from 1873. The rule provided that up to 5 per cent of land in
a newly provided land title could be taken if needed, within a set period of 10 to 15
years (depending on the provision applying) and without payment of compensa-
tion for the purpose of a road (and later rail) route in an outlying area then still
without a road network. Even though no compensation was payable, such titles
were often cheaper to acquire and the roads themselves were considered to make
the rest of the land significantly more valuable. Even so, the rule was always meant
to have limited application to titles and was available only for a limited period
of time. It was always expected that as settlement expanded and such titles were
no longer new, the rule would naturally become increasingly less applicable until
it died out. The rule was clearly meant for new settlement and Māori land was originally exempt.

From the mid-1860s, however, the Native Land Court title process provided a convenient opportunity to extend the 5 per cent rule to freehold Māori land as title was provided by the court and, from 1894, the rule was extended even further to apply to customary Māori land. The process by which the rule was applied meant that most freehold Māori land passing through the court became potentially subject to the rule, unlike for general land, where the rule was limited to only outlying areas. The rapid work of the Native Land Court in this inquiry district also meant that most freehold land became potentially subject to the rule just at a time when road infrastructure development was taking off. At various times, the time window during which the rule could be applied after new title was provided was also extended longer for Māori land than for general land. The sometimes confusing process by which title was considered settled for Māori land potentially meant the rule could apply even longer.\(^{115}\)

### 20.3.1.2 Vesting a public route in the Crown without compensation

Another significant legislative provision introduced to this district had first been introduced with the Public Works Act 1876. That enabled routes used by the public to be declared compulsorily vested in the Crown without payment of compensation.\(^ {116}\) The power to vest routes used as roads was continued through a variety of Public Works and Native Lands Acts and was potentially significant in Te Rohe Pōtāe, given the circumstances of routes previously developed by hapū and iwi for such purposes as trading over the aukati becoming available for settler use and improvement once the aukati was lifted. There was little requirement to record such vestings, however, and while some evidence was produced of such powers being exercised in this district, it was not possible to provide a complete tally.

### 20.3.2 The legislative regime, 1928–81

A new Public Works Act 1928 marks the period when the pace of public works development in this district began to decline. The 1928 Act provided a new framework for much of the twentieth century, reflecting a consolidation process with compulsory takings for public works. Many of the important patterns already established continued with the 1928 Act and amendments, albeit at a noticeably lesser pace. There were still no legislative requirements to consult with Māori over a proposed work, while special kinds of private land continued to attract additional protections (apart from land required for defence or railway purposes), including for land occupied by a building, garden, orchard, ornamental park, or pleasure ground. The cemetery and burial ground protections were at first omitted, but later re-instated in a 1948 amendment.\(^ {117}\) Owners of Māori land could
therefore continue to expect such added protections to extend to urupā (once burial grounds were reinstated) and kainga. However, such protections did not extend to lands of special significance to Māori, such as other kinds of wāhi tapu, or lands with strong ancestral connections, or the state of remaining Māori land ownership. Nor did the 1928 Act or subsequent Acts require specific regard for Treaty protections.

The trend for extending public works purposes for which land could be compulsorily taken continued, although at a lesser pace. By the 1920s, for instance, river and flood control was becoming a major issue as settlement and forest clearance began to exacerbate the impacts of storms. A series of Acts providing for individual flood schemes culminated in the Soil Conservation and Water Control Act 1941 and amendments that included compulsory land taking powers. The development of aviation resulted in powers to take land for aerodromes from the Public Works Amendment Act 1935. A renewed focus on providing services and amenities for a growing population after the Second World War, also saw extensions of compulsory land taking powers for such purposes as soldier resettlement, housing, hydro power generation, larger schools and hospitals and new highway and motorway construction.118 Associated land taking provisions also continued in such special purpose legislation as the Housing Improvement Act 1945, the Public Works Amendment Act 1947 (for motorways), and the Geothermal Steam Act 1952.

The powers of compulsory taking for local and special purpose authorities continued, also with light monitoring. Local and special purpose authority powers to take lands by compulsion also continued to be extended, including for such purposes as camp grounds, local housing improvement, river works and flood control, town planning and recreation reserves, through such legislation as continuing Counties Acts and amendments and special purpose measures such as the Physical Welfare and Recreation Act 1937. Special legislative provisions within the main Public Works Act 1928 and special purpose Acts, and subsequent measures also continued for certain works purposes considered especially important. That included for railways and defence as previously and later motorways. The 1928 Act, for instance contained special provisions for railways and for defence purposes.119 The separate special provisions also generally provided for lesser protections than for general public works takings. That included with defence takings, a Crown right to enter, survey, and build the work without the usual protections for notice and objections. The powerful Railways Department had also become a major landowner and continued with the benefit of separate Railways Acts, such as the Government Railways Act 1949. The pattern of separate Railways legislation continued through into the 1990s.120

The 1928 Act also continued to provide the general taking process and mechanisms, as outlined previously, including for notice, objections, compensation, and

120. Public Works Act 1928, s 339; Public Works Act 1981, s 45.
for offering back land no longer required. The 5 per cent regime was abolished so such general provisions were more likely to apply. The 1928 Act and subsequent measures also continued and strengthened the previous trend of encouraging greater negotiation with private landowners, although with continued barriers for owners of Māori land. The formal notice requirements continued to require two steps, for example, of public notice and to serve notice on the owners concerned ‘so far as they can be ascertained’ while failure to provide notice continued to be deemed not to invalidate the taking.\textsuperscript{121} The right to make a well-grounded objection within 40 days continued which could then be heard, if officials so advised, by inquiry. An independent authority for considering objections took some decades to develop. The well-grounded objections and any personal injury claimed also continued to be focussed on monetary awards. Following public gazettal of the taking proclamation, all further claims or interests in the land continued to be considered ended, while monitoring of local body takings was light and continued to be limited to such issues as whether the taking authority had sufficient funds for a work. Following a taking, provisions also continued for compensation for the land taken.\textsuperscript{122}

The 1928 Act also continued the significantly more punitive treatment of customary Māori land required for a public work. In contrast to other lands, for instance, the 1928 Act provided no provision for acquiring customary land by agreement, notice was even less protective and owners had no right of objection to a compulsory taking. Until the 1970s, the 1928 Act and subsequent amendments continued the separate provisions for all kinds of Māori lands, including continuing to require taking authorities rather than the owners to apply for compensation for taken Māori land, with no time period for Crown applications, and with no penalties for failures by any taking authority.\textsuperscript{123} For many years, compensation continued to be determined by the Māori Land Court, with no right of appeal, in contrast to the Compensation and Land Valuation Court for general land.

Owners of Māori land continued to struggle to have legally recognised forms of collective management of their land including for such purposes as protection for compulsory takings. From 1962 to 1974, legislative changes provided for the Māori Trustee to negotiate compensation for most owners of Māori land, but with no requirement to consult the owners.\textsuperscript{124} It was not until 1974 that provision was finally made for owners to have their own representative trustees for the taking process.\textsuperscript{125}

The biggest change to the protections and process provided from 1928 concerned the old principle of offer-back of lands to former owners. The 1928 Act at first continued the established principle that land no longer required for a public work should be first offered back to the former owners or their successors.\textsuperscript{126} However,

\begin{itemize}
  \item \textsuperscript{121} Public Works Act 1928, s 22,
  \item \textsuperscript{122} For example, Public Works Act 1928, ss 22–24.
  \item \textsuperscript{123} Marr, \textit{Public Works Takings}, pp 139–141.
  \item \textsuperscript{124} Marr, \textit{Public Works Takings}, pp 142–143.
  \item \textsuperscript{125} Document \textit{A63}, pp 79–80.
  \item \textsuperscript{126} Public Works Act 1928, s 35.
\end{itemize}
in subsequent years that offer-back principle was significantly weakened and then abandoned. Crucially, that was also the period when lands in this district became potentially more available for return, as land needs changed with new technological developments and population changes. Under subsequent provisions, taking authorities were increasingly enabled to first use land for other public purposes and to sell instead to adjacent landowners if this proved more convenient. As early as a 1935 amendment to the 1928 Act, the requirement to give preference to the former owners began to be abandoned, enabling lands no longer required to be sold to adjacent owners or on the open market. By the mid-twentieth century, the requirement for offer-back was abandoned altogether. For a lengthy period from the mid-1930s until 1981, no strict legislative requirement applied to agencies to offer back land to former owners, with the priority being instead to find other public purposes for taken lands.

When government authorities considered returning taken land, it was generally more difficult and therefore inconvenient to return Māori freehold land and there was no legislative provision for returning Māori customary land. Until the 1940s, government agencies had to get special legislation to return Māori land. Some later provisions made it easier to return Māori land no longer required, such as the Native Purposes Act 1943, but a return was not a requirement and was to be made only at the discretion and convenience of the taking authority. Provisions for the return of gifted Māori land were further provided by the Māori Affairs Act 1953, although still at the convenience of government agencies.

The continuing legislative support for expanding the powers and influence of taking authorities for public works finally began to be curbed from the early 1960s with growing public disquiet about the extent of such powers. Legislative requirements for agencies to make greater efforts to negotiate and agree over lands required spilled over, to an extent, to takings for Māori land. The 1962 Public Works amendment finally brought customary Māori land within provisions providing for negotiated agreement over land required, although takings could still go ahead regardless of Māori objections. The 1962 amendment also encouraged compensation for Māori land to be negotiated with the taking authority, and, as noted, provided for the Māori Trustee to be the representative of Māori owners of land for compensation purposes.

By the 1970s, public disquiet about the environmental impacts of public works and the value of lands taken but now no longer readily returned, pressured further change in public works compulsory land taking provisions. Māori anger and protest about the continuing impacts of compulsory public works takings, including on the now very small amounts of remaining Māori land contributed to the general disquiet and helped focus attention on issues of returning lands formerly

127. Document A63, p 260. The Public Works Amendment Act 1962 provided for the Minister of Public Works to issue a declaration stating that agreement had been reached to a public works taking. Only if it were not possible for such an agreement to be reached would officials proceed with the formal notification and taking process: doc A63, p 78.

taken by compulsion. The New Zealand Māori Council submitted on proposed legislative reform in the 1970s, but only as a submitter rather than being consulted as a Treaty partner.  

Legislative amendments of 1974 finally abolished the long-standing separate taking provisions for Māori land, a feature of public works legislation since 1882. In 1973, an independent judicial body was finally set up to hear appeals from landowners on alleged abuses of the Public Works Act and provided for independent hearing of well-grounded objections to proposed takings. As noted, amendments in 1974 also provided for more effective and direct representation for Māori owners of land subject to compulsory takings for public works. A notice of a taking finally had to also be served on the registrar of the relevant Māori Land Court, who was then to summon a meeting of owners. That mechanism had been available for land purchases from 1909, but was never also provided for compulsory takings for public works. If a compulsory taking was considered urgent for the time likely to be required to have all owners meet, then the Court could appoint agents or trustees to directly represent the owners.

Continuing criticism of the public works regime contributed to the development of the current Public Works Act 1981. Even so, Māori criticised the lack of direct consultation over the drafting of the 1981 legislation. The 1981 Act finally re-introduced the principle of offer-back of lands in response to public pressure and Māori protests and was extended to returns of taken Māori land. Offer-back provisions were also strengthened by a 1982 amendment that allowed land to be offered back at below market value where reasonable. Otherwise, the 1981 Act was largely a consolidation of previous amendments with some further improvements for owners of Māori land. The separate sections for taking Māori land were also confirmed ended. The 1981 Act confirmed a growing focus on acquisition of land by agreement rather than compulsion as the first option. Takings of Māori land were placed under the supervision of the Māori Land Court. An effort was made to change the focus of compulsory takings to require something more like the national interest or ‘essential’ works only, although that provision was abandoned shortly afterward due to difficulties in practical definition.

However, the 1981 Act also contained serious limitations. Unlike the then-recent developments with the Town and Country Planning Act 1977, for example, that required account to be taken of Māori relationships with land and the state of Māori landholdings, the 1981 Act still contained no reference to Treaty guarantees, and no requirement for consideration of Māori interests and ancestral connections with the land proposed to be taken for public works. Significant exceptions

also applied to the new offer-back provisions, including that land did not have to be offered back if it was required for another public work, if the public work had caused ‘significant change’ to its character, or if disposing authorities considered it ‘impracticable, unreasonable, or unfair’ to do so.\(^{137}\) Lands could be sold to adjoining property owners if size or lack of access to the property made it unsuitable for purchase by anyone other than an adjacent landowner.\(^{138}\)

The New Zealand Railways Corporation Restructuring Act 1990 also included special offer-back provisions for railways lands.\(^{139}\) The provisions maintained a similar offer-back process to that included in the main Public Works Act 1981. The railway land for disposal had to be offered back to former owners at current market value unless the corporation or the director-general considered it ‘impracticable, unreasonable, or unfair to do so’ or where ‘there has been a significant change in the character of the land for the purposes of, or in connection with, the public work or other activities for which it was acquired or is held’.

The Tauranga Tribunal noted that some more recent legislative improvements have been made including the Environment Court being made responsible for hearing objections to proposed takings, and further protections through the Resource Management Act 1991. At the same time the Crown has provided additional powers to devolve land taking rights for such purposes as electricity and telecommunications to ‘requiring authorities’ under the Resource Management Act.\(^{140}\) Nevertheless, as several Tribunal reports have now noted, the Public Works Act 1981 has now been in effect for over 30 years and it is no longer fit for what is now considered reasonable and required for Treaty compliance.

20.4 The Practical implementation of Compulsory Public Works Takings of Māori Land in Te Rohe Pōtae, 1889–1927

The period following the lifting of the aukati, particularly the first three decades of the twentieth century, was particularly significant for public works developments in Te Rohe Pōtae. The very rapid and compressed phase of public works infrastructure development coincided with extensive farm and settlement expansion and intense pressure for more land. This period of land sales and expansion of the settler economic base meant that by 1930, Te Rohe Pōtae hapū and iwi retained 25 per cent of their original landholdings.\(^{141}\)

As noted in the legislative summary, alongside the rush to provide for basic infrastructure, such as rail, road, bridges, and water and sewage supplies, the national demand extending the range of taking powers also proved convenient in this district, enabling takings for a range of additional needs such as for public buildings, and to support improved public social services such as hospitals and

\(^{137}\) Document A20, p 257.
\(^{138}\) Document A20, p 257; Public Works Act 1981, s 40(4); New Zealand Railways Corporation Restructuring Act 1990, s 23.
\(^{141}\) Document A21 (Douglas, Innes, and Mitchell), pp 44–46, 129.
schools. From the early twentieth century, national demands for taking powers for further new areas of public need, such as for recreation and tourism, all found a ready adoption in Te Rohe Pōtae.

The result is readily apparent in the evidence provided to this inquiry on areas taken and time periods of takings. The introduction to this chapter notes evidence that some 17,000 acres of Te Rohe Pōtae Māori land was taken in total between the late 1880s and 2009 under compulsory public works provisions (excluding compulsory takings of Māori land for the main trunk railway up to 1903 covered in chapter 9). Of that estimated total, just over 14,500 acres, or by far the greater area was taken in the period to the late 1920s. That is not to say that the amount of later takings, when so much Māori land had already been lost, was not also significant. However, the context is important, with such a large area of land taken by compulsion at much the same time as the district was subject to the period of greatest infrastructure development and the period of very extensive purchasing of Māori land.

As might be expected from the amount of land taken and the time period, several patterns can be discerned in the compulsory takings of Te Rohe Pōtae Māori land at this time. The largest area taken was made up of compulsory takings for transport routes and associated resources, most especially for roads. Most of those were also taken under the 5 per cent provisions, where no compensation was payable to the Māori owners. The next largest area of compulsory takings during this period was for scenery preservation purposes. Some individual compulsory takings were amongst the largest takings of any private land made in this country. That included the large areas taken under compulsory provisions for the Tokanui mental hospital and nearby Waikeria reformatory farm in response to new ideas in reforming the provision of care. Numerous other smaller takings were nevertheless significant for those impacted and some Te Rohe Pōtae communities and whānau had their lands subject to a series of takings with cumulative impacts over time.

20.4.1 Road and railway takings to 1927

The largest area of Te Rohe Pōtae Māori land taken under compulsory public works provisions during the period to the late 1920s was for the purposes of roads and railways, although we have already covered the majority of railway takings in our separate chapter 9 for the main trunk railway. While compulsory takings began by the late 1880s, the pace of takings really picked up from 1900, as Te Rohe Pōtae Māori land passed through the Native Land Court. As noted, the new land titles provided by the court also made a percentage of the Māori land titles concerned potentially subject to 5 per cent provisions for road or rail, where no compensation was payable to the owners. The practical reality of such takings was,
however, that with no compensation payable, record keeping requirements were minimal, and only scraps of evidence on the taking process and decisions for some of the takings have survived.

As we have discussed in earlier chapters, Te Rohe Pōtae Māori communities had been very clear that while they could see the potential benefits from more extensive roads and rail in their district they wanted to collaborate over what was required and they did not want that development to be used as a means of forced acquisition of their land. Nor did they want such development to undermine their authority over their district. The careful direct negotiations over what was required for the railway appeared to offer a practical and useful alternative by which their interests and concerns could be fully considered and they could collaborate over district needs and gain benefit from the new infrastructure.

Te Rohe Pōtae Māori were quick to seek the economic opportunities promised as a result of new infrastructure while the collaboration they sought seemed possible. In chapter 9, we discussed the willingness of the Kawhia Native Committee to negotiate economic benefit from the railway, charging royalties and rents for timber and stone required from an early period while maintaining control of what resources could be utilised. We received further evidence from claimants in this district of how alive they were and continued to be to the economic advantage of roads and railways. The main trunk railway, for example, provided not just opportunities for employment, housing, and business, but also became an important part of their everyday life. Claimant Hoane Titari John Wi described the importance of the railway to his community during his childhood in the Ōngarue region:

We went everywhere on the train – our main mode of transport in Ōngarue and around was the train. The lunch train going to Taumarunui was our main train, you could catch up with everyone there and then go to Masons Garden, and all the kuia, koroua and kids would sit there and catch up. We would go to Taumarunui on pay day, which was every fortnight, and everyone was there. The other important social function of the train was for the coronation and poukai [gathering of Kingitanga supporters]. When it was time for the coronation my family would get the manu from the ngahere, pigs, tuna and all the stuff, which would be loaded up onto the train to go to Ngāruawāhia. All along the railway people would load up for the coronation.¹⁴⁴

We are also aware of evidence that at least some of the Te Rohe Pōtæe leadership continued to advocate for extensions to the railway in the interests of encouraging economic opportunity. John Ormsby took part in lobbying for a new branch railway to Kāwhia in the early twentieth century, for instance, to encourage new opportunity. In that instance, while the Government agreed to begin preliminary surveys, the line was never built and no land was taken for the proposed Kāwhia line.¹⁴⁵

¹⁴⁴ Transcript 4.1.11, app B, pp [234]–[235] (Hoane Titari John Wi, hearing week 5, Te Ihingārangi Marae, 6 May 2013).
Lobbying was more successful for the Stratford branch line, extending from the main trunk line at Ōkahukura (north of Taumarunui) to Stratford, in Taranaki, although we have no evidence of Māori support for that line. The evidence presented to our inquiry suggests the Stratford line was approved partly as a concession to Taranaki settler interests and also to assist new settlers in the Ōhura Valley, some of whom were already leasing Māori land.\(^{146}\) Construction of that branch line began in 1901, and the part of the line traversing this inquiry district, between Ōkahukura and Ōhura, was finished by 1928.\(^{147}\)

The practical reality of the way Māori land was taken for roads and railways in this district was, however, increasingly under a public works regime that required no consultation, minimal notice and in some cases, no compensation. The collaboration Te Rohe Pōtae Māori had intended was increasingly ignored, while assurances of equal opportunity to participate in new economic opportunities were increasingly overlooked in favour of Crown and settler interests. The only evidence of Māori participation in the new railway line by the time the Stratford line was built, was the Māori land taken for the route from largely anonymous Māori owners. There is no evidence of prior consultation and the extent of purchasing and leasing along the line ensured most economic benefit would go to settlers.\(^{148}\)

The two compulsory takings of Māori land along the Stratford rail line were made in 1920 and 1925 and together totalled some 27 acres, taken from the Rangitoto–Tuhua 58 (Whatitokarua) block in the Matiere section of the line. Both takings were made under general public works provisions, so compensation was payable to the owners. All but one acre was proclaimed taken in March 1920. Following the legislative requirements already explained, the Minister of Railways had to apply for compensation, and the Native Land Court awarded compensation in October 1921.\(^{149}\)

There is only scattered evidence of many of the compulsory takings of Māori land for this first time period and accordingly, little additional detail of the taking. Almost nothing is known about the Māori owners the land was taken from or what they knew of the taking. While the Native Land Court was responsible for ensuring payment of the compensation, little is known either of how that was done and whether the owners were ever paid.\(^{150}\) This lack of detail highlights a common feature of Māori land takings for road and rail purposes in this inquiry.

\(^{146}\) Document A20, pp 204–205.
\(^{147}\) Document A20, pp 204, 205.
\(^{148}\) Document A20, p 205.
\(^{149}\) Cleaver and Sarich originally identified two sections of Māori land taken for the Stratford-Okahukura branch line: subdivision 1 of section 3 of the Whatitokarua block, consisting of 27 acres 1 rood 8 perches, and subdivision 2, section 3 of the Whatitokarua block (13 acres 3 roods 10.8 perches). Crown evidence clarified that, with the exception of a small area of just over one acre for which the Māori owners received £1 in compensation, the remainder of subdivision 2, section 3 (some 12 acres) was no longer in Māori ownership at the time of the 1925 taking, having been purchased by Percy Wotton in 1914: doc A20, p 162; submission 3.4.293, p 53.
district: the lack of formal requirements for consultation and minimal protections resulted in minimal documentation regarding the extent of engagement with Māori owners.\textsuperscript{151}

Another feature of compulsory taking of Māori land for railways in this district (other than that for the main trunk line to 1903) was that subsequent compulsory takings were not so much for actual railway routes but more commonly for other railway ‘purposes’ as legislation allowed, such as for land required for yards and sidings and, more commonly, for quarries. While most takings appears to have been made under provisions where compensation was payable, even then some takings for such purposes were stretched to claim application of the 5 per cent rule, thereby reducing or evading compensation.\textsuperscript{152}

Takings for railway quarries during this period included Māori land taken for the Waimihia pumice pit and Maramataha rhyolite quarry in 1903 and 1905. Both quarries were located on the Ōngarue River. Further takings of Māori land for railways ‘purposes’ were made for the Waiteti limestone quarry in 1907 and 1912. That quarry was located in the Mangaokewa Gorge, south east of Te Kūiti in the Mangaokewa Gorge in 1907 and 1912. The three railway quarries together amounted to takings of around 79 acres of Māori land, or close to half of the entire additional Māori land taken for railways after 1903 and to around 2009.\textsuperscript{153}

The provisions allowing takings for railways ‘purposes’ could be extended to cover a wide range of railway needs. Further amendments to special railway provisions in the main public works and railway legislation enabled additional, more broadly generous, scope. That included even such provisions as to enable additional land to be added to existing railway land and to enable land to be taken for possible future utilisation even if not immediately required. Railways was also enabled to begin using taken land for other commercial purposes while it waited to identify some possible future need. We have already noted in chapter 9 that Te Rohe Pōtae Māori gifted some land for the main trunk railway as a gesture of goodwill. It is not possible to tally precisely what happened to all that land due to minimal surviving records, but the evidence indicates that some Māori land gifted or taken for railways in this district was subsequently leased out by Railways for a commercial income. That practice began early, with evidence that land Māori gifted for Ōtorohanga Station was already being leased out by Railways by the 1890s.\textsuperscript{154}

Railways also began using some of the lands it had acquired for railway employee housing. Records are minimal, but railway housing was developed on lands at Te Kūiti, Hangatiki, and Poro-o-tarao. By the end of the 1920s, Railways owned 55 houses in Te Kūiti, including the railway settlement at Te Kumi Road and a row of railway cottages on Carroll Street, opposite the Te Kūiti Station.\textsuperscript{155}

\textsuperscript{151} Document A20, p 172.
\textsuperscript{152} Document A20, chs 4–5, esp p 165.
\textsuperscript{153} Document A20, tbl 4.
\textsuperscript{154} Submission 3.4.293, p 80.
Some of that land was originally taken from Māori land prior to 1930, including just over three acres of land taken in 1911 under railways provisions enabling additional takings of land for railways. That land appears to have been used for some of the railway housing for railway employees in Carroll Street, Te Kūiti.

Significantly more Te Rohe Pōtae Māori land was taken for roading purposes during this period (excluding the land for the main trunk railway already discussed in chapter 9). As noted, Te Rohe Pōtae Māori communities were very concerned about the potential impact of a major increase in roading, not least for how that might make their land subject to increased rating and land purchasing. As a result, such concerns were a major part of the negotiations over their district. Nevertheless, with government assurances, Te Rohe Pōtae Māori were also aware of the potential benefits and opportunities new roading could provide. As land was lost through purchasing and new titles were created through the Native Land Court, Māori communities needed new road access to develop their own lands for opportunities such as farming and timber milling. Māori again expected continuing negotiation and consultation, so they could collaborate over new roading required and share equitably in expected benefits. However, the practical reality of the evidence provided for this district is that most of the Māori land taken for roads in Te Rohe Pōtae to the late 1920s was under provisions where no consultation and only minimal notice was required. Most land takings were made under provisions where no compensation was payable, or where the strategic use of such provisions could significantly reduce the overall cost of compensation. Additionally, as with rail, a significant pattern in the takings was for resources, such as gravel and limestone, required for road ‘purposes’.

The first recorded compulsory taking of Māori land for a road in this district occurred in 1888, in the Mohakatino–Parininihi block. That taking was made under the 5 per cent rule with no compensation payable, beginning what became a significant pattern for road takings. Several other compulsory takings for roads followed in the 1890s, also under provisions where no compensation was payable.156 New settlers to the district were also able to take advantage of the early dray, stock, and other routes the Te Rohe Pōtae Māori community had developed prior to the lifting of the aukati. Such routes were potentially subject to provisions enabling vesting in the Crown as a road used by the public, also without compensation.157 Takings of Māori land for roads grew rapidly from 1900 until the late 1920s, after which the rate of takings began to decline.

The evidence provided to this inquiry indicates that over 3,000 acres of Te Rohe Pōtae Māori land was taken for roads in the period to the late 1920s under provisions where compensation was not payable. In contrast, a further 484 acres of Māori land was taken for roads under general public works provisions, where compensation was payable.158 In regard to takings where no compensation was

156. Document A63, p114. The taking, in August 1888, was for a road in the Mohakatino-Parininihi block.
payable, the majority was taken under 5 per cent provisions. A lesser amount, difficult to precisely tally from records, was declared vested in the Crown as a public road, including for at least seven roads in the district. The evidence also indicates that taking agencies also used a mix of 5 per cent and general public works provisions to make up the lands required for a road, allowing maximum flexibility, while reducing the overall cost of the land.

Both central and local government authorities were taking land even while the Crown was purchasing very large areas of Māori land in the district and then developing and cutting up blocks provided with roads for on-sale for new farm settlements. However, the nature of Crown purchasing resulted in some fragmentation of the land purchased, meaning linking roads were required through lands still held by Māori. Retained Māori land was also required for developing main arterial routes through the district and opening new sources of timber and areas of settlement. Where Māori remained reluctant to sell or purchasing Māori land was progressing too slowly, the provisions for compulsory taking were an available alternative. The evidence indicates that Māori land was taken for roads to link the Crown’s Rangitoto farm settlements east of Ōtorohanga and Te Kūiti, for example, and for the major arterial route that became State Highway 3 between Ōtorohanga and Te Kūiti. The evidence also indicates that once local authorities were established in the district, they were also very active in taking Māori land for roading purposes, whether for local routes or the materials needed to build and maintain them. It is not known how much the limited time-period contributed to the urgency to take land while no compensation was payable but clearly cash-strapped authorities were always going to seek to reduce their costs. The evidence also indicates that both local and central government agencies were willing to utilise provisions that enabled them to end earlier rentals and royalty agreements negotiated at commercial rates with Māori owners by the use of compulsory takings of the land concerned.

In making compulsory takings of Māori land for road purposes, Crown and local authorities were only required to apply the relatively narrowly focused protections and objection processes provided. They did not need to carefully consider the cultural or intrinsic values of the land being taken for Māori and they were able to develop a strongly held assumption that it was always too difficult to find let alone consult with the legally recognised owners of Māori land. A feature of the claims before us in this district is the overwhelming and enduring frustration and sadness of Māori communities that their concerns and their needs for protection of their taonga and sites of importance received so little priority or value when land was taken for roads and road construction took place without evident

concern to protect rivers and waterways or sites of historic and cultural importance or even their wāhi tapu and urupā.⁶²

Although the records of compulsory takings for roads and railways are very scattered for this district and rarely illustrate the entire taking process that could be applied, we have selected two further cases to illustrate how the general taking regime operated in this district. These cases illustrate in different ways the way the general provisions of the taking regime helped undermine expectations of sharing equitably in the benefits promised with the introduction of settlement in this district.

20.4.1.1 Waiteti, Waimiha, and Maramataha railway quarries, 1903–12

These quarry takings and especially those for Waiteti quarry illustrate the way taking provisions were used to undermine equitable sharing in economic opportunities and to shut Māori out of participation in public works decision-making. Māori land was taken for the Waimiha pumice pit and Maramataha rhyolite quarries in 1903 and 1905. Both quarries were located on the Ōngarue River and quarrying for the main trunk line began in both cases prior to 1903. As discussed in chapter 9, the Kawhia Native Committee was quick to participate in the economic benefits of the railway. Prior to 1903, the committee negotiated agreements with the Government for the payment of royalties for the quarry stone at Ōngarue required for the construction of the Ohinemutu section of the main trunk railway in 1897.⁶³

Such agreements were important in recognising a Māori interest in the resource, providing a useful ongoing income at a time of significant change and land purchase pressure, and providing an opportunity to acquire capital for investment in further development. Once the Government began introducing the general public works regime, however, officials became determined to use the available provisions to take the land containing the resource, ending the agreements and further negotiation with owners. That saved costs for the Crown but closed off both recognition of rights in the resource and economic opportunity for the Māori owners.

In 1901, John Ormsby led a deputation to meet with the Minister of Railways, Sir Joseph Ward, to discuss railway-related matters, including what had happened with the payments. Ormsby was clear that an agreement had been reached for Railways to pay threepence per yard for the stone, and the deputation wanted the payments resumed.⁶⁴ Public Works officials claimed they could find no written record of such an agreement and shortly afterwards a decision was made to resolve the issue by taking the Māori land outright rather than continuing the dispute.

---

⁶² For example, loss of access to river resources as a result of takings in Orahiri 1 and Otorohanga 1F4A blocks (doc A63, pp 169–170) and evidence provided to our Tokanui hearing from June Elliot and Gordon Thompson that Te Mawhai Road built in 1903 on Crown land was allowed to cut across Te Iakau urupā in spite of promises to reserve the land as a Māori burial ground: doc P19 (Elliott), p 4; transcript 4.1.14, pp 406, 412; submission 1.2.126, p 14.


⁶⁴ Document A20, p 110.
The Māori land containing the two Ōngarue railway quarries was then taken in 1903. Although there is recorded evidence of the discussions over paying royalties, no evidence could be found of any Government consultation with the Māori owners over the decision to take their land. There is also very little surviving information about the practical application of the various stages of the compulsory taking process for these quarries.

There is a record that compensation for the land taken for the two quarries was decided in 1904, with the Māori land council, at the time given responsibility to represent the Māori landowners, negotiating with the Public Works Department and agreeing on £50 compensation. That sum was also agreed to include any claim for unpaid royalties. There is no evidence of any land council consultation with the Māori landowners over the agreement and nor was that required.

A similar situation arose with the compulsory taking of Māori land for the Waiteti quarry. That case is also useful for a relatively rare practical illustration of the extent of the use of the 5 per cent provisions to help reduce the cost of overall compensation payable. The Mangaokewa Gorge where the Waiteti limestone quarry was located is formed by limestone bluffs cut by the Mangaokewa River. The area was recognised as an especially valuable source of quality limestone from an early period that was considered well suited for use for railway and road purposes. The limestone bluffs and gorge also contained important wāhi tapu for local Māori, including a customary burial site for kōiwi. Two important pā, Tumutumu and Taupiri o Te Rangi, were located in the vicinity, with important historical connections with the tūpuna, Taonui and Maniapoto. The ancestor Maniapoto was also understood to have been buried in a cave in the Pukenui land subject to the takings. The main trunk railway route passed close by the gorge, which was the site of the scenic railway Waiteti Viaduct and the railway route was already in operation by the time of the compulsory takings.

The Ngāti Rōrā claimants allege that the compulsory takings for Waiteti railway quarry undermined their economic opportunity, severed their ancestral connections to their land, and prevented them from managing the necessary balancing of commercial quarrying with continued protection of their prized wāhi tapu, waterways, and urupā. The claimants alleged further cumulative impacts when more land in the gorge was taken under public works provisions for scenery preservation and the continued takings for the quarry extended to limestone caves and bluffs, denying hapū access to their burial sites and other taonga.

As with the Waimihia and Maramataha quarries, the Government had begun taking stone from the site prior to 1903, and the commercial value had been
recognised by the Kawhia Native Committee. As early as 1889, John Ormsby negotiated royalties of twopence per cubic yard for the extraction of ballast stone from the site. With the application of the public works regime across the district, officials also became increasingly reluctant to continue paying such royalties and decided to resolve the issue by using compulsory public works provisions to have the land taken. An early taking was already made in 1895 of some 24 acres of Māori land adjacent to the Mangaokewa River from the Tē Küiti and Pukenui blocks. The taking was made under provisions requiring compensation, and in that case, the Government agreed that compensation could be made to the Māori owners by way of exchange for shares in land purchased elsewhere in the blocks. The main trunk railway line was then completed and opened through the district by 1903.

Suitable limestone was still considered a valuable resource for road and railway building and maintenance. Māori owners remained aware of the commercial value of the resource and, by 1906, they had set aside an area of their remaining land in the vicinity, the 180-acre Pukenui 2M block, for use for commercial limestone quarrying. The Māori owners entered a lease and royalty agreement for the land and limestone with William Lovett, who established a limestone crushing plant on the site and on-sold the limestone to local bodies for road building and maintenance. In 1906, Mr Lovett was paying the Māori owners of the block an annual land rental of £13 10s and a royalty of one penny per cubic yard of limestone extracted. The royalty was less than the Kawhia Native Committee had been able to negotiate earlier, although the reasons for that are not clear. The land blocks also had relatively few owners. By 1906, the three owners in the block were minors and their father, Tama Kawe, was the one trustee, potentially making commercial management of the block considerably easier.

Railways officials also identified the ‘valuable limestone’ at the site and continued to operate their quarry after the line opened. Railways then decided to extend their quarry site further, leading to two further compulsory takings of Māori land to extend the quarry site after 1903, in 1907 and 1912. The two takings included a further 14 acres of Māori land in the Pukenui block, adjacent to the existing railway quarry. A small part was taken from the Pukenui 2D block, while most was taken from the Pukenui 2M block already set aside by Māori for their commercial quarry. The first taking was formally proclaimed in 1907, for the purposes of extending the railway limestone ballast pit and limestone quarry. The Minister applied for compensation as was required and the compensation award for the 1907 taking was heard by the Native Land Court, the following year, in 1908. There is no evidence that the Government consulted with the Māori owners or their trustee over the proposed taking, or the likely consequences for their commercial income.

Nor is there any evidence that officials considered alternatives to outright taking of the land, and it was preferred policy to take rather than lease the land. Claimant Hoane Titari John Wi told us at our Waimiha hearing that the owners would have readily agreed to an agreement that did not require compulsory taking, as they never minded central or local government being able to take and use some of the resource, as long as the Māori owners and community could share in the income from the resource and were able to retain control of what land was quarried in order to protect important sites.\(^{174}\)

Tama Kawe, trustee for the Māori owners, attended the compensation hearing, as did the lessee, Mr Lovett. The Railways employed a lawyer to protect the railway interest in the compensation awarded.\(^{175}\) Mr Lovett told the court there was still plenty of limestone on the site and estimated the land contained over 1.25 million cubic yards of limestone. He agreed that the royalty rate he was already paying was ‘cheap.’\(^{176}\) Tama Kawe for the Māori owners asked for fair compensation of £5,250. That was the estimated value of the limestone resource if the long-term lease and royalty arrangement with Lovett had been able to continue. Tama Kawe stated that in the previous two years, royalties of some £15–£16 had been paid to the owners.\(^{177}\)

The Railways lawyer, Prendergast, argued that the 5 per cent provision for taking land for road and rail ‘purposes’ without compensation should be applied. The taking was for a quarry for a railway ‘purpose’ and the taking was (just) within the 15-year time limit for application as the title to that land was provided by the Native Land Court in 1893. Prendergast submitted that 5 per cent of the 180-acre block was nine acres and therefore the full value of the nine acres should be subtracted from the just over 14 acres taken. That left just over five acres, or less than half the taken area, liable for any compensation to be paid.\(^{178}\) No mention was made of how far that stretched the original intention of the provisions to provide for transport routes in outlying areas when, in this case, the main trunk railway was already operating just a short distance away.

The Native Land Court appeared to accept that it had no choice but to accept the argument and apply the rule. The court agreed that just five acres was now liable for compensation. The court also accepted Prendergast’s argument that the value of the limestone resource on the land taken was ‘negligible’ due to the ‘abundance of limestone in the Te Kūiti district’ and the cost of extracting the resource.\(^{179}\) The court therefore decided the award to the Māori owners, based on poor quality land only, should be just £25 for over five acres of land, with £90 to Lovett as the lessee. A further £25 was awarded to the owners for the additional loss of a water right to a spring on the land, with £75 for Lovett as lessee. The total amount awarded to the owners was just £50 for the 14 acres taken and nothing at all for what officials had earlier identified as a ‘valuable’ limestone resource.

174. Document q36(c) (Wi), p 11.
Lovett’s share of the compensation, while not high, was still relatively more significant given the commercial loss he was considered to have suffered. He was awarded total compensation of £225, less £60 in costs.\(^{180}\)

The amount awarded to the owners seemed low, including in comparison to the lessee award. However, the court stated that was basically the fault of the owners. In the court’s view, they had effectively reduced their freehold interest in the land (and therefore the value of it to them) by agreeing to a long term lease at a relatively low rental.\(^{181}\) ‘This was even though Māori found it very difficult to achieve the full value of their land, given the form of title they were given, including to obtain development finance for developing and improving the value of their land and to utilise its resources themselves. The court also accepted the Railway lawyer arguments for applying the 5 per cent provisions. The court then deducted £15 from the owner compensation award to pay for costs to the Railway Department in bringing the case (with £60 deducted from Lovett).\(^{182}\)

The costs award could be considered harsh when the public works regime did not allow Māori owners to bring compensation applications themselves. They were solely reliant on the taking authority to do so and had no control over those costs. Most of the court hearing time in this case was also taken up with hearing the Railway case. The award of costs made up a significant proportion of the award to the owners. The total compensation payable to the Māori owners for the loss of their land, valuable limestone resource, and freshwater spring came to just £35 or approximately two years’ worth of the royalty and rental then being paid. Not surprisingly, the owners took their chances with an out-of-court settlement with Railways over their other relatively smaller piece of Pukenui 2D block also taken for the quarry extension. The Native Land Court subsequently confirmed compensation of £2 for that part.\(^{183}\)

Despite claiming to the court that the limestone resource was worth very little, Railways continued to use the Waiteti quarry site, building a ballast-crushing plant at the site and deciding to extend it further in subsequent years.\(^{184}\) As will be discussed later in this chapter, the Mangaokewa Gorge then became the subject of scenic reserve takings, highlighting the way public works takings often had cumulative impacts for Māori communities. The Railways quarry was excluded from the scenic reserve, on the grounds of its commercial importance. Railways then sought and obtained approval to have some of the land taken from Māori for the scenic reserve set aside for extending the quarry in the public interest.\(^{185}\) As will be noted, two local authorities then followed the Railways’ lead, also seeking and obtaining approval to have some of the scenic reserve land, originally taken from Māori, then set aside for their quarrying use.

\(^{180}\) Document A20, p 170.
\(^{181}\) Document A20, p 170.
\(^{182}\) Document A20, pp 161, 169.
\(^{183}\) Document A20, p 154.
\(^{184}\) Document A20, p 170.
\(^{185}\) Document A63, pp 569–571.
A few years later, Railways officials decided to extend the quarry again, taking in yet more of the remaining Māori land in the Pukenui block. By 1911, the Māori owners of the remaining land from Pukenui 2M (49 acres) had transferred the now smaller Lovett lease to a new leaseholder, John Wilson, who had a lime crushing works with access from a railway siding. Officials followed the encouragement of the public works regime in seeking out Mr Wilson’s manager to discuss mitigation of the likely commercial impacts of the taking for the Wilson lease. That included a possible land exchange, and a possible compensation pay-out for the existing lease. There is no record, however, that officials made any effort to similarly consult with the Māori owners concerned.\(^{186}\) The remaining land in Pukenui 2M block was proclaimed taken in 1912. The Māori owners chose to reach another out-of-court compensation settlement direct with Railways rather than risk what might happen with a court award. The amount paid was £240 for the 49 acres, equivalent to £5 per acre.\(^{187}\)

The continuing value of the Waiteti quarry resource was apparent for many years. The central and local government authorities were now the landowners, however, and received the continuing income from royalties and leases. We discuss this in more detail in our section on scenery preservation. By the 1920s, Railways officials decided the limestone resource was no longer suitable for railway line ballast.\(^{188}\) Railways made no effort to return the quarry site to the former Māori owners, but instead, as it was enabled to, entered commercial leases for some 10 acres of the quarry land in 1923, and a further 44 acres in 1931.\(^{189}\) The lease terms included ongoing payments of royalties for the limestone.\(^{190}\) Such records as were provided to our inquiry indicate that Railways profited from royalties through limestone licences to parts of the quarry land from at least 1925 to 1993.\(^{191}\) It has not been possible to quantify the value of these royalties, although the longevity of quarrying operations on the Mangaokewa site suggests that the commercial value remained significant.\(^{192}\)

From the early 1980s, Railways was required to begin disposing of land, including the quarry land, which was transferred to private general landowners in exchange for other lands required for improving the railway track. That included two areas in 1986, totalling some 5.46 hectares, originally taken from Māori owners of the Pukenui block for the quarry in 1912.\(^{193}\) Even though offer-back provisions had been re-instated from 1981, the legislative exceptions enabled the transfers. Official correspondence notes that while ‘the land would normally be offered back to the original owners or their successors,’ lack of legal access to the blocks being

---

188. Document A20, p 178.
190. Document A20, pp 178–179. A small area of just over an acre used for the ballast pit and originally taken from nearby Pukenui 2D4 was disposed of by exchange of land in 1939.
193. Document A20, p 266.
disposed of meant they were only suitable for disposal to an adjoining owner. Most of the remaining Waiteti railway quarry site, around 29 hectares, was then sold to McDonalds Lime Company in 1993, following the restructuring and sale of New Zealand Rail, presumably under similar exceptions. That land included some of the lands taken under compulsory provisions from Māori owners in the years 1895 to 1912.

The Māori owners deliberately set aside some of the land for commercial quarrying, while retaining other areas of cultural importance. The extension of the quarry site under taking provisions requiring no prior consultation and minimal notice undermined efforts to protect and resulted in significant damage and disturbance to wāhi tapu and urupā, a source of enduring grievance for local tangata whenua. Once they lost control of the quarry, the owners could not prevent the extension of quarrying up to and disturbing nearby urupā or important historic sites. Claimant Haami Te Puni Bell gave evidence to our inquiry that he spoke to quarry workers who told him of human bones uncovered during the quarry’s operations:

One worker who operated the crusher for breaking up the limestone said on quite a few occasions he would see ‘bones’ coming in with the limestone. They were almost impossible to get out and so they became part of the ‘lime’. Another worker who worked on the drill talked about one day when it began to pelt down with rain. They downed tools and ran along the ‘bench’ to an overhang. He and a mate began to squeeze under the ‘overhang’ to find in fact it was the entrance to a cave. On looking around with the aid of a lighter, [he] found it was a burial cave. This worker at the end of the day’s work told some local kaumātua about his find. That night he, along with the kaumātua and a few others, went to remove the kōiwi and taonga. He added that it was lucky they had done this, as the next day the ‘overhang’ and the cave were next on the list for the crusher.

On another occasion, Mr Bell told us, workers noticed that the quarry office manager was using a human skull as a doorstop. Mr Bell described how the quarrying operations on the Railway Reserve block and the dumping of overburden in the adjoining lands have also ‘destroyed and obliterated’ their historic

194. Document A20, p 266; doc A20(a), pp 386–387. A further factor influencing the decision of officials not to go ahead with the offer-back process was the fact that the Government had entered into negotiations to exchange the land prior to the passage of the Public Works Act 1981.


196. Ngāti Rōrā (Wai 616, statement 1.2.77) claimant Puni Bell describes two significant Ngāti Rōrā pā – Tumutumu and Taupiri o Te Rangi in the gorge vicinity and kāinga of Taonui and Maniapoto: doc S35, pp 12–14. Maniapoto himself is said to have been buried in a cave in the Pukenui block of Mangaokewa: submission 3.4.279, p 51.


The quarrying operation also resulted in run-off being allowed to pollute the nearby Mangaokewa Stream.\(^{199}\)

### 20.4.1.2 Ōngarue township, 1902

The taking of Māori land for public buildings in Ōngarue township illustrates some further issues with the practical implementation of compulsory public works provisions in this inquiry district. The taking in 1902 is closely linked to the main trunk railway and the promises of opportunities to share in economic benefit associated with the railway. This case helps illustrate how the Crown practically chose to use compulsory provisions when such benefits seemed imminent. The case additionally provides a link to the general public works provision being applied across the whole district and especially the new kinds of public works purposes provided from the early twentieth century, in this case for public buildings. The taking further highlights the cumulative application of compulsory provisions to small Māori communities. Land was compulsorily taken in the Ōngarue locality for a range of public purposes, including the railway route, and nearby quarries. As construction of the main trunk line progressed south, further takings for a possible township were soon under consideration. The proposed site for an Ōngarue township was previously a Ngāti Raerae ōpōturi of Kawakawa and Katiaho and included urupā.\(^{200}\)

The Ngāti Raerae and Te Ihingārangi claimants allege that excessive land was taken for the purpose of public buildings for Ōngarue township, that the taking put Crown economic interests ahead of opportunities for Māori, and the taking was made in Crown interests at a time when the future of the township was still uncertain. The takings left owners with ‘little ability to sustain themselves’ at a time (between the 1890s and 1903) when they faced considerable pressure from the arrival of the Native Land Court and the North Island main trunk railway to their district.\(^{201}\) The taking further failed to protect their urupā on the land.\(^{202}\) The claimants alleged the result was that compulsory public works provisions were used as yet another means of taking Māori land by stealth.\(^{203}\)

By 1897, construction of the North Island main trunk railway had reached the Ohinemoo section, extending from the Poro-o-tarao tunnel north of Waimiha, towards Ōngarue further south.\(^{204}\) The usual process for construction was to establish small railway camps ahead of the main construction. Before long, by the early twentieth century, a camp was established at Ōngarue. Most such camps were temporary and disappeared as work progressed. For instance, the *New Zealand Herald* described ‘collections of hastily and cheaply constructed buildings, such as previously existed at Poro-o-tarao and which keep pace with the progress of the

---

199. Transcript 4.1.21, pp 560–561 (Haami Te Puni Bell, hearing week 12, Oparure Marae, 6 May 2014).

200. See doc A164, pl 68; doc Q10(b) (Rata), p 8; doc Q30 (Rata), pp 3–7.

201. Submission 3.4.175(b), pp 5–6; doc Q30(b) (Rata), pp 16–18.


204. Document A20, p 110.
railway works, being extended stage by stage, as various sections of the line are completed:205

There was a likelihood that Ōngarue camp would suffer the same fate as other similar temporary railway camps. By 1903, a new railway outpost had already been established some 21 miles further south at Piriaka.206 However, there were a few reasons to suggest, even by 1903, that Ōngarue might have a more permanent and prosperous future. The most important reason was that it was thought likely that Ōngarue would be the location of the new junction between the main trunk and Stratford branch line. The branch line construction had begun from Stratford the previous year. Ōngarue possibly also had a role as a fledgling service centre for the local farm community and was also a centre for the then flourishing timber milling industry, both of which were likely to be further strengthened if also became a junction township.207

The prospect of becoming a more certain township encouraged some debate in the local settler community, including concerns that it would become another Native township located on Māori land. Such a prospect clearly offered Māori some economic opportunity, as well as the ability to manage land use in the town, including to protect sites such as urupā. The possible commercial competition and the uncertainty of Māori land title for business development was, however, a cause of settler concern. Opinions published in the local press in 1903, protested the possibility of Ōngarue becoming another Māori township; a ‘bad edition of Te Kūiti, labouring under the same disadvantages – native land and no tenure.’208 A possible Māori township at Ōngarue was also critically compared with other Te Rohe Pōtae townships such as Ōtorohanga, Te Kūiti, and Taumarunui, where, it was claimed, ‘the natives expect great increment and fix high rentals.’209

There might have been some expectation from Māori that the Crown would consult and mediate to ensure they had equitable opportunities to share in expected benefits. However, it seems that even by 1901, government officials were also contemplating the possibility of a future Ōngarue township but in ways that would best protect government economic interests. Officials were already developing a plan for using the new compulsory provisions to take land for public buildings and a large area of land at a suitable site in the township for a very large government reserve that could house not only public buildings but enough land for future requirements should Ōngarue prosper, as seemed likely. No effort was made to consult with local Māori, nor is it clear why officials did not try purchasing the land required.

Survey plans for the proposed taking were prepared by 1901 and indicate the plan to take 27 acres for a variety of government buildings in the town, even while it was still barely more than a camp. The plans included land for a proposed

‘School Reserve’, ‘Court House Reserve’, and ‘Police Reserve’, as well as for an additional ‘Government paddock’ that presumably could be used for any further public building need in future. There were obvious advantages for the Crown in getting in quickly before the land rose in value once a junction location was announced. The Government could also make an income to offset costs from leasing land not immediately required. Presumably, the idea that the land was government owned and could be on-sold to settlers might also have been anticipated to calm any expected settler agitation about Māori ownership. However, little evidence appears to have survived on decision-making. It is evident, nonetheless, that government and settler concerns effectively shut Māori out of their best opportunity to share in the commercial benefits expected from a bigger town and from their ability to protect important sites on taken land. While officials were in a position to select

210. Document A63(d) (Alexander answers to questions), p.3.
the most suitable site for the Government, the lack of consultation prevented Māori from being able to warn officials of the existence of their urupā.

The Māori land required for the township was taken from the Rangitoto–Tuhua 77 block, for a ‘Police Station and Other Public Buildings’ in 1902. The taking was made under general public works taking provisions, where compensation was payable. As required, the Minister applied to the Native Land Court to determine compensation. The court hearing for compensation was held in 1903. Tutahanga Te Wano and Te Ra Wahirua appeared for the Māori owners at the hearing, while two local farmers gave land valuation evidence for the Crown. Tutahanga told the court that 30 shillings per acre was a fair price for the land. He was also very sceptical as to why so much land was required for public buildings. The court fixed the compensation for the owners at 25 shillings per acre, presumably based on existing agricultural land value.

Some of the taken land was soon used for public buildings. A school building was relocated from Poro-o-tarao to the school reserve at Ōngarue in 1902. The site continues to be used for Ōngarue School today. It also appears that, for some years, pupils used the nearby ‘government paddock’ to graze their horses in lieu of any public building on the site. In 1902, a police station and cells were also built on the ‘Police Reserve’ part of the land. No further public buildings were ever constructed on the taken site. The rest of the land still had no buildings when the announcement was made for the junction site for the Stratford line in 1911. That confirmed the junction would actually be located at Ōkahukura, a little way south of Ōngarue.

Ōngarue remained a timber milling centre for some years, but the earlier expectation of a larger, more prosperous township never eventuated. The junction decision made the taking of a full 27 acres seem even less likely to be required. No court house was ever built on the ‘Court House’ part of the site. Neither was the government paddock ever required for public buildings. There is no evidence, however, that at the time, officials considered returning some of the land to the former Māori owners. As early as 1911, the Government advertised a lease of 11 acres of the land situated near the school reserve and known as the ‘government paddock’. That might have been while some growth was still thought possible.

211. Submission 3.4.175(b), p 9; doc A63(d), p 2.
212. Document Q30(a), pp 15–16.
215. While control of the Ōngarue School was transferred from the Auckland Education Board to the Taranaki Education Board in 1915, the ownership of the school site was not formally transferred to the control of the Taranaki Education Board until 1932: Lyndsay McMillan and Audrey Walker, Ōngarue: A Place of the Heart/A District History (Ōngarue: Ōngarue School Centenary Committee, 2005), pp 53–58; doc A63(d), p 3.
but the income from that lease went to the Government, not the former Māori owners.\textsuperscript{219}

As it became clearer still that the full extent of the taken land would not be required, efforts were still not made to return the surplus land to the former owners. By the 1920s, public works provisions allowed authorities to first consider using taken land for other public purposes. Transfers of parts of the site were made for other public purposes over subsequent years. One area was redesignated as a reserve for recreation purposes for the Ōngarue domain (with public hall) in 1922.\textsuperscript{220} A small area of the police reserve not required was set aside for State housing in 1956. The rest of the taken land was never used for other public purposes. As public needs changed, even some of the land originally used for public buildings began to be disposed of under provisions then applying. By then, however, there was no legal requirement to first offer back lands to former owners. The police station, for example, was eventually closed and the land disposed of into private general non-Māori ownership.\textsuperscript{221}

As public works provisions for offer-back were weakened and abandoned, other parts of the reserve never used for public purposes were disposed of, most often into private general ownership. Some parts of the government paddock and police part of the reserve were made available for sale, in 1930 and 1960.\textsuperscript{222} It is not known what, if any, efforts were ever made to notify the former owners or their successors for any of the disposals and increasingly this was not legally required. The details of other disposals are not known but evidence provided to this inquiry indicates that today, the Crown retains only a small part of the 27 acres taken in 1902. That includes part of the school reserve (still a school) and the site of the Ōngarue domain and hall.\textsuperscript{223} The remainder of the land is now in private general ownership.

\textbf{20.4.2 Ōpāraru and Piopio Schools, 1917–60}

The school reserve set aside for Ōngarue township was a relatively unusual way of providing land for school sites. From the turn of the twentieth century, schools had also become a purpose for which land, including Māori land, could be subject to compulsory taking provisions. The cases considered in more detail here concern takings for public schools in the years to 1927.

Three separate compulsory takings of Māori land were made from the same Ngāti Hikairo owners, a section of Te Whānau Pani hapū, for the Ōpāraru school.\textsuperscript{224}

\begin{footnotesize}
\begin{enumerate}
\item 220. Document A63(d), p 3.
\item 221. Document A63(d), p 3; doc Q30(b), pp 16–18.
\item 222. Document A63(d), p 3.
\item 223. Document A63(d), p 3.
\item 224. Document A98 (Thorne), pp 307–313.
\end{enumerate}
\end{footnotesize}
The first taking was made in 1918, followed by subsequent takings to extend the original school site some decades later, in 1942 and 1960. Two separate compulsory takings of Māori land were made for the Piopio school. The first taking was made in 1922, with a subsequent taking decades later in 1958. In both cases considered here, the original takings made in the period to 1927 were then followed by further later takings. Both cases highlight the continuing insistence on replacing leasing opportunities for Māori with outright takings, the lack of consultation and the way one original taking for a work often resulted in a pattern of further takings.

Claimants for the school sites alleged their lands were repeatedly targeted for compulsory land takings for school purposes. In the case of Oparau School, counsel for the Ngāti Hikairo claimants argued they were subject to a pattern of public works takings for the school and the takings were made, despite the continued protests by the Māori landowners that the block was the home of their forebears and they wished to retain it. Claimants similarly alleged targeting of their lands for Piopio schools and that the takings were made in the face of protests from local Māori. They alleged the takings also deprived them of their papa kāinga and the burial place of their whānau members.

20.4.2.1 Oparau School, 1918, 1942, 1960
The first compulsory taking of land for the Ōpārau school occurred in 1918. Subsequent takings for the school followed in 1942 and 1960. The background to the takings was an agreement by the Moke whānau to lease some of their land for a school from around 1902. A school house and teachers’ residence were then built on the land at Ōpārau, on the Pirongia West block, near the convergence of the Ōkupata Stream and Ōpārau River, and at the site of a former kāinga of Ngāhuinga.

By 1914, the lease had expired and rents were no longer being paid, although the school building and teacher’s cottage remained and continued to be used. As the

---

225. The Ngāti Hikairo claims are Wai 1439, Wai 2353, Wai 2351, Wai 1112, Wai 1113. The claimants for Wai 2353 are Hinga Whiu (of Ngāti Hineue and other Ngāti Hikairo hapū) and the Honerau Tai Hauauru Whānau Trust. They have connections to the land taken for Oparau School through their tupuna: statement 1.1.269, pp 2, 4, 8, 10; submission 3.4.226, pp 84–87.

226. Wai 691/788 are the consolidated claims of the Mōkau ki Runga claimant collective, in part on behalf of the descendants of the original owners of Kinohaku East 4B1 (subsequently renamed as Piopio A1 in 1930s), the land involved in the taking for Piopio School: statement 1.2.91, p [1]; statement 1.2.56, pp 2–3. Wai 2088 is a claim by William Gene Wana and his mother, the late Gwen Wana, for themselves ‘and all beneficial owners of the Piopio A1B block’ (a subdivision of Piopio A1, which was partitioned in 1944), concerning the taking of their whānau lands for Piopio College in 1958. The 62-acre block known as Piopio 4A1B was awarded to William Wana’s late grand-uncle, Taumaihi Kurukuru, known to his whānau as ‘Koro Taumaihi’, following the partition in 1944: statement 1.2.56, pp 2–3; doc q12(a) (Wana). Wai 457 is the Tuhoro whānau claim. Their tupuna, Putuputu Tuhoro, was an owner in the Kinohaku East 4B1 block: statement 1.2.113, pp 1, 7–9; submission 3.4.238, p 25.

227. Submission 3.4.226, p 87.

228. Statement 1.2.91, p 71; statement 1.2.56, p 9–6.


school grew, local settlers petitioned the Minister of Education to ask that ‘steps be taken to procure a site for a school and residence to be vested in the Board of Education.’ By 1916, the school had around 40 pupils and its roll was increasing. Rather than continue with a lease, a decision was made to take land for a school site and in 1916, the Auckland Education Board notified an intention to take just over three acres of the Moke whānau’s lands for a school site on the Pirongia West 1 section 2F1B block under the Public Works Act 1908.

Paahi Moke took the opportunity to formally object to the taking, on behalf of the block’s Māori owners. He noted that the education board was by then in significant arrears on its rental payments to the Moke Whānau. He asked for an inquiry into their objection on the grounds of hardship the owners would experience if their land was taken. Officials accepted the objections were sufficiently well grounded to require an inquiry and Native Land Court Judge McCormick was appointed to it. The inquiry took two days in February 1917. One day was taken up with hearing evidence and the other visiting the existing school site and two alternatives proposed by the owners.

Paahi Moke attended the inquiry for the owners and William Duncan for the Education Board. Paahi Moke, through a translator, told the inquiry the whānau’s concerns that the proposed taking included their best and most valuable land, including areas under cultivation. He noted the whānau had already been subject to public works takings, including for a landing reserve (on which to build a wharf) and roads. He proposed two alternative sites as possibly suitable for the school, one of which was also located on whānau lands. Judge McCormick inspected the existing school site, noting he could see no cultivations on it, and the two alternative sites proposed. Judge McCormick reported his findings on 14 March 1917.

Judge McCormick accepted that both the suggested alternative sites would in theory be suitable for school purposes. The first site was most suitable for a school, but it was located over the Ōpārau River from the existing site. The river would need to be bridged for access at a likely cost of some £150. The judge considered that prohibitively expensive. The second alternative site was located at the junction of the Ōpārau Road and Pirongia Main Road on part of Pirongia West 1 section 2. The judge agreed that was also potentially suitable. The judge reported that the Māori owners, many of whom were also owners in that site, had agreed they would part with the land for £25 or £30. That was about one-tenth of the compensation that would be required for the Ōpārau site. However, the second

231. ‘Kawhia Matters,’ King Country Chronicle, 8 July 1914, p 5.
232. The exact size of the taking was 3 acres 1 rood 7 perches: doc A63, p 198.
239. Document A63(a), pt 3, p 1381.
site was more distant from the existing township. The mud track providing access would also need to be improved, although the cheaper cost would help offset costs of improving access.  

Judge McCormick considered that the owner objection to the taking of the existing school site still amounted to ‘a mere matter of value’. He believed that the owners were unwilling to part with the land mainly because they thought they could get a higher price for it on the open market. He considered the compensation proposed of £310 for the taking a ‘very liberal offer’. The compensation payment would be sufficient not only for the land, but also to cover any further private injury to the owners. Judge McCormick’s report suggests that he was operating very much within what was understood to be the scope of compensation requirements of the time, with a focus on financial concerns and those areas that might have extra protection such as existing cultivations for subsistence use. In that situation, such concerns as Māori attachment to ancestral lands or the impacts on remaining Māori land were out of scope. The report also indicates that Judge McCormick also felt obligated to give significant weight on possible costs to the Crown and public convenience for the proposed school.

The report meant that most owner objections were dismissed. The education board was then able to issue a taking proclamation for the land in March 1918. The report had some impact as the size of the taken area was reduced to two-and-three-quarter acres in recognition of the owner concerns. The proclamation also excluded the existing school building, possibly to reduce compensation costs. The Native Land Court awarded compensation of £110 in April 1919 the amount also being correspondingly less than the original compensation proposed.

Later, in 1942, officials decided that additional land was required for a school playground. There is no evidence of consultation with the owners of the Māori land required when the decision was being developed. In February 1942, the education board gave notice of intention to take an additional area of one rood of land from the Moke whānau. The record indicates that two formal objections were made to the taking, although no detail survives. They were evidently again well-grounded and a formal inquiry was provided. The taking authority was legally entitled, under public works legislation, to set the location for an inquiry and selected Auckland, while the owners lived in Kāwhia. None of the owners attended the hearing to support their objections. The board went ahead with proclaiming the taking in August 1942. Application was made for compensation and the Native Land Court held a hearing to determine the compensation award.
in February 1944. Paahi Moke and Mamae Moke appeared for the owners. Paahi Moke asked that the owners be compensated £100 for their land and stressed its ‘sentimental value’ to them, which by then indicated interests not recognised by the public works regime. Mamae Moke stated that she objected to the taking because they had already provided land for a school site, it was ancestral land, and she wished to build on it herself. By then, however, the formal objection process was over. Only the award was at stake. The Native Land Court awarded compensation of £65 for the additional land taken.

The owners were not willing to let the matter end at that point and sought a revocation of the taking. However, they appeared unaware that was only legally possible before the compensation was awarded. In February 1943, six of the block’s owners wrote to the Māori member of Parliament, Paraire Paikea, asking for the taking proclamation to be revoked. An English translation of the original te reo letter, signed by Mamae Moke, Paahi Moke, Teaomangi Moke, Matire Moke, Heti Moke, and Parekuku Moke, asked for a ‘fair deal’ and for the opportunity to be consulted about the taking. They explained their ancestral connection to the land and the cumulative impact of several public works takings of their land, situated as it was near Ōpārau township. Those takings included land for a wharf, the school takings and now more land to enlarge the school site. They explained that they had already begun transporting timber to the site to build a new house so that Heti Moke and his eight children could live there. They offered alternative land on the eastern boundary of the school site, emphasising how much they wanted to retain this home site of our forebears.

Public Works officials contacted the Auckland Education Board and the Oparau School Committee for further information. The school committee replied that they could find ‘no old resident who remembers this family living on the site’. The committee felt the alternative land offered was ‘unsuitable for a playing area for children’. The education board also advised that it did not consider any further action was necessary in response to the owner complaints. That appears to have ended the matter and, in reality, it appears the owners had missed or been unaware of the process sufficiently to engage at the times allowed.

---

251. The individuals named on the letter were Mamae Moke, wife of Moke Pumipi, and their two sons, Heti Moke and Pahi Moke, as well as other members of the Moke whānau: Teaomangi Moke, Matire Moke, and Parekuku Moke.
255. G Riesterer, honorary secretary, to Auckland Education Board secretary, 24 July 1943 (doc A63(a), pt 3, p 1415).
256. G Riesterer, honorary secretary, to Auckland Education Board secretary, 24 July 1943 (doc A63(a), pt 3, p 1415).
By 1960, yet more land in the area was taken for school site purposes, this time a little over one rood at the frontage of the school. The taking was not essential for the school operation but to tidy up the area; or ‘enable a rather untidy frontage to be incorporated in the school site, which will add a lot to the appearance of the school and increase the flat area of land available.’ The area contained a house occupied by one of the block’s owners, Heti Moke, but officials believed he was in the process of shifting to a property he was acquiring nearby and would soon vacate it. Officials therefore recommended the taking should proceed with the Māori owners to be paid £350 and their legal costs in compensation.

This time, by 1960, there was apparently more effort by Ministry of Works’ officials to discuss the matter with the Māori owners and their solicitor. Claimant Thomas Moke told us that his tūpuna were reluctant to part with the land but felt they had little choice. The public works grounds for acceptable objections still not include such matters as the importance of ancestral connections with the land. The additional land was proclaimed taken in October 1960 and compensation of £350 was confirmed by the Native Land Court in January 1961.

By 2005, the Oparau School roll had decreased to just seven pupils and the school was closed in 2006. The school site was offered back to the Moke whānau for purchase under the offer-back provisions of the Public Works Act 1981. The Government apparently set a price for the land and improvements at $300,000, an amount the Moke whānau had no means to pay. Thomas Moke explained to us that the whānau had no wish to purchase the buildings, which were, by that stage, ‘somewhat derelict’, and sought the land only. He explained that the offer-back process then stalled. The claimants are pleased to see that the land has since been land-banked and they ‘hope that the future will see the Crown return this land to Ngati Hikairo ownership again.’

**20.4.2.2 Piopio schools, 1922, 1958**

With the Piopio schools, the evidence also indicates early Māori support for local schooling. The first Piopio community school was opened in February 1909, in a local hall Māori offered for the temporary use of a school. A 1908 newspaper article praised ‘the manner in which Europeans and Māoris are cooperating for
the purpose of having a school established in the district. The article described
the ‘keen interest’ of local Māori in a school, and claimed, perhaps hopefully,
that Māori had offered to gift land in the Piopio township for a school site. The
Auckland Education Board purchased a school site several years later and the first
Piopio purpose-built school building was completed by May 1912. It appears that
a large percentage of the original 37 pupils at the Piopio school were Māori.

The Piopio district grew rapidly in the following decade with an influx of
European settlers. As a result, Māori children were no longer in the majority of
pupils. A decade later, Piopio local, Nui Ratamera, explained to the Government
that while ‘originally the school at Piopio had been a mixed one, the only Native
child attending it at present was one of his own [children]’. The growth of the
school meant that by 1919 the Piopio school management was looking for a new
site to accommodate a larger school. The Auckland Education Board agreed a new
site was required and, in October 1920, gave notice of its intention to take eight
acres of Māori land in the Kinohaku East 4B1 block for a new school site for a
Piopio school. The available evidence does not reveal how the site came to be
chosen.

Officials did not need to consult with owners in making a decision but it appears
that some Māori at Piopio became suspicious a compulsory taking was being con-
sidered. Native agent Gabriel Elliott later informed authorities that several local
Māori had raised concerns with him and he had warned officials that it would be
‘unwise to take the land under the Public Works Act and that it would be better
to approach the Natives privately’. The Education Board chose to proceed with
a public works taking. A public notice of a formal intention to take was posted
by the usual means. The notice incorrectly described the land as the ‘Kinohaku E
4B1 block’ rather than ‘Kinohaku East 4B1 block’. As was often the case with Māori
land, it does not appear that individual notice was served on the owners. Six
months after the taking, the Auckland Education Board still appeared unaware of
the identity of the block’s owners.

No evidence has been found of objections to the taking and in April 1921, the
taking of the Kinohaku East 4B1 block was proclaimed. When workmen arrived
to plough the school site, Nui Ratamera, the occupant of the block with his kāinga
on the land, repeatedly forced them to leave. He continued to resist the taking

---

271. Notes of interview between Nui Ratamera and the Minister of Education, ‘Piopio, Auckland’,
4 October 1921 (doc A63(a), pt 3, p 1422).
4 October 1921 (doc A63(a), pt 3, p 1421).
274. Document A144 (Stirling), pp 83–84.
after police were called, although they made no arrests.\(^{278}\) Nui Ratamera also attempted to protest through official channels although outside the formal taking process.\(^{279}\) His preferred approach was to deal direct with Ministers of the Crown. He travelled to Wellington to protest directly with Ministers about the taking of the land, informing them that the block was his kāinga and that his two children were buried there.\(^{280}\) He also asked how the decision had been made to relocate the school when other land was available next to the existing school.\(^{281}\)

Nui Ratamera explained that in leasing the land in question, he had deliberately reserved the 10 acres now proposed to be taken for the school for himself, as

---

\(^{278}\) Document A63(a), pt 3, pp 1421–1422.
\(^{279}\) Document A63, p 191.
\(^{280}\) Document A63(a), pt 3, p 1421.
\(^{281}\) Document A63(a), pt 3, pp 1421–1422.
his kāinga.\textsuperscript{282} He explained that he had been gifted the land ‘according to Māori custom’ by his first cousin Putuputu Tuhoro.\textsuperscript{283} Officials rejected his claim with the Minister of Education, CJ Parr, also stating that it was ‘very apparent that Nui Ratamera had no title whatever to the land, and therefore that he had no rights in the matter at all’.\textsuperscript{284} Further, he informed Mr Ratamera that his department had no power to intervene in the matter, because the Auckland Education Board now owned the land.\textsuperscript{285}

Nevertheless, the Government agreed to send officials to Piopio to investigate Nui Ratamera’s claims.\textsuperscript{286} In October 1921, Public Works Department resident engineer, a Land Court official, an Education official, and local agent Gabriel Elliot met at Te Kūiti. They were joined by Alexander Knox, the lessee of the Kinohaku East 4B1 block, who agreed to accompany the party to Piopio. There, they visited the school site with representatives of the school and ‘Nui Ratamira and other Natives’.\textsuperscript{287} Nui Ratamera and Alexander Knox showed the officials the site of the children’s graves on the block, which was unfenced. However, Knox later told government officials privately that Ratamera had asked him to back up his statement about the location of the graves.\textsuperscript{288} Officials told Ratamera they did not believe the graves were necessarily on the eight acres to be taken for the school.\textsuperscript{289} They believed his real objection was that he wanted to reserve the land for himself.\textsuperscript{290}

Officials were also told that Ratamera had two kāinga, one on the present school site and one on the other side of the river. There was some debate about which of these was his principal dwelling. While Ratamera and the other Māori there stated that the main kāinga was on the school site, the Europeans present said that the other kāinga ‘which contained some fruit-trees, etc’ was his ‘favourite’.\textsuperscript{291} The group then returned to the Kinohaku East block, where they felt that they could agree on an alternative site for the school which would ‘leave Nui with ample suitable land for the 10-acre reservation that he was so anxious for’.\textsuperscript{292} With Ratamera’s agreement, the officials promised to present their proposal for a change of site to the Auckland Education Board. The district engineer noted that ‘the alteration will
mean very little to the Board’ with the depth just slightly narrowed at the northern end which would also ‘provide a slightly longer road frontage’. The Auckland board refused to agree to the proposal, however, citing the costs that would be incurred. Given the strength of Māori opposition to the taking, however, and the errors in the original notice, the education board decided to revoke and then reissue the taking proclamation so that ‘there could be no question as to the validity of the Board’s title’. In November 1921, the board reissued notice of the intention to take the Kinohaku East 4B1 block. This time, a written objection to the taking was made by Putuputu Tuhoro and Nui Ratamera (signing himself Nui Tone). They stated they objected on the grounds of the proposed school site being ‘too adjacent to a burial ground belonging to our family’ and because ‘that portion of the land proposed to be taken consists of the Kainga of the undersigned Nui Tone’.

Nui Ratamera died before an inquiry could be held into the objections. Putuputu Tuhoro did not appear at the objection hearing, possibly not surprisingly as the hearing was again held in Auckland and by 1922, Putuputu Tuhoro was a frail elderly woman of around 80 years, living in Oparure, over a hundred miles from Auckland. The education board took the non-attendance at the inquiry hearing, and the advice that Nui Ratamera’s children’s graves lay outside the proposed school site, as grounds to dismiss the objections. The Kinohaku East 4B1 block was proclaimed taken on 7 March 1922.

Local Māori continued to resist the taking. When construction workers arrived on the new school site to begin building a house for the headmaster, Putuputu Tuhoro, described in the local press as ‘a wrinkled, venerable old wahine’ physically resisted their entry onto the site and ‘made it very plain that any timber carted on to the ground for a school building will have to pass over her dead body’. Tuhoro was joined in her protest by a younger relation, Ngawherau Te Mura, who obstructed work by removing timber and survey pegs. Claimant Oriwia Woolf, who is a niece of Te Mura, told us of how her aunt protested ‘both physically and verbally’ against the ‘unjust taking of our whenua.’ Similar disruptions continued

---

293. Resident engineer, memorandum to Assistant Under-Secretary of Public Works, 20 October 1921 (doc A63(a), pt 3, p1433).
295. Reed Towle Hellaby and Cooper to Under-Secretary for Public Works, 7 February 1922 (doc A63(a), pt 3, p1436).
297. Putuputu Tuhoro and Nui Tone to secretary, Auckland Education Board, 21 December 1921 (doc A63(a), pt 3, p1440).
301. Document A63(a), pt 7, p4025.
302. ‘Irate Māoris’, Evening Post, 12 April 1922, p7; doc A144, p 89.
303. ‘Irate Māoris, Evening Post, 12 April 1922, p7; doc A144, p89.
for the next few nights, until police were called.305 The next day, Te Mura, with her
six-week-old baby on her back, blocked the entry to the site, forcing a delivery of
building materials to be dumped on the roadside and workmen to cease work.306 Later, she demolished work in progress for a shed to be used by the builders to
store tools and building materials.307 The Tribunal received no evidence on further
actions resisting the taking. Application for compensation was made and the
Native Land Court determined compensation of £480 to Putuputu Tuhoro for the
eight acres of land taken for the Piopio school site in July 1922. The money was
paid out later that year.308 Putuputu Tuhoro died several years later.309

In the 1950s the Piopio District High School began to seek more land, to expand
its secondary department.310 Initially, the school authorities sought to purchase
a 20-acre block of privately owned land separate from the existing district high
school for a new secondary school.311 The offer was declined and then a decision
was made to acquire a 15-acre piece of Māori land adjacent to the existing school
site in a number of blocks.312 By that time the original Kinohaku East 4B1 block
had become two blocks: Piopio A1A1 and Piopio A1B.

The Piopio A1B block was solely owned by Taumaihi Kurukuru.313 When
approached by school authorities, Mr Kurukuru agreed to sell his land for the sum
of £1,250.314 Government records of the time nevertheless describe Kurukuru as
a ‘reluctant seller’. As a condition of his agreement to sell, Mr Kurukuru insisted
that the Government pay to relocate his existing home and other buildings to his
other lands across the river.315 Mr Kurukuru also informed officials of the presence
of ‘two human bodies’ on the block to be taken.316 Officials did not consider this a
barrier to taking as there was ‘not likely to be any difficulty in the Board arranging
for the remains to be removed to an official burial ground, provided all the neces-
sary formalities are observed’.317

Claimant William Wana, who is Taumaihi Kurukuru’s great-nephew, told our
inquiry that Taumaihi, who he knew as Koro Taumaihi, lived at Piopio his whole
life.318 Mr Wana remembered his great-uncle as a ‘private, polite and quietly spoken

308. Document A144, p.89.
315. Assistant, district, and chief land purchase officers to district commissioner of works,
Hamilton, 6 September 1956 (doc A63(a), pt3, p.1443).
316. Assistant, district, and chief land purchase officers to district commissioner of works,
Hamilton, 6 September 1956 (doc A63(a), pt3, p.1443).
317. Assistant, district, and chief land purchase officers to district commissioner of works,
Hamilton, 6 September 1956 (doc A63(a), pt3, p.1443).
man’ who kept a large garden on his block. He was also ‘very self-sufficient’, even
though he had a wooden leg and became blind in his later years. William Wana
believes that his uncle didn’t wish to give up his land, but realised it was futile to
resist, as the Government could have taken his land under public works legislation
anyway.

The second five-acre section of Piopio A1A1 block was solely owned by Kahu
Kurukuru. The Tribunal received little information on negotiations for the
purchase of this block, besides the fact that Mrs Kurukuru appears to have
consented to be paid for the block. Claimant Oriwia Woolf was 14 years old at
the time and remembers that her parents were concerned that the new school
site contained a wāhi tapu. Her father, Henry Taitua Rauputu, approached the
school principal and the chairman of the school board with his concerns. He told
them that the remains of his wife’s tūpuna still lay on the site. Later, he sent a
telegram to the Ministry of Works informing them that there was a burial place
within the grounds of the new school. His telegram stated that while he did not
object to the block’s alienation, he would ‘like to discuss reserve for removal’.
It appears he expected either a burial reserve to be removed or the bodies removed
and reinterred. Officials assured Rauputu that ‘all the necessary formalities’ would
be observed in ‘arranging for the remains to be removed to an official burial
ground’. Officials sent to the site for what government records describe as the
‘suspected presence of two bodies’ thought to be buried on the block subsequently
uncovered no remains.

In April 1957, the Government gave notice of its intention to take a total of 16
acres for the Piopio public school, including 6.5 acres from the Piopio A1A1 block,
owned by Mrs Kurukuru, and 9.5 acres from the Piopio A1B block, owned by Mr
Kurukuru. Sixteen acres of the Piopio A1A1 and A1B blocks were taken for the
school in January 1958.

Oriwia Woolf told our inquiry that, several days after work started on the site, a
screen was erected around a certain area of the site where bulldozers were working,
and work stopped temporarily. That evening her father and cousin went to the

327. Telegram quoted in commissioner of works to district commissioner of works, 10 June 1957
(doc A63(a), pt 3, p 1446).
328. Minister of Works to Harry Rauputu, 10 June 1957 (doc A63(a), pt 3, p 1446).
329. District commissioner of works to commissioner of works, 9 December 1957 (doc A63(a),
pt 3, p 1447).
331. Document A63(a), pt 7, p 4080.
site to exhume the remains of their relation. The remains were laid to rest in their urupā at Mangakatote. The name of the individual exhumed was Tuhoro Nui, and he was the son of Ratimera and Hana Nui. Oriwia Woolf remembers another occasion when her grandfather told her that he was going to his old house site on the Piopio College grounds to ‘move some human bones that were buried between the cow shed and where the house used to be.’

The Piopio site continues to be used as the site of Piopio School and Piopio College. Around 2009, the site of the former principal’s residence attached to Piopio School was declared surplus to government requirements. By that time authorities were contracting out such disposals to accredited agents. Members of the Wana whānau were approached by employees of Darroch Limited, accredited agents for the Minister of Education, with an offer to purchase back the land formerly owned by Taumaihi Kurukuru. After receiving a letter from the company, William Wana’s mother, Ngakawa Wana, phoned the company and asked if the Ministry would consider gifting the block to her, as she was not in a position to buy it and believed that she should not have to pay for it. In spite of the fact that a 1981 amendment allowed less than market value to be agreed for land, the Wana whānau were told by the company that their only option was to purchase the land. No evidence has been provided as to how that decision was made or why no alternative considered. According to claimants, the whānau’s discussions with Darroch Limited, triggered the whānau’s lodging of a claim with the Waitangi Tribunal.

20.4.3 Tokanui Hospital and Waikeria Prison, 1910–11
Tokanui is in the north of our inquiry district, to the immediate south of the Pūniu River. The river previously formed part of the northern aukati boundary separating the southern edge of the Waikato confiscated lands from Te Rohe Pōtāe. The searing experience of war and raupatu was an enduring, significant influence in this locality. Researcher Wayne Taitoko explained to us that Tokanui was a place of refuge for the lower Waikato peoples dispossessed by war and raupatu as they fled to refuge with their Ngāti Maniapoto kin. Tokanui is also the site of one of the most significant public works takings in our inquiry district and in New Zealand’s history. Barely a generation after the lifting of the aukati, the Crown used compulsory public works provisions to take over 3,000 acres (1,274 hectares) of Māori land at Tokanui, as the site for the Tokanui Mental Hospital and Waikeria Reformatory farm.
As previously noted, the Crown conceded Treaty breach with the taking in that a lack of ‘sufficiently detailed planning’ in 1910 resulted in the Crown acquiring more Māori land than was needed for the Tokanui Mental Hospital. In agreeing that the taking involved an ‘excessive amount’ of land, the Crown also acknowledged that it caused ‘significant prejudice to the Māori owners, whose land base had already diminished as a result of raupatu and extensive Crown purchasing’ and therefore the taking of land for the Tokanui hospital breached the Treaty and its principles.339

This concession is important and welcomed, and we do not need to consider the excessive taking part of the claim in any more detail. The huge area of land taken was much greater than usual for a public work either in New Zealand nationally or in this district. Nevertheless, this case is included in our selection of practical implementation of compulsory takings for other issues it illustrates about how compulsory land taking provisions of the time were applied. That includes the extent to which the taking was a last resort in the national interest, the level of consultation prior to a taking decision, and the extent of recognition by authorities of the very great sensitivity of the site for Māori and the impacts of a taking on their remaining Māori land and their ability to obtain a livelihood from it. The case also reveals some of the practical issues arising from the processes for formal objection and compensation.

The claimants alleged that the taking of Māori land for the Tokanui Mental Hospital and the Waikeria Prison was excessive and devastated their tribal land holdings.340 The taking of land for the mental hospital and reformatory farm was also a further blow in a cumulative series of compulsory takings and pressure to sell lands suffered by the owners. For claimants, their counsel argued the compulsory taking took away their tūrangawaewae, enabled the destruction of their wāhi tapu, and ‘separated Ngāti Paretekawa and Ngāti Paea from their estates, rivers and other natural resources which had sustained them and their identities mai ranō’.341 For some of those impacted, the compulsory taking was a last straw that left them virtually landless.342

The decisions to establish a new mental hospital and prison reformatory farm in the Tokanui area had a national interest aspect as part of a new approach to the development of new mental hospitals that departed from a previous focus on

340. See submission 3.4.198, pp 4, 8; transcript 4.1.14, p 340; doc P16 (Te Huia), pp 2–3; doc P19, pp 2; doc P18(a) (Thomson), p 2 (Wai 440); submission 3.4.208, pp 2–3 (Wai 2014 and Wai 2068); submission 3.4.250, pp 1–2 (Wai 551/Wai 948); submission 3.4.251, pp 1, 32–33; claim 1.2.133, pp 1, 60, 63 (Wai 846); doc P5(d) (Roa), p 1 (Wai 1098); transcript 4.1.14, p 454 (Wai 1765); submission 3.4.230, pp 1; doc P15(e) (Maniapoto, Ingle, Anderson, Moala, and Maniapoto), p 1 (Wai 1593); submission 3.4.150(a), pp 3–4 (Wai 1360); submission 3.4.238, p 26; doc A144, p 147; submission 3.4.198, p 47 (Wai 457).
342. Submission 3.4.208, pp 2–3.
containment and segregation, to one of treatment and cure by trained profession-
als.\footnote{Warwick Brunton, ‘Mental Health Services – Mental Hospitals, 1910s to 1930s’, Te Ara – the Encyclopedia of New Zealand, http://www.teara.govt.nz/en/mental-health-services/page-3; last modified 21 June 2018.} Old, decrepit buildings on cramped sites in the middle of towns, such as the aging Mount View Asylum in Wellington, were closed and officials began to look towards new buildings more appropriate to new forms of care. By 1907, the inspector of mental hospitals, Dr Frank Hay, was authorised to construct a mental hospital following the new concepts. The hospital was to be large enough to allow for future growth, while achieving as much economy in operation as possible.\footnote{‘Report on Mental Hospitals of the Dominion for 1907’, AJHR, 1908, H-7, p 5.}

Around the same time, similar reformist thinking was developing for treat-
ment of convicted criminals, whereby it was hoped the focus on containment and punishment could be modified, at least for some, by reforms that looked more to care and ‘cure’. In 1909, a prison reformer, the Liberal member of Parliament John Findlay, known for his strong humanitarian principles, was appointed Minister of Justice and set about modernising the prison system.\footnote{Geoffrey G Hall, ‘John George Findlay’, in The Dictionary of New Zealand Biography, Ministry for Culture and Heritage, http://www.TeAra.govt.nz/en/biographies/3f7/findlay-john-george; last modified February 2006.}

Rural sites were considered the most desirable for both kinds of reforms. A rural setting was considered to offer more opportunity for therapeutic care and improved treatment. Rural sites also offered more scope whereby older cramped buildings could be replaced in the case of mental hospitals by a series of stand-alone ‘villas’ on a single property, enabling improved treatment for different types of patient on the same site.\footnote{Document A63(a), pt 1, p 21.} Rural sites also offered opportunities for a therapeutic work environment and security for inmates. They also offered financial economy in cheaper supplies, services, and land. Inmates could grow much of their food and sell the surplus.\footnote{Document A63(a), pt 1, pp 21–23.} Sites well away from neighbours were also likely to provoke less opposition.\footnote{Document A63(a), pt 1, pp 21–23.} Even so, a rural site still needed easy transport access for the workforce required and for families to visit.

The Tokanui lands (made up of partitions of the Tokanui blocks and one Pokuru block) offered many of the advantages sought for the proposed new mental hospital. While still rural, they were close to the main trunk line and road routes, potentially relieving pressure on the asylums in Auckland and Wellington. While the Crown had already acquired significant areas in the wider locality through purchasing, the Tokanui lands had the benefit of not being closely leased out to Pākehā leaseholders who might vigorously oppose the plan. The Government also had some knowledge of the quality of the lands as a result of the land purchasing.\footnote{Document A63(a), pt 1, p 21.} By 1908–09, Government Ministers and senior officials began considering the Tokanui area for a proposed mental hospital site. Officials began to draw up
detailed plans for a large new hospital of almost 5,000 acres, to include hospital buildings and grounds, a substantial attached farm and vegetable growing operation, and plenty of room for future growth. The Crown already held some 2,035 acres in the Tokanui area. However, a little over half the area identified as required (some 2,971 acres) was still held as Māori land. In 1909, having obtained government approval for the preferred site in principle, officials began to discuss options for obtaining the large additional area of Māori land required.

By 1909, another Crown agency, the Prisons Branch of the Justice Department, also became interested in acquiring land for a new kind of prison reformatory farm. Prisons Branch officials had also been looking for a rural site but had been considering converting an existing State-owned farm at Moumahaki, near Pātea, into their new prison reformatory. It appears they might have already run into some local opposition from residents. A local newspaper reported in September 1909 that the State farm had ‘been saved from so regrettable a fate [as conversion into a reformatory farm] by the agitation of the good folk of that and the adjacent districts’.

Dr Hay, the inspector of mental hospitals, also held the position of inspector of prisons and the evidence indicates that he was instrumental in encouraging prison branch officials to shift their attention to the Tokanui area instead of the Moumahaki farm, which he advised was too highly cultivated and ‘situated in too closely settled a district’ to be suitable for a reformatory farm. Dr Hay advised that the Tokanui land could be obtained more cheaply than Moumahaki, and the Government could expect further economy by having the reformatory farm and hospital share facilities. He did not explain quite why private Tokanui land would be cheaper than the Moumahaki farm already owned by the State. Possibly, he was considering the overall loss to the State if a State farm development was to be lost for a reformatory purpose and compared to the relatively undeveloped and cheaper Māori land. Dr Hay was also required to consider economies for the Crown and sharing facilities offered that potential. Soon afterwards, in 1909, Cabinet approved a change in the site of the proposed reformatory prison farm from Moumahaki to Tokanui.

The new mental hospital and prison were clearly important components of contemporary reforms and in the national as well as regional interest. However, it is by no means clear that the Māori land required needed to be taken as a last resort. While Crown interests such as future needs, costs, and efficiencies had to be considered, there is no evidence at this time that Crown officials were required to consult with Te Rohe Pōtae Māori over the proposal or with the owners of the

---

350. Document A63(a), pt2, p1196; doc A63, p580. Tokanui was not specifically mentioned in 1909 Public Works memorandum regarding the Cabinet decision, but breakdown of the acres in the takings confirms the site referred to was Tokanui.


Māori land being considered, in stark contrast to the earlier precedent with the main trunk railway.

Crown officials clearly had the option to try and continue to purchase additional Māori land. There were processes available to assist the Crown purchasing, including by having numerous interests in Māori land vested in the local Māori land board, which the board could then sell. The only obstacle was the minimal protections the board was required to enforce, including to only approve sales where Māori owners would have sufficient lands remaining for their subsistence. As Native Department officials were already well aware, as a result of existing purchasing, in the Tokanui area ‘many of the owners possess no other lands’. In that situation it was likely the board would not be able to approve the amount of further purchasing that officials now required.\footnote{355} The Crown could also pursue purchasing individual owner interests outside of the board. That might realise more land eventually but only at the expense of what could well be long delays, not only because of the numerous owners to deal with but because owners would be very reluctant to sell the last of their lands.\footnote{356}

The officials could have scaled back some of the additional lands they considered were required for future growth, but they had another option with considerably fewer and weaker protections. That option was to use the compulsory land taking public works provisions available, which included takings for mental asylums and prisons.\footnote{357} Although officials were well aware from the outset that many of the owners of the Māori lands required now possessed little or no other lands, public works provisions still did not require consultation at this decision-making stage, nor is there any evidence such consultation took place. Senior Native Department officials tasked with advising on Māori interests in the matter also reassured their colleagues that the proposed taking would satisfy any potential concerns of the Native Minister that Māori owners might be ‘deprived of land required for their own use and occupation’.\footnote{358} Native Department Under-Secretary, Thomas Fisher, visited Kihikihi early in March 1909 and viewed the Māori land in question for himself. Rather than consult directly, he was evidently determined to satisfy himself just how much the Māori owners needed the land, as evidenced by what parts of it they were, in his view, utilising. He noted the former home of Rewi Maniapoto located on the land, the presence of an old meeting house, and some cultivations.\footnote{359} Otherwise, he was confident that, overall, the Māori lands required could be taken, provided that ‘steps be taken to safeguard the interests of the owners at present in occupation’.\footnote{360}

\footnote{355. Under-Secretary for Native Department, memorandum to Dr Hay, 7 January 1909 (doc A63(a), pt 1, p 818).}
\footnote{356. Document A63(a), pt 1, p 818.}
\footnote{357. Document A63(a), pt 1, p 825.}
\footnote{358. Under-Secretary to inspector-general, 29 January 1909 (doc A63(a), pt 1, p 825).}
\footnote{359. Rewi Maniapoto’s former home was located on the Tokanui 1B2 block, and was still inhabited by his widow. The old meeting house was located on Tokanui 1A2, while a portion of the Tokanui 1D section 2 block was occupied and under cultivation: doc A63(a), pt 1, p 829.}
\footnote{360. Under-Secretary, memorandum to Native Minister, 13 March 1909 (doc A63(a), pt 1, p 830).}
While Fisher did not even meet with the few Māori he noticed had cultivations when visiting Kihikihi, he met instead with the former Crown land purchase officer, William Grace. Fisher asked Grace to use his knowledge and contacts to begin preparing lists of owners in the lands and their whereabouts. This was presumably to find out more detail for the compulsory taking, including how many owners might actually be ‘in occupation’. Grace prepared a list as best he could, warning Fisher that Māori owners were wary of possible government plans and therefore were reluctant to cooperate: “They do not like the proposal that certain of the lands should be taken for Mental Hospital purposes, & for that reason they keep silent.” Grace’s wife, Makereti Hinewai, was an owner in the Tokanui land and it seems that Grace’s efforts and possibly Fisher’s visit to Grace had informally alerted some of the owners.

The list compiled by Grace revealed the typical state of ownership in Māori land at the time. Some of the legally recognised owners were now deceased with successions required. Some had moved away from the district with their whereabouts and intentions now uncertain. Some had moved away temporarily in pursuit of seasonal work such as gum digging and milling but with every intention of returning in the near future. Others were still living on the land. Such factors, along with the difficulties owners faced in obtaining loan finance, no doubt helped contribute to the still undeveloped state of much of the land. The same factors that made further purchasing difficult also created difficulties for owners in collectively managing, developing, and protecting their lands. Grace additionally confirmed what officials already knew; a number of the owners had little or no other lands left, other than their Tokanui land.

Preparations for a compulsory taking continued, however, and the required survey of the lands for the hospital and farm at Tokanui was completed by August 1909. A formal notice of intention to take some 4,933 acres of land, including 2,972 acres of Māori land for the hospital and 1,283 acres of land (of which 541 acres was Māori land,) for the reformatory farm was issued in February 1910. That was more than the final amount taken and even more than originally estimated. The usual notice process was followed for Māori land, with only the public notice part considered possible, even after the work Grace had provided. A notice was put up at the local post office (at Kihikihi) and in local newspapers.

In spite of the failings of the formal notice, it appears that at least some owners had already been alerted by other means. From the time of Fisher’s visit to Kihikihi in March 1909, some of the Māori owners began writing to the Government setting out their concerns based on what they knew of the proposed taking. Those concerns were directed at Crown Ministers, presumably reflecting Te Rohe Pōtae Māori understandings of their relationship with the Crown.

361. Grace to Under-Secretary, 12 March 1909 (doc A63(a), pt1, pp 833–834).
In March 1909, Raureti Te Huia wrote to the Native Minister to set out the deep distress caused by the proposal to use compulsory taking powers for the land, given the wider context of the suffering of the same owners due to earlier wars and confiscations:

E hoa, ko te nei wahi he toe nga mai mate whe nua iriro atu i te raupatū. Kei te takiwa o Puniu Kihikihi, Kotau a poraka ko Tokanui nama 1. he whaka aro naku kaua te nei tikanga e [whakaiti]? Ki te whakaaetia ka kino i au.

Now, friend, this land is a residue of confiscated land, it is near the Puniu, Kihikihi and it is known as Tokanui No 1. I ask that the proposal be not agreed to, for if it is I shall cause trouble.366

Presumably already conversant with public works process, Te Huia also contacted the Minister of Public Works and asked for an inquiry to hear their objections.367

Within a short time, six more owners wrote separately to the Minister of Public Works to object to the compulsory taking of their last remaining land, especially given the context of the earlier killings and raupatū. Te Whakataute Raureti, Ngati Te Whakataute, Hepi Te Kuia, Kawa Te Huia, Te Wiki Hepi, and Wiripine Te Whiuki wrote:

E hoa, tena koe, tenei kuataemai nga mapi whakaatu i te waahi o nga matau whenua tangohia ana i te waahi o te ture kaati hei kupu atu ma matau kaore rawa matau e whakaae. Kia riro aua pihi whenua i te mea kaore matau e hiahia ki te utu ki te aha ranei [manawhenua?] heoi te mea kei te whakaaerohia ko te mahi i te mea koina tonu nga kainga o nga matau tupuna matua taemai kia matau[.] no reira hei kupuatu ma matau kia a koe me mate ahau me mate iri o te] whenua i takoto ai aku maatua ka ranga maha.

Friend, greetings, we are in receipt of certain plans which show the portions of certain of our lands, proposed to be taken under a certain Act. What we have to state is that we absolutely refuse to let those pieces of land go, either for payment or otherwise. The one thing we are determined to do is to work those lands ourselves, because those are the sites of the homes of our ancestors and parents and ourselves. Therefore we declare unto you: You may kill us first and then kill our lands where our forefathers lie.368

More Māori owners joined the objections as the formal notice was issued and posted. Many noted the immense cultural importance to them of the land,

---

366. Te Huia Raureti to Native Minister, 10 March 1909, and translation (doc A63(a), pt1, pp 831–832).
368. Te Whakataute Raureti and others to Minister for Public Works, 8 March 1910, and translation (doc A63(a), pt2, pp 1209, 1211).
deliberately set aside from previous sales for that reason, and noted it was also
the only land left to them and for some, their major means of livelihood. Whete
Manga described to the Government how the land was their papakāinga, and it
contained urupā, and many of her whānau would be left landless if the land was
taken from them. She also noted the circumstances of the area resulting from the
earlier raupatu and the need to provide for relatives who had become landless as
a result:

Ko tenei poraka i wehea e matou hei Papa Kainga. Ko to matou urupa mai o matou
tupuna tae mai ana ki nai anei [inaianei] Ko tenei pihi hemea wahi mai i te whenua
hoko ki te Karauna. He maha o matou kua whenua – Kore no reira e pupuri ana
matou i taua Pihi hei kainga no matou me o matou whanaunaunga kua kore nei he
whenua. Kua oti te uuuinga o tenei Pihi te Taiepa kua ruia hoki ki te karahe henui
atu a matou take. Kei te wa e tutaki ai matou ki te tangata a te Karauna ki te aroaro
o te Kooti Whenua Māori ki te Poari ranei atu korerotia ai e matou [missing word] o
matou kei runga i taua Pihi ko Huiterangiora te ingoa.

This block has been set-apart by us as a Papakainga and it contains our burial places
from the times of our ancestors. This piece of land was cut-out from the part sold to
the Crown. Many of us are now landless, we therefore are holding this piece as a home
for ourselves and those of our relatives who are landless. The greater part of this block
is fenced and grassed. We have other grounds of objection which may be stated when
we meet the officer before either the Native Land Court or the Board. It [may] be
added that we have an important (meeting) house on this [land, block?] the name of
which is ‘Hui Te Rangiora.’

The Māori owners of Pokuru 1, Tokanui 1B2, Tokanui 1A2, Tokanui 1B2, Tokanui
C14B, Tokanui 15B, and Tokanui C16B engaged solicitors to try to help them set out
their objections in ways the Government might better understand. They objected
on the basis that they were living on the blocks in question and would be left
without sufficient land to sustain themselves if their land was taken. The land
included the water resource they were dependent on. They stated that the Tokanui
lands were deliberately set aside ‘for the benefit of such members of their hapu as
are landless so as to ensure them against want’ and because they relied on fish and
eels from the river for their sustenance.

The Māori owners noted that they had thought the land was already pro-
tected and its importance noted through the land board process provided by
the Government. The Waikato-Maniapoto Māori Land Board had approved
their leasing other lands, contingent on the board being satisfied that they had
enough remaining land to sustain themselves; but now the compulsory taking

369. Whete Manga ‘and the whole family of Hitiri te Paerata to Minister for Public Works, 2 April
1910, and translation (doc A63(a), pt 2, pp 1214–1218).
would mean such lands were to be taken from them.\footnote{372} They also couched their cultural objections in ways the Government might better understand, noting the important historical associations with the Tokanui lands, including the direct association with ‘one of their most venerated chiefs Rewi Maniapoto, who had lived on the land when he famously met with Sir George Grey. Using such sacred lands for prison and asylum purposes seemed even more inappropriate: “The owners feel that land which is hallowed to them by such associations would be subjected to a species of degradation by its use for the purpose proposed.”\footnote{373}

Te Whiwhi Mokau, Te Muraahi Niketi, Tauranga Mowaho Kohika, Hapimana Mokau, Mokau Hapimana, Kehu Te Maruke, Waiuku Te Huia, and Nga Rauotitahi set out similar grounds of objection. They noted (in translation) their ancestral connections to the land, that they were the last remaining lands required for their livelihood, and that they had urupā on the land. They had other matters they also wanted to put before an inquiry.\footnote{374}

Public Works officials forwarded the formal objections to Dr Hay in April 1910, noting that some appeared to be of ‘a very serious nature’ and were likely made to obtain higher compensation.\footnote{375} Public works provisions of the time required that the test of a well-grounded objection was limited mainly to monetary concerns and any additional injury that could not otherwise be included under general compensation. The operative Public Works Act 1908 (section 19) followed the pattern already set of limiting consideration of objections and compensation within concerns of monetary compensation, as was often preferred by settler landowners. That provision required, for instance, that a ‘well grounded objection’ in the Act had to be an objection that, in the view of the Minister or taking authority, could not be addressed through compensation. That was part of understandings that most land takings could be covered by some monetary amount, with some allowance for cases of ‘private injury’ from the taking or construction of the work that was not already covered by the general compensation under the Act and might therefore require some further consideration. The focus remained, nevertheless, on commercial monetary value for both compensation and such private injury.\footnote{376}

Accordingly, official attention as to whether objections merited further inquiry was limited to such concerns. Dr Hay took the same approach, informing the Minister of Public Health, George Fowlds, that based on the ‘general untended condition of the land’, in his view ‘compensation must be the goal of the objectors.’\footnote{377} The objections were, nevertheless, considered sufficiently serious to have an inquiry. The provisions provided that in such cases, the Minister could make the appointment at a location to be set by the taking authority. The inquiry

\footnotesize{372. Document A63(a), pt 2, p 1225.  
373. Makereti Hinewai and others to Minister of Public Works, 2 April 1910 (doc A63(a), pt 2, pp 1222–1223).  
375. Assistant Under-Secretary to inspector-general of mental hospitals, 18 April 1910 (doc A63(a), pt 2, p 1234).  
376. Document A63(a), pt 2, pp 1245, 1272.  
377. Hay to Fowlds, 8 June 1910 (doc A63(a), pt 2, p 1238).}
was held locally, at Kihikihi, from 26 to 27 July 1910, with Judge Rawson of the Native Land Court appointed. Most Māori owners making objections had hired Auckland solicitors Earl and Kent, to represent them, although some also attended to present their own evidence. The Government was represented at the inquiry by Crown Land Purchase officer Mr E Bold.

Earl, as lawyer for the owners, began by stressing the impacts for the Māori owners in being left landless and noted the incongruity of the Crown’s compulsory taking when placed against the Crown native lands legislation protections which had, from the 1890s, sought to prevent sales of Māori land in cases where the owners had little other lands. Earl further argued that the loss to the owners would extend to depriving them of their fishing rights and of lands with great ‘historical and traditional’ associations. That is perhaps as close as he felt able to directly invoke Treaty protections for fishing rights and taonga. Earl further explained that the nature of the loss for Māori could not be compensated by money alone. The Māori owners considered the taking of their lands to be a serious ‘desecration’, incapable of monetary compensation.

Manawa Hinewai presented her own evidence, informing the inquiry that she had grown up on the Tokanui blocks and her people had been ‘associated with this land for many years past’. She noted how willing those with interests in the land had been to refuse to sell the lands, so as to keep such important land in the possession of their people. If necessary, ‘we can get money in other ways’ without losing this land. They did not want to see strangers in possession of this particular land given its importance; ‘our people should go there.’

Te Matengaro Te Haate (Hetet) told the court that he and others were living on the land, that it was the land of his ancestors, and that he would have little land left to him if it was taken. Crown cross-examination clarified that Te Haate’s home fell outside the legal boundary of the Pokuru blocks to be taken, although he had had cultivations within the proposed hospital grounds until just three years prior.

William Grace also gave evidence on behalf of the Māori owners. He recounted the historical importance of the hui between Rewi Maniapoto and Governor Sir George Grey in the 1870s, which he had personally witnessed as Grey’s private secretary and interpreter. He also recounted how the Government had later built a house for Rewi on the block in an expression of goodwill. A kāinga had then grown up around it. Many people had died and were buried there. Grace explained to the inquiry how the owners of the Tokanui blocks had a strong sense of ‘this place as a sanctuary for them to return to’ and the enormous cultural importance of

378. Document A63(a), pt1, p 852.
379. Document A63(a), pt1, p 857.
380. Document A63(a), pt1, p 857.
381. Document A63(a), pt1, p 857.
382. Document A63, p 598; doc A63(a), pt1, p 857.
383. Document A63(a), pt1, p 858.
384. Document A63(a), pt1, p 859.
385. Document A63(a), pt1, p 860.
386. Document A63(a), pt1, p 858.
the land. ‘There is’, he added, ‘no other land that has the same sentimental value to them in this locality’. In making closing submissions, counsel for the Māori owners implored the inquiry to give serious consideration to Māori objections if the public works provisions were to provide serious protection for Māori and that required the Government right to compulsorily take Māori lands against their wishes to be ‘strictly construed’. Otherwise, given that the Minister was ‘sole arbiter’ over whether takings should proceed, the whole taking process for Māori would come to resemble ‘a mere farce’.

In submissions for the Crown, Bold kept very much to the letter of public works law. He explained the Crown view that, where land was required for a public work, the Government was under no obligation to consider such legal protections as were provided elsewhere for Māori. That even included any protections concerning sufficiency of their remaining land (such as were required for purchases of lands). He argued that with public works the ‘[n]eeds of [the] community must override private interests’. If Māori owners were ‘left impoverished’ by taking their land, then: ‘it is [the] duty of the Government to look after them, as they do in the case of Europeans. Their being landless should not bar public works of [the] colony.’ Bold also insisted that public works provisions required a focus only on whether it was considered that all of the objections made could be adequately compensated through monetary compensation.

After hearing submissions, Judge Rawson visited the Tokanui lands (Tikanui and Pokuru blocks) and issued his report two weeks later. In his report, Judge Rawson accepted that there were urupā and a small cultivation on the Tokanui 182B block that would be damaged as a result of the taking. Whakataute Te Huia had sworn ‘on oath’ that the Tokanui 1D2 block contained the burial site of the owners’ tupuna, Te Akanui. The report recommended that the two burial grounds should be reserved from the taking ‘and fenced and cared for’. He also recommended that the boundaries of the taking be adjusted to exclude the small area of cultivation on Tokanui 182B, although he stressed that this gesture should be seen ‘not as a right but as a favour’. This was presumably because while the applicable public works provisions did not require such consideration, the report could require it as ‘a favour’.

In every other respect, Judge Rawson dismissed the objections of the Māori owners, largely based on the commercial values required. He found that many owners were not living on or deriving income from the land, and that many had

387. Document A63(a), pt1, p858.
388. Document A63(a), pt1, p864.
389. Document A63(a), pt1, p865.
390. Document A63(a), pt1, p865.
393. Rawson to Under-Secretary, 9 August 1910 (doc A63(a), pt2, p1276).
left the district entirely. He found the loss of fishing rights could also be compensated with a monetary award. He considered that objections based on the lands being sacred through direct association with Rewi Maniapoto were contradicted by Grace’s evidence that some owners wished to sell their land. He did not address Grace’s evidence that ‘the natives never wanted to part with this portion – that it was not just a question of a bigger price.’ Judge Rawson also found that none of the owner objections met the criteria for a ‘well-grounded’ objection under the current public works legislation.

The failures of the applicable public works provisions when it came to accommodating Māori concerns are very evident in this case. Even when Māori hired lawyers and pursued formal process such protections as existed could not adequately address their interests or concerns and the failures for Māori owners of a focus on commercial and monetary compensation was made particularly evident. Māori owners did not give up and continued to resort directly to the Crown and Parliament. That included an appeal from Ngāti Ngutu hapū who also noted how they were suffering from the cumulative impacts of a series of takings for public works, by both central and local government agencies. In translation, they noted their misfortunes from the road board, the railway line, and now the mental hospital. The lands being taken for the hospital were the only block they had left ‘te mara whenua o tenei iwi i rahia atu e pupuru ana hei papakainga hei paamu a mo a ratou tamariki heoi ano’ (‘the only block which we own, of a sufficient size to work as a Papakainga and as a farm, for ourselves and our children after us’).

Ngāti Taohua and Ngāti Tuwhakataha also described their concerns including their fears that such compulsory takings were undermining the relationship established between Te Rohe Pōtae Māori and the Government: (in translation) ‘very serious consequences will result, as between Govt and the Māori.’ They explained the important context of the war and raupatu for their people and land outside the aukati: ‘You, the Govt came along and took it from us.’ They explained their important marae, Hui Te Rangiora, where ‘they discussed their great undertakings, and whereon they invited and welcomed the representatives of the leading tribes.’ War and raupatu had forced them to relocate their marae to its current position at Tokanui: ‘we then moved our Marae . . . and we named the Marae Hui te Rangiora (in remembrance of the former home). Now, the Govt comes along again to take this land from us.’

The petitioners explained the importance of the Tokanui land not only for those historical associations but for long-standing cultural and ancestral connections: “This is the land whereon our ancestors have moved, worked, and struggled, from old times down to ourselves their descendants, and we continue to occupy these

---

399. Document A63(a), pt 2, pp 1260–1261; signed by Te Manu Te Haate, Matengaro Te Haate, and Putuputu Tuhoro.
400. Te Whakataute Raureti, Te Whiwhi Mokau, Tupotahi, and 14 others to Minister for Native Affairs, 27 July 1910 (doc A63(a), pt 2, p 1269).
The Full Petition of Ngāti Taohua and Ngāti Tuwhakataha

I. Ko matou konga tangata noho tuturu ki tenei whenua e tino whaka atu ana kite Komihana mehemea kite riro tenei whenua ite Kawanatanga tera e tae kitetehi rarurarui nui ki waenganui inga Māori mete Kawanatanga.

II. Ite mea ite wa inga kaumatua koe nei to matou kainga ko Kihikihi ko Huiterangiora te marae tikina mai e koe ete kawanatanga ka tangohia katahi ki hikitia to matou marae ki Tokanui No 18 No 2 Ko Huiterangiora ano te marae na kua tae mai nei ano te kawanatanga kete tango itenei o matou whenua.

III. Kote whenua okenga tena o matou tupuna mai o mua ā taenoe mai kia matou kinga uri whakatupu kei runga tonu i awa whenua e noho ana.

IV. Ko ratou marae i noho ai ratou mai o mua ā taea noa tia tenei ra ko matou tenei konga uri whakatupu kei ite tikina tao tonu iho ratou marae. Kote marae tena e whaka takoto ai ratou ia ratou tikanga nongi, e karanga ai inga iwi nongi Ko Huiterangiora. Wai hoki tuku iho kia matou kinga uri whakatupu koe nei ano to matou marae e karanga ai inga iwi inga hapu.

V. Ko ratou whare i noho ai ratou mai onga ra omua a tuku iho kia matou konga uri whakatupu ko ana whare whare ano nga whare. E hura itemua he whare engari e kiia ana ete Māori konga oha anga runga ko ne whakatupu ka manaki rawa oha a ko aua whare kei te tu tonu inaianei.

VI. Ko matou Tupuna matua whaea i noho i tenei whenua i mua taemi ki naianai kei aua whenua katoa e tanu ana. A me mea te kupu poto he urupa kei Puakekawhaka he urupa ke ite Waiauruhe. He urupa kei te Pukahuh. Otira, kei nga wahi katoa o tenei whenua.

VII. Ko ratou pa kei runga tonu iaua whenua, he pa ke ite Pukahuh he pa kei Puakekawhaka.

VIII. Ko ratou mahanga kai mai o mua ā taea noa tia tenei ra ko matou tenei konga uri whakatupu kei runga tonu matou iaua, whenua a mahi kai ana.

IX. Kamutu tonu nei nga whenua i mahue he oha ao matou tupuna kia matou. I takoto ai he marae itu ai he whare i herea ai hoki tenei whenua e ratou me ta ratou kupu kia mau te whenua. Na taua kupu ka mea ratou ko ratao ano hei here ite whenua ara me tanu tonu iho ratou ki runga i tua whenua kati e hara ite mea na matou tenei kupu engari he kupu kua takoto mai ia ratou he whaka waha kau ta mataou tanga uri whakatupu.

X. Ko ta ratou kupu here tenei. Ko Mōkau ki runga ko Tamaki ki raro ko Mangatoatoa koa weanganui koa tenei a Mangatoatoa ko te marae ko te whare e korerotia ake nei.

XI. Ko tenei ingoa ko te hapu e kore e kua he hapu ki te kore he marae. Ko te marae e kore e kua he marae ki te kore he whare. Ko te whare e kore e kua he whare ki te kore he tangata. Ko te tangata e kore e kua he tangata ki te kore he whenua. Kati ko Ngati Taohua raua ko Ngati Tuwhakataha nga hapu ko Huiterangiora te marae, ko Huiterangiora te marae, ko Huiterangiora te whare, ko Huiterangiora te
whare ko Ngati Taohua me Ngati Tuwhakataha nga hapu. Ko tenei whenua na Ngati Taohua raua ko Ngati Tuwhakataha i here mai onga ra o mua iho a raenoa mai ki tenei ra. Kati ko matou tenei konga uri whakatupu ka here ano i enei whenua I tenei wa.

We the persons who permanently occupy this land desire most emphatically to assure the Commissioner that if this land be taken by Govt, very serious consequences will result, as between Govt and the Māori (owners).

It should be stated that in the days of the old people, our dwelling-place was at Kihikihi, the Marae being Hui te Rangiora. You, the Govt came along and took it from us. We then moved our Marae to Tokanui No 1B, No 2, and we named the Marae Hui te Rangiora (in remembrance of the former home). Now, the Govt comes along again to take this land from us.

This is the land whereon our ancestors have moved, worked, and struggled, from old times down to ourselves their descendants, and we continue to occupy these lands.

The Marae which they (our ancestors) occupied, from old time, and still occupied by us their lineal descendants, who continue to take care thereof. It being the Marae whereon they discussed their great undertakings, and whereon they invited and welcomed the representatives of the leading tribes. Therefore the name ‘Hui Te Rangiora’ (or, the assemblage of life). So it is that we have continued to use this Marae for the same purposes.

The houses which they have occupied are revered by us as heirlooms, and we value and guard them accordingly.

Our forefathers have not only occupied these lands, but they are buried here at the burial-places of Pukekawakawa, Waiaaruhe and Pukahu, in short, all over this land.

Their (fighting) Pas are on these lands, one at Pukahu another at Pukekawakawa. Their cultivations, from of old, are still being worked by us their descendants.

This is the only land which has been actually bequeathed to us by our forefathers verbally. It has held their Marae, houses, and so on, and it holds their bones as evidence that they desired to retain it for themselves and their descendants. It was their wish and we their descendants naturally desire it to be carried out.

They held this land to themselves (and for us) by saying: Mōkau is at the South, Tamaki is at the North, and Mangatoatoa is in the centre. This then is Mangatoatoa with its Marae and its house: A tribe is nothing without a Marae; A Marae is nothing without a house; a house is nothing without a man; a man is nothing without land. Therefore

The tribes here are Ngatitaohua and Ngatituwhakataha and Hui te Rangiora is the name of its Marae and its house. This land belongs to the Ngatitaohua and Ngatituwhakataha. This land has been held fast by our forefathers from old time to this day, and we their descendants intend to still hold fast to it.

Rawson’s report, agreeing to exclude the small area identified as cultivated and to fence off the two burial grounds and treat them as ‘sacred land’. That left the way clear to go ahead with the compulsory taking of the Māori land at Tokanui (from the Tokanui and Pokuru blocks) for the mental hospital, and for the prison reformatory. The actual land subject to the compulsory taking was some 2,610 acres of Māori land for the Tokanui hospital, gazetted in October 1910. An amended survey of the additional Tokanui 1B2B block for the hospital was completed by December 1910, to exclude the cultivated area as recommended. A further adjusted area of 340 acres was then taken in early 1911. That meant a total of just under 3,000 acres of Māori land was taken under compulsory provisions for Tokanui Mental Hospital (2,950 acres 1 rood 24 perches). In comparison,

---


403. Document A63(a), pt 7, p 3949; doc A63, p 604.
the Crown set aside just under 2,000 acres (1,962 acres 1 rood 23 perches) for the hospital from land it had already purchased from Māori.

A further 541 acres of Māori land was taken under compulsory provisions for the nearby Waikeria Reformatory Farm under the same Gazette notice of October 1910. The Crown set aside some 742 acres from land already purchased for the Waikeria Reformatory Farm. That brought the total takings of Māori land for both the mental hospital and the prison farm to well over 3,000 acres (1,274 hectares), a very large area for a combined public works taking anywhere in New Zealand, let alone this district.

The final step with the taking was to determine and award compensation for the takings. The Native Land Court sat to determine compensation for the land taken for both the hospital and prison shortly afterwards, in August 1911. Solicitor Alan Brown acted for the Māori owners, several of whom also attended in person. Mr Ostler acted as counsel for the Crown and, following standard public works process, he focused on land value for compensation purposes and argued that the lands taken were generally poor quality and undeveloped, lowering their value for compensation purposes. The five valuers who presented evidence for the Crown took the same approach, basing their estimations of value on recent sales in the district, from which they subtracted the cost of development, including converting the land into permanent pasture and eradicating rabbits and noxious weeds.

Eight local farmers and two professional valuers provided evidence for the Māori owners again based on land values for agriculture. They described the taken land as ‘good land’ and ‘average Waikato country’ that was ‘suitable for dairying’ and suggested the values estimated by the Crown were too low. They pointed out that the Crown was intending to farm the land itself as part of the hospital and prison operations. Te Matengaro Te Haate told the court that ‘he had no value to give’, but still did not wish to give up his land. It is not clear that matters such as loss of fishing rights were considered as part of the compensation.

The court compensation award decision was issued two weeks later. The court described the valuation evidence as ‘of a very conflicting nature’, with Crown estimates being ‘rather low’ while those of the Māori owners were ‘exceptionally high’. The court opted for what it regarded as a middle ground between the parties. It awarded £7,402 8s in total compensation for the taken land, compared to the Government valuation of £6,661 4s 3d.

405. Document A63(a), pt 7, p 3949.
408. Document A63(a), pt 7, p 3738.
The first patients were admitted to Tokanui Hospital in July 1912. Waikeria Reformatory Farm also began taking inmates soon after the formal takings. The evidence provided indicates that, in spite of early optimism that the ‘full area of 5000 acres’ was needed to accommodate the hospital’s future growth, the majority of lands taken were never used for mental hospital purposes. Neighbouring settlers began to pressure officials to lease out some of the hospital land, while the Justice Department started seeking permission to extend the operations of the Waikeria Reformatory Farm to hospital lands. As early as 1913, prisoners from the neighbouring farm were working some of the unused hospital grounds.

Later research indicates that around one-third of the original 5,000 acres was never used for hospital-related purposes. In the following 70 years, substantial portions of the hospital grounds were carved off for sale or for other government purposes, as allowed by public works measures of the time. The transfers began even before 1927: in 1925, Cabinet approved the transfer of some 738 acres of hospital lands to the Waikeria Reformatory Farm, by that stage known as the Waikeria Reformatory Borstal. A further 2,758 acres of hospital lands was transferred to the borstal in 1927, along with the first of two transfers of land to the nearby Tokanui school.

The compensation award did not end the protests from former Māori owners of the land taken. Those protests included further petitions to Parliament. In the years leading up to 1927, several petitions were made. They protested the loss of lands the owners needed to live on, the loss of wāhi tapu and resources on the lands, the wider context of raupatu and war being followed by the further compulsory takings for public works, and the apparent government lack of interest in assisting Māori, such as the failure to provide equitable lending facilities to enable Māori to develop and live from their lands. In 1912, Matengaro Te Haata and 36 other members of Ngāti Paia, Ngāti Terahurahu, and Ngāti Tuwhakataha hapū, descendants of Ngutu, appealed to the Native Minister concerning the compulsory taking of their land at Tokanui for the hospital.

They described (in translation) their ancestral connections to lands on either side of the Pūniu River, which had then been subject to attack and confiscation, leaving them with lands (in what became the Pokuru and Tokanui blocks) only on the south side and needed for their hapū. With the taking, they lost over 1,338 acres, leaving each family with just two to three acres to live off, which was not sufficient for themselves now or for the future of their families. They said that the

---

420. Campion, 'Mental Health and Legal Landscapes', p 18.
422. Document A63(a), pt 1, pp 38, 45, 616.
He pithiana tenei nanga hapu e toru iputamainei iroto. I ngatatai whakapapa e tenei tupuna e ngutu aua hapu enei – Ko Ngati Paia, ko Ngati Terahurahu, Ko Ngati Tuwhakataha, aratau take enei he whiriwhiri matewhare enga mangai ote Iwi. 1) i puritia teneiwhenua enga tupuna maatau a taenemakaingauri, whakatupu ranga e murinui inahoki ngapa ipuritiaienei whenua e ngutu ratau keena uri tukuiho kiana mokopuna, Kei Te Taha Hauraro o Puniu Awa? Ko Mangateatea pas, Ko Otawhao Pas, Ko Tupapakunui Pas, Ko Whakapirimata pas. Kei Te Taha Tonga o Puniu Awa, Ko Haereawatea pas, Ko Rewatu pas, Ko Teputakau Pas, Ko Takapaukura pas, kaore e neipas ihinga kaorehoki iriro te whenua, I Te Pakanga Ki Te Pakeha Kahinga Ko Enei Pas – Ko Kihikihii, Ko Te Awamutu, Ko Rangiaowhia. I te hinganga e enei pas karire ketewhenua norunga o Puniu Awa putanoa ki raro ketetaha haurare keite karuna ketetaha tonga keinga maori (ara keiamatau) koinei te waahi iwhakaereaiaai hei kaupapa oneone moenei hapu hapu taeatu kingawahakatupuranga amuru ia matau ara ko pokuru nei, ko tokanui No 1D, me tokanui No1B, ngawhenua tenei ipuritia ematau imurimai ite raupatu ara itepakanga. 3) Note tau 1909, katuria ete ture he pakanga kinga iwi noona nei, nga whenuanei note tau 1911, kakiia kuamu rua tematauwhenua kautua kite moni otira i tenei wa ara itenei raupatu kariro 1338, ngaeka, e 36, ngapaati, no reira he tinei tirawa, te waahi i waihotiamainei kia matau ara iat[illegible] ngata e matau me oona uri menga uri e toru eka ietahi e rua e ietahi na [eoraranei?] tena whanau tena whanau, iena eka tino iti, i waihotiamainei ete kawa natanga, Ki tamatau mahara hepairawa tetiki mai tepana atu inahoki kuaitere tenei ahua kaito iruino irote itepakorokoro noireira meataiti romai koukou kiomatau, mate, omatau mate enei kakorerotiaatunei kia koutou a) teraupatu ote whawhai ki te tangata, b) teraupatu ote whawhai kite ture ote tau 1908, c) teraupatu a te waipuke (irunga ra ite itinga ongaka) 4) Noreire enga kai whakahaere enga kai awhinahoki i teiwi aata tireihai mai ngamate kuapanie kienei e iwi Māori, e taunetenei enei hapu kioona mate, noireira kainoiatu kiakoe (ara kiakoutou) kia rongoatia ekoe o matau mate kokoe naanakehoki te takuta e oraai omatou mate, e taimahanei irunga ia matau.

compulsory taking of their land for the hospital felt very similar to the previous raupatu they had suffered, ‘it is as if we were being cast out by distant acts, instead of being forcibly expelled.’ They asked for an inquiry into all the matters that were causing them difficulties with keeping and using their land.

We reproduce the text of their petition in full, in te reo and English, in the accompanying sidebar.

In December 1912, Raureti Te Huia and 47 other owners of the Tokanui blocks
This is a petition from us three hapu descendants of the ancestor Ngutu. . . The following are the matters which they ask the House and the representatives of the people to consider; 1.) This land was held by our ancestors and forefathers down to our own time as is evidenced by the successful holding of the undermentioned strongholds and the neighbouring lands by Ngutu and his descendants: On the North of Puniu River – Mangateatea Pa, Otawhao Pa, Tupapakunui Pa and Whakapirimata. On the South Side of Puniu River – Haere-awatea Pa, Rewatu Pa, Te Pukahu Pa, and Takapaukura Pa. None of those Pa were taken, neither was the land. In the fights with the Pakeha the following pa were taken: Kihikihi, Te Awamutu, and Rangiaowhia. On these Pa being captured the Puniu lands were taken, from the interior to the mouth of the river. The Crown holds those of the north side and the Maori hold those of the South side of the river; that is to say, we ourselves do. For ourselves and our future descendants we have held Pokuru No 1; Tokanui No 1D, and Tokanui No 1B. These lands we have held since the general confiscation and we have relied on these as lands for our hapu. 3) In the year 1909 the Law was directed against the owners of the lands. In the year 1911 it was announced that our lands were taken and that we would be paid compensation money for the same. As a result we were deprived of 1,338 acres and 36 perches. The consequence is that each owner has either 3 or 2 acres left to him with which to provide a family living; this is altogether insufficient and Government cannot expect us to provide for our families from these moieties of land. In our opinion it is as if we were being cast out by distant acts, instead of being forcibly expelled; for we are as pigs hemmed in within small enclosures (and unable to procure food). On those grounds we ask you all to review our disabilities, those disabilities being: a) confiscation following upon fighting the Pakeha; b) Appropriation following conflict with the Act of 1908; c) Lands lost through floods carrying it off. 4) Therefore, O ye who administer and assist in affairs of fallen estates – we earnestly ask you to conscientiously consider the disabilities to which this section of your people have become subjected as above set forth. We entreat of you to remedy our distresses, distresses which you alone can properly heal and which in the meantime gravely afflict us. . . Matengaro Te Haata and 36 other signatories.1


petitioned Parliament. While their original petition was in te reo, only the English translation has survived. They asked the Government to ‘favourably consider’ their plight, following takings in the Pokuru and Tokanui blocks for the mental hospital, which left them landless, and they asked for certain of the lands to be handed back to them. They wanted to keep the lands for their own use and alleged that

many of their people were unaware of the takings at the time so were unable to object in the time allowed. They felt neglected by the Government, with little done to address problems Māori faced in utilising their land, such as the difficulties in obtaining loan finance for Māori land: ‘the Government has not arranged to advance Māoris funds, to enable them to properly work their lands.’

They also pointed out that the public works law had acted in the same way as warfare and raupatu, leaving them without sufficient land to support themselves and accused the Government of ‘the deepest injustice.’

In each case, the Government response was that the owner objections had already been addressed by Judge Rawson’s inquiry, and some had been found to be ‘of little merit.’

In 1923, Raureti Te Huia wrote to the Government with new concerns; the two burial sites it had been recommended and agreed would be protected and cared for in what were the hospital grounds were already in a state of neglect. Te Huia wanted them properly fenced and trustees appointed to care for them. As a result, the hospital agreed to fence off one of the burial sites that was still evident. However, neither Raureti Te Huia nor hospital staff could locate where the second urupā was sited within the grounds.

We heard a large amount of evidence about the way claimants still feel strongly about the takings and the impacts they caused. Jock Roa told us, for instance, that his great-grandfather, Murahi Niketi, was forced to move south to Piopio after his lands were taken at Tokanui. Others remained, but had to subsist on greatly reduced land holdings. The Ngā uri o te Whakataute claimants spoke of their ‘meagre remaining lands,’ squeezed in between the hospital and Waikeria Prison. Gordon Thomson compared the Crown to a ‘horde of locusts’ devouring his tūpuna’s Pokuru, Wharepuhunga, and Tokanui lands, leaving them with only a fragment of the lands which were (and remain) their tūrangawaewae.

Robert Elliot told of us of the pain of his elders having to watch their tūpuna’s former lands being worked by others. That pain was exacerbated by his whānau being unable to gain finance to develop their own lands and being subsequently forced to lease half of their farm to a Pākehā farmer.

The forced removal of whare also continued. At our Ngā Korero Tuku Iho hearings at Ōtorohanga, Moari Stafford, the chair of the Ngāti Kaputuhi Marae Committee, gave evidence on how the public works taking at Waikeria forced the relocation of their whare, Kaputuhi:
I roto ke i taku kōrero ka kōrero i tēnei whare a Kaputuhi. I mua tēnei whare i rū ki ngā whenua o Waikeria, i te ngaro ana ngā whenua ki raro i a Public Works, ko te Prison today nē. I ngaro tērā whenua [indistinct] o Kaputuhi ki te tū ki runga a ka neke tēnei whenua ki te whenua o Te Kawa tata ki te Railway. He roa kua tū ki reira i te tau 1950 aku matua i haria mai te whenua nei ki Hangatiki te wāhi tū i tēnei wā.

I talk now of the house Kaputuhi. Before this house stood at the lands at Waikeria, when those lands were under the Public Works Act, when those lands were taken Kaputuhi had no other lands and so the land was shifted to Te Kawa near the railway, it stood there for a while. In 1950 my elders moved it to Hangatiki where it stands today.435

The failure of the Government to protect the urupā on the site caused further sorrow. The Crown could never have been in any doubt, from either the protests of owners, or the inquiry recommendation the Crown accepted, that Māori owners were concerned about the urupā of their tūpuna.436 However, within a decade they had fallen into disrepair and remained unfenced, and one had been completely obliterated. Claimant Robert Te Huia described the failure as a ‘broken promise’ on the part of the Crown.437 George Searancke of Ngāti Ngawaero, described his ‘deep mana’ for his people, separated from the burial places of their dead.438

The taking of the Tokanui and Pokuru blocks further deprived the local people of access to their rich Pūniu River resource.439 Former owners then found themselves unable to participate in providing for important cultural events and reliant on the goodwill of neighbouring landowners for such resources. Robert Te Huia described the situation:

we were no longer able to access the swamps and rivers as of right so we needed to cultivate these relationships with our new neighbours if we were to survive. Up until the 1960s, we were able to access the properties of Pakeha leaseholders and owners to get kai out of the swamps, to catch rabbits and harvest food like puha.440

Mr Te Huia told us that his whānau also arranged understandings with the authorities at Waikeria Prison and Tokanui Hospital allowing them access for harvesting tuna and other kai.441 However, those arrangements came to an end with government restructuring in the 1980s. As a result, his people again lost reliable access.
The taking of Tokanui lands, claimants told us, rendered their tūpuna virtually landless and without sufficient means for their sustenance. With the taking of the land came the denial of opportunities for economic development. As Gordon Thomson put it, ‘the Crown robbed the descendants of Huiao, Ngutu, Paia and others of the Tokanui/Pokuru blocks to economically and viably develop their own lands. Our Tupuna were essentially chopped off at the knees and rendered powerless to halt the inevitable confiscation of their lands.’

In this way, the Crown’s takings of their Tokanui lands created an inter-generational problem. The Crown’s actions, the claimants told us, left them without sufficient lands ‘to sustain ourselves or our families’ or to ‘guarantee our mokopuna will be able to sustain themselves or their families’.

As Jock Roa told us: ‘The further total loss of almost all of our last remaining tribal lands, including Tokanui, has caused further distress to our people’, thus denying their tūpuna their rights to ‘utilise their lands and resources for their benefit’.

Over the decades following the taking, as large portions of former hospital lands were declared surplus, the Crown has had ample opportunities to provide redress to the former Māori owners of Tokanui for its taking of their lands. It has not done so. Today, for instance, only 415 acres of the original 10,205-acre Tokanui block remain as Māori freehold land due to purchases and takings and the failure to return land when opportunity arose.

20.4.4 Scenery preservation, 1903–27

Scenery preservation had emerged as a new category of public work for compulsory land taking purposes by the early twentieth century. The Scenery Preservation Act 1903 provided for the establishment of a Scenery Preservation Commission to identify and recommend lands for scenic reserves. The commission was provided with £100,000, a significant sum for the time, to acquire scenic reserves considered nationally significant, whether by purchase or to compensate for compulsory takings. Possibly in recognition of strong Māori concerns and criticism, the original five-member Scenery Preservation Commission, appointed in 1904, included Major Hoani Paraone Tūnuiārangi, of Rangitāne and Ngāti Kahungunu.

A Government Minister later claimed that the appointment meant ‘the natives were to some extent consulted’ and the commission would take ‘greatest pains to ensure that their cultivations and memorials etc should be protected, and their wishes and feelings given effect to as far as possible.’

---

442. Document P18(a), p [3].
446. Tony Nightingale and Paul Dingwall, Our Picturesque Heritage: 100 years of Scenery Preservation in New Zealand (Wellington: Science and Research Unit, Department of Conservation, 2003), pp 11, 29. The commission’s other members were Henry Matthews (the Government’s chief forester), John Marchant (Surveyor-General), and William Smith (a horticulturalist and amateur ethnologist).
447. Minister of Lands to Native Minister, August 1907 (doc A63, pp 556–557).
The new interest in scenery preservation had potential for significant Māori cooperation and support given Māori communities were also very keen to protect sites of importance from the impacts of development. At the same time, as noted, the requirement for scenery preservation not to cut across productive purposes focused attention more narrowly on certain kinds of scenic areas; on the more non-productive, inaccessible, and rugged scenic lands not useful for other purposes and least attractive for purchasing for farm settlement. The potential problems were even more likely in Te Rohe Pōtae, which was still regarded as only recently ‘settled’ and contained much rugged scenery, wild rivers, coastal edges and limestone bluffs, and other ‘natural curiosities’ of the kind that was targeted for scenic interest. The same bluffs and rugged features also contained areas of considerable cultural value to Māori, often being the location of pā and urupā, for example, while remnant forests, and waterway edges remained important sources of food and other culturally important resources.

Te Rohe Pōtae Māori were also concerned that the lands they had managed to retain from purchase pressure were often the least attractive for farm purposes but were still required to support their families. Māori land held under multiple titles also tended to be least and slowest developed for farm purposes, meaning that such land was not only more likely to still be ‘scenic’ but also cheaper and therefore more attractive than better developed lands. It was critical for Māori, therefore, that they were adequately consulted over scenic reserves and that they had sufficiently strong protections for their interests. If the land was to be acquired under existing public works provisions and processes, that was also a matter of considerable concern. As already noted, Sir Āpirana Ngata clearly set out such concerns to Parliament in 1906, when he explained that Māori were not entirely opposed to scenery preservation, but objected to the ‘manner or method’ of carrying it out, most especially the failure to properly consult with Māori when plans were developed and the failure to take adequate consideration of areas of ‘sentimental’ attachment to Māori. ‘Sentimental’ referred to Māori concerns and interests in lands that were not adequately covered by the focus on commercial land value or the few minimal protections for urupā and cultivations. Native Minister James Carroll made a similar point the following year to the Minister of Lands, noting that the ‘objection and dissent of the natives is a wholesale one owing to the taking of their land for scenic purposes in large areas without consulting them in any way, or making provision for prompt payment’.

---

451. Native Minister to Minister of Lands, 8 August 1907 (doc A63, p 556). To this, the Minister of Lands responded that the Scenery Preservation Commission included Major Tūnuiārangi as ‘a member representing the native race’ and that ‘It will, therefore, be seen that as the Commission personally inspected all areas prior to recommending their acquisition, the natives were to some extent consulted, and the Chairman in all cases took the greatest pains to ensure that their cultivations and memorials etc should be protected, and their wishes and feelings given effect to as far as possible’: Minister of Lands to Native Minister, August 1907 (doc A63, p 556).
When Māori members of Parliament helped exclude Māori land from a new 1906 Scenery Preservation Act, appointments to a new scenery board were entirely government officials without any Māori representation. The legislative uncertainty that followed from 1906 to 1910 hindered but did not halt planning for such reserves or even stop all takings of Māori land for scenery purposes. Evidence provided to our inquiry indicates that two compulsory takings of Māori land for scenery preservation were made between 1906 and 1910 in this inquiry district: at Mangaotaki Gorge and Waitomo. Section 3 of the Scenery Preservation Amendment Act 1910 confirmed that Māori land was included and from then the Native Under-Secretary was added to the scenery board. The Act also retrospectively validated any takings of Māori land that occurred in the interim and when no Māori appointment had been made.

The first scenery commission began work on identifying and recommending possible reserves from as early as 1904. Through new board reorganisations, the same recommendations were nevertheless largely followed through to the 1920s, including for scenic reserves on Māori land even while takings were slowed during the period 1906 to 1910. As noted, the 1910 amendment (section 7) also provided a right for Māori to continue to hunt birds on taken land and to continue to bury their dead within urupā on lands now taken for scenery preservation, subject to strict conditions.

Almost immediately, the commission began considering scenic areas in this inquiry district, including Māori land, setting a framework that continued to be followed across the district. Of 380 scenic reserve recommendations developed nationally, some 14 concerned scenic lands in Te Rohe Pōtāe and a majority of these involved Māori land. Some of the takings of Māori land in this district for scenic reserves were substantial. The largest was the 1912 taking of the entire 2,950-acre Mangoira block on the Mōkau River, much of which was never required for scenery. Echoing Tokanui to the north and at much the same time, that taking was also arguably for a national as well as local purpose and was one of the largest single takings of land for public works in New Zealand. From the early 1920s, as the Government’s fund for acquiring private lands for scenic purposes was exhausted, most scenic reserves began to be created on Crown land.

So much Māori land was taken for scenery preservation that compulsory takings of Māori land for scenery preservation comprised the second largest amount of Māori land taken for a public purpose in this district, after land taken for roads. Takings for scenery preservation were made right across the district and most

452. Geoff Park, Ngā Uruora: The Groves of Life (Wellington: Victoria University Press, 1995), p143. Nightingale and Dingwall, Our Picturesque Heritage, pp24, 29, 41; the board’s membership included the heads of the Lands Department and the Tourist and Health Resorts Department, and the commissioner of Crown lands. The Secretary for Māori Affairs was added to the board in 1910.
457. Nightingale and Dingwall, Our Picturesque Heritage, pp24, 44.
were compressed into the important period of development in the district, from 1903 to the late 1920s.\textsuperscript{458} That coincided with most of the three decades when Te Rohe Pōtae Māori faced the most intensive land purchasing pressure and were attempting to establish themselves in the new settler-oriented economy.

In view of the significant scenery preservation takings for Māori land across this inquiry district, we have selected a range of scenery takings to discuss in more detail. We begin in the south of the district with the chain of reserves created along the Mōkau River. The Mangaokewa Gorge scenic reserve is located near Te Kūiti in the centre of the district, while the final group of scenic reserve takings considered are clustered around Kāwhia Harbour.

The claimants alleged that the scenery preservation takings along the Mōkau River were excessive in area and had major impacts on their livelihoods and food sources, their connections with their river, which they regard as a taonga, their wāhi tapu, and their ancestral lands.\textsuperscript{459} They alleged that such takings deprived them of their ability to exercise their tangata whenua status over their lands.\textsuperscript{460} The compulsory nature of the takings and the provisions applied were also ‘grievous affronts to both the principles and spirit of the Treaty of Waitangi, to Māori and our connection with our land as tangata whenua.’\textsuperscript{461}

The claimants contended that the public works taking process provided for scenic reserves failed to provide for adequate consultation with Māori, or for formal notice, and disadvantaged owners of Māori land through every step of the compulsory taking process. The taking process failed to require sufficient regard for Māori access to their remaining lands. In some areas, the claimants allege they are now reliant on permission from the Department of Conservation to pass through a scenic reserve to reach their land.\textsuperscript{462} The takings also failed to have regard for the ability of owners to generate income from their lands and to control access over their remaining land.\textsuperscript{463} Claimants in the Mōkau River reserves also spoke of how the ‘mamae’ stemming from the loss of their papakāinga and the desecration of wāhi tapu has been ‘passed down from generation to generation’ of their whānau.\textsuperscript{464} Claimants say that the taking of so much land along the river has imposed an additional duty on the Crown to preserve the Mōkau River.\textsuperscript{465}

Ngāti Rōrā, Ngāti Rereahu, and Tuhoro whānau claimants alleged serious impacts of the Mangaokewa Gorge scenery takings, which they say compounded

\begin{itemize}
\item \textsuperscript{458} Document A63, p 213.
\item \textsuperscript{459} Submission 3.4.246, pp 110–117. Wai 691/788 are the consolidated claims of the Mōkau ki Runga claimant collective (statement 1.2.91).
\item \textsuperscript{460} Document Q31, p 11.
\item \textsuperscript{461} Document Q31, p 11. See also Jim Taitoko’s claim (Wai 868 R01, statement 1.2.61; Wai 868 R01, submission 3.4.247) on behalf of himself, his whānau, and the hapū of Ngāti Rungaterangi, Ngāti Te Paemate, Ngati Wairoa, as well as the iwi of Ngāti Maniapoto. The ancestral land interests of Taitoko’s tūpuna included the Mangapapa, Mangawakino, and Mohakatino blocks: doc Q21, p [2]; submission 1.2.61, p 5.
\item \textsuperscript{462} Document Q31, p 11.
\item \textsuperscript{463} Document Q31, p 8; submission 3.4.246, p 75.
\item \textsuperscript{464} Document Q26, pp 3–4.
\item \textsuperscript{465} Document Q31, p 14.
\end{itemize}
the impact of takings for the Waiteti railway quarry. Ngāti Rōrā claimants allege the cumulative takings and the extension of takings for scenery denied hapū access to their burial sites and other taonga. Ngāti Rereahu and Tuhoro whānau claimants also alleged serious impacts from the takings and loss of access and riparian rights in their river taonga.

Claimants subject to compulsory takings for the Kāwhia Harbour reserves similarly allege that the taking of their tūpuna’s land for scenic reserves diminished their land holdings and economic base, in direct contravention of the Crown’s article 2 duties to Māori and their land. The Crown failed to properly consider the impact of the takings on owner landholdings and income and economic opportunity or the impact of takings on wāhi tapu and kaitiakitanga over their ancestral lands. The owners were further disadvantaged by the unfair process provided for notifying takings and for assessing and paying compensation for their land. Additionally, the Waikato hapū of Ngāti Mahuta allege their customary interests in the west coast of Te Rohe Pōtae, including Kāwhia Harbour, were adversely affected by the takings, impacting their harbour taonga, and were

---

466. Statement 1.2.33, pp 3–7; statement 1.2.77, pp 28–30, 33; submission 3.4.279, pp 50–51. Ngāti Rōrā trace their descent from Rōrā, the youngest son of Maniapoto, who was born at Taupiri o Te Rangi (doc s9(b), pp 1, 4). Claimants told us that Ngāti Rōrā was awarded title to Pukenui block in 1893 and to the Te Kūiti block in 1899. Te Kūiti block was later included in the Mangaokewa Scenic Reserve: doc A60, p 775; doc s35, p 13.

467. Claims were received from Gary Dyall and Ngāti Rereahu (Wai 1894, statement 1.2.31, submission 3.4.145) and the Tuhoro whānau (Wai 457, statement 1.2.113, submission 3.4.238). Some of the Rangitoto–Tuhua blocks were included in the scenic reserve taking: submission 3.4.238, p 27; doc A144, pp 167–168.

468. The Native Land Court awarded title to the Awaroa blocks to Ngāti Kiriwai and Ngāti Te Kanawa Taimanu hapū of Waikato, and Ngāti Hounuku, Ngāti Korokino, and Ngāti Te Kanawa hapū of Ngāti Maniapoto in 1886: statement 1.2.105, p [7]. The claims from Ngāti Hikairo hapū of Ngāti Taiharuru, Ngāti Tai, and Ngāti Kiriwai (submission 3.4.144; Wai 1995 R01, statement 1.2.9) concern takings in Awaroa A2H1 block on 23 October 1919 for a scenic reserve: statement 1.2.9, pp 4–5; submission 3.4.144, pp 3–4. Koha Hepi’s claim on behalf of hapū of Ngāti Mahuta, Ngāti Ngutu, and Ngāti Kiriwai (Wai 1974, statement 1.2.105, submission 3.4.192) concerns land taken in Awaroa A2H1 and Awaroa A2H2 for a scenic reserve: doc Q14(b) (Hepi), p 4; submission 3.4.192, p 3.

Richard Williams filed a claim on behalf of Ngāti Ngutu (Wai 1497 R01, statement 1.2.115, submission 3.4.203) with interests in Awaroa A2E2: statement 1.2.115, pp [3]–[4]; submission 3.4.203, pp 5–6; doc Q9 (Williams), pp 2–3. Shirley Pu’s (Wai 2084, statement 1.2.32, submission 3.4.174) for Ngāti Tamainu and Ngāti Kiriwai claims concern scenic reserve takings of land interests in Hauturu West and Kinohaku West blocks for the Te Umuroa and Oteke scenic reserves: statement 1.2.32, pp 6–10; submission 3.4.174, p 3. The Ngāti Huiao (Wai 1762, statement 1.2.126) claim concerns Hauturu West 2 and Kinohaku West 12 blocks taken for Te Umuroa reserve: statement 1.2.126, pp 21–22. Ngāti Kinohaku claims (Wai 753, Wai 1585, Wai 2020, Wai 2090, Wai 586, Wai 1396, statement 1.2.102, submission 3.4.204) concern land interests taken in Oteke and Puti Scenic Reserves: submission 3.4.204, p 29. The Tuhoro whānau (Wai 457, statement 1.2.113, submission 3.4.238) claim an interest in land taken for Oteke reserve: statement 1.2.113, p 9; submission 3.4.238, p 17. Claims brought on behalf of Ngāti Mahuta hapū (Wai 1588, statement 1.1.137; Wai 1589, statement 1.2.129; Wai 1590, statement 1.1.139; Wai 1591, statement 1.1.140) concern interests in land taken for Kāwhia Harbour reserves: submission 3.4.143, pp 15–17, 38.

made with insufficient consultation.\textsuperscript{470} The takings were made without sufficient regard for the ongoing impacts of the takings on the owners. That included owners being left with small interests in remaining lands that were difficult to utilise and undermined their ability to care for their wāhi tapu, maintain connections with ancestral lands, exercise mana whenua of their lands, support their whānau, and hand down customary and historical knowledge, leading to further dispersal of their whānau.\textsuperscript{471} The taking of the Thom family land, for example, deprived the family of the means to sustain themselves economically from the farm and to participate in farm development.\textsuperscript{472} The ‘meagre compensation’ paid for scenic reserve land was also insufficient to build an ‘economic base’ to replace lost land.\textsuperscript{473}

The Crown conceded that its taking of the Mangoira block in 1912 for the Mōkau River Scenic Reserve under the Scenery Preservation Act 1908 involved ‘an excessive amount of land’. Despite requiring only ‘a few hundred acres for the purposes of scenery preservation’, the Crown took the entire block of some 3,000 acres. This was a breach of the Treaty of Waitangi and its principles.\textsuperscript{474} The Crown also acknowledged that there is some evidence to support the contention that it failed to consult with Māori owners before acquiring additional lands for some scenic reserves.\textsuperscript{475}

Otherwise, the Crown submitted that scenery preservation ‘is in the public interest and a legitimate exercise of the Crown’s governance responsibilities.’\textsuperscript{476} The Crown generally rejected allegations that Māori land was targeted for scenery preservation. Instead, the evidence demonstrates the Crown’s concern to protect areas of natural beauty and therefore the focus was on identifying suitable sites, regardless of the status or ownership of the land. A significant amount of land for scenery was also acquired from European owners and the Crown also contributed land for scenery purposes. The Crown submitted that Māori land taken for scenery purposes was taken for legitimate scenery preservation purposes and not for European settlement.\textsuperscript{477} The Crown submitted that, for the Mōkau River, it was also concerned to preserve the navigability of the river from the effects of erosion caused by bush clearing on the river banks.\textsuperscript{478} The lands around Kāwhia Harbour were also legitimately taken for reasons of scenery preservation. Such takings complied with legislative requirements and did not breach the Treaty.\textsuperscript{479}

\textsuperscript{470} Submission 3.4.143, pp 15, 38.
\textsuperscript{471} Document s10(b), pp 9–10; doc q14(b), p 4; doc n14, pp 4–6.
\textsuperscript{472} Submission 3.4.203, p 13.
\textsuperscript{473} Submission 3.4.203, p 13.
\textsuperscript{474} Submission 3.4.310, pp 55–56.
\textsuperscript{475} Submission 3.4.310, p 57.
\textsuperscript{476} Submission 3.4.309, p 11.
\textsuperscript{477} Submission 3.4.310, pp 53–56.
\textsuperscript{478} Submission 3.4.310, p 53.
\textsuperscript{479} Submission 3.4.310(e), pp 120–128.
20.4.4.1 Mōkau River scenic reserves

The chairman of the original scenery commission, former Surveyor-General Stephenson Percy Smith, became interested in the possibility of creating scenic reserves along the Mōkau River as early as 1904, the same year the commission was established. Officials soon developed recommendations that included a very large area of around 12,365 acres of remnant forest lands and scenic cliffs along the banks of the Mōkau River, and visible from boat traffic on the river.480 Consistent with government policy requirements, that did not include rights of way to the river from adjoining lands, landing places and river flats suitable for productive cultivation (many of which were already under lease from Māori owners).481

The importance of the Mōkau River to Māori as a transport route, a source of food and natural resources, a site for settlements, and the location of many sites of cultural and historical significance was known to officials to some degree at the time the reserves were considered. Reports on the scenic potential of the river lands also contained evidence of Māori use and occupation, largely couched in terms of a romantic past intended to appeal to the anticipated tourist traffic on the river. These did not make mention of the continuing income that Māori owners were still relying on from these leased lands, the development potential of those lands, or the importance of the river lands and their sites to Mōkau communities still relying on them for their cultivations and fisheries.482

Barbara Marsh explained the importance of those lands to our inquiry at our Ngā Korero Tuku Iho hearings at Mōkau:

our land and waterways are so connected that one cannot be without the other . . . From the day I was born I inherited whakapapa that would connect me to all of our ancestral lands and waterways . . . Our whakapapa to the Mōkau river comes through our historic ancestral inheritance of our tūpuna.483

Officials developed their recommendations by 1911, resulting in the eventual acquisition of a chain of scenic reserves along the Mōkau River, during the years from 1912 to 1920. The lands were acquired from Māori and general land and included some 4,154 acres of Māori land taken under compulsory provisions for scenic reserves. There is no evidence of any effort, and nor was there any legal requirement, to consult with Māori owners and nor does it appear there was any consultation with the Māori land council and later board, while the proposals for the takings were being developed.484

481. Document A63, p 448; doc A63(a), pt 1, p 653.
482. Document A63, pp 446–450; Stokes, Mōkau, p 37. Evelyn Stokes suggested that Taurangatoetoe Pa (sometimes called Taurangatoitoi) was within the boundaries of the part of Mangoira block taken for a scenic reserve in 1912 but declared Crown land in 1915: see Stokes, Mōkau, fig 6, p 35; doc A63, map 17, p 458.
483. Transcript 4.1.5, pp 56–57.

232
As plans became more developed, officials understood they would need to identify the Māori landowners affected, but that appears to have been to enable the requirements of the taking process to be met. From the beginning of consideration in 1904, Percy Smith asked officials for details of the ownership of lands proposed to be reserved, including Māori ownership, and whether or not some of the Māori land might be administered by the then Māori land council (which was soon enabled to sell lands for scenic purposes).485 Efforts progressed slowly, with Lands and Survey officials still reporting on efforts to identify owners through the Native Land Court at Auckland.486 By then, firm decisions for reserve proposals were already made.

The period of some legal uncertainty between 1906 and 1910, as to whether Māori land could be taken for scenery purposes slowed but did not stop official efforts to progress the work required for the reserves. That included undertaking surveys of the lands and, in contrast with the slowness over the owners, the beginning of talks and negotiations with the leaseholders of the lands. Officials regularly referred to, and treated, the leaseholders as though they were the ‘owners’ when in fact they were often ‘owners’ of leases from the actual Māori owners. Officials

also became very concerned with leaseholder logging along the river, prompting them to regard the protection of the reserves as increasingly urgent. The records of discussions with leaseholders reveal they were generally supportive of scenic reserves being taken along the river edges as long as their interests were catered for, including that any reserves were restricted to ‘only the areas absolutely required for the preservation of the scenic beauties on the River’, the reserves excluded lands ‘fit for settlement,’ and leaseholder rights of access to the river remained protected. Leaseholders also wanted compensation for losses to their leases to adequately reflect the commercial value of the lease.

Officials were well aware of government policy that scenic reserves could not cut across productive land use. While they expressed serious concerns about forest clearance along the river, their reports also acknowledge the rights of settlers (lessees) wanting to clear their leased land for farming. The need to balance those competing needs required officials to compromise but also tended to make more inaccessible and apparently unproductive Māori land along the river more attractive. The lack of a strong Māori voice to negotiate over their interests along the river also made such lands more attractive as officials continued to struggle to even identify the legal owners in the Māori land.

The compulsory takings for scenery preservation relied on both the powers provided by the Scenery Preservation Acts, and the powers and taking process provided in the Public Works Act. The compulsory takings of the Māori land along the river were made under those provisions, most in 1912. Some of the takings of Māori land extended considerably further from the river edge to take large areas or even whole blocks, including the large 2,950-acre Mangoira block, for which the Crown has conceded a Treaty breach. The other two areas of Māori land taken for reserves along the river in 1912 were both from the Awakino block and comprised a total of some 170 acres.

The three 1912 takings involved three different kinds of Māori land title with different taking protections and provisions applying. In each case, it appears there was no consultation with Mōkau River Māori owners prior to recommendations being decided and nor was this legally required. Officials followed the legal requirements of the time, including for notice and even went a little further, making some effort to individually notify at least some owners or men they knew had standing in the local community. While it was highly unlikely that reached all owners, the efforts were greater than what was legally minimally required. In each of the 1912 takings, no formal objections passing the well-grounded test were received from Māori owners and therefore no further formal inquiry was deemed required. Each taking was then proclaimed followed by an application for compensation and a court

---

488. Under-Secretary for Lands to chief surveyor, New Plymouth, 14 June 1911, pp 1–2 (doc A63(a), pt1, pp 660–661); doc A63, p 449.
hearing to determine the compensation award. The compensation hearings did not require any participation from the owners.

One of the 1912 takings involved the large 2,950-acre Mangoira block, located on the northern bank of the Mōkau River, some 10 kilometres upstream from the river mouth. The Crown has conceded Treaty breach in that an excessive area of land was taken. The Native Land Court had determined title to the land (Mangoira 1 and 2) in 1886, awarding the land to Ngāti Tū and Ngāti Rakei. By 1905, the land had been leased in two separate leasehold agreements. By 1912, when the taking was made, the two leases had been purchased by Hawke's Bay businessmen with interests in tourism, one of whom was a lawyer for the Mōkau Coal Company.

Officials appear to have decided to take the whole of the block based in part on the steep topography of some of the most scenic parts, although only 427 acres was ever actually needed for scenic purposes. Some additional land was included for convenience of fencing the boundary of such a steep area of land. In discussions with the leaseholder, however, officials were warned their proposal would significantly impact the leaseholder interest, cutting the leased portion almost in two. In usual compensation terms, such a taking would also risk significantly higher compensation costs for the Crown because of the likely severance issues. Officials decided the most economic alternative would be to take the whole block instead and then immediately dispose of the unwanted for scenic purposes large remainder, conveniently wanted by the leaseholder. Officials attempted to read the disposal provisions in either the Scenery Preservation Act 1908, or the Public Works Act 1908 to support that course of action, even though it clearly paid little heed to the property rights of the underlying owners. For officials the remainder of the land could then easily be reorganised for the development of ‘four decent farms’ while reducing the likely compensation costs to the Crown. The case illustrates how easy it was for officials, when the actual owners had very little effective legal protections, to see the issue only in terms of balancing what they saw as competing settler farming interests with those of scenery preservation.

Officials followed the legal process provided for taking the Mangoira block. They even attempted to serve notice on individual Māori owners at least as far as they could be ascertained. How well this was done was a matter of dispute between the parties before us. However, it is important to note that the legal requirement under section 18 of the Public Works Act 1908 continued the qualification that this was required only insofar as the owners could be ascertained, leaving a wide discretion for officials. In most cases we have considered, officials routinely went

---

492. Document A63(a), pt 1, p 695; doc A63(a), pt 3, pp 1476, 1499.
494. Inspector of Scenic Reserves to Under-Secretary of Lands, 25 November 1911 (doc A63(a), pt 1, p 708).
496. Submission 3.4.246, p 113; submission 3.4.310, pp 55–56.
no further than the public notice. The Mangoira block was proclaimed taken as a scenic reserve in February 1912 under the Public Works Act 1908.\(^{497}\)

When it came to the application for compensation public works officials began to raise serious issues with the Mangoira block taking. They pointed out it was most irregular to take such a large area of private land knowing that most of it was not actually required and there were already plans to dispose of the remainder. It was possible to revoke a taking before compensation was paid and public works officials began to seriously promote that approach.\(^{498}\) The lessee was kept informed and proposed an alternative plan. That involved going ahead with the full taking and then to immediately rely on the provisions enabling disposal of lands no longer required provided by section 30 of the Public Works Act 1908. The lessee was confident of being able to purchase the land as soon as it was offered for disposal.\(^{499}\) Presumably the lessee was confident the Māori owners would not be able to afford to buy back the land or they would not find out about the disposal in time to exercise any rights of offer-back. Public works officials recognised how completely unfair and irregular such a proposal was but also felt torn by pressures to support settlers. In this case, officials sought further advice from the solicitor-general.\(^{500}\)

That advice was unequivocal, describing the proposed agreement to continue with the taking and then immediately use disposal provisions as ‘not only illegal’ but ‘a most improper agreement for the Minister or the Crown to enter into.’\(^{501}\) The obvious advantage to the Crown and the block’s lessees, at ‘the expense of the Native owners’ was evident, and ‘quite apart from its illegality’ it would practically give the land to the lessee ‘without so much as consulting the Native owners’. It would be ‘contrary to fair dealing and equity’ and amount to a ‘conspiracy between two parties to plunder a third.’\(^{502}\) Neither would such an agreement stand the test of scrutiny in any court.\(^{503}\) Officials were strongly advised that the proposal be ‘abandoned at once’, on the grounds that it was ‘tainted with fraud’ and that it would be ‘both immoral and illegal for the Crown to lend itself to such a scheme.’\(^{504}\)

Officials did not go ahead with the plan suggested by the lessee. However, they did go ahead with the compulsory taking of the full area in the certain knowledge it was not all required. In subsequent years parts of that land were disposed of for settlement purposes. By 1915, just 365 acres of the 2,950-acre Mangoira block taken under compulsory provisions was retained for a scenic reserve. A further 125 acres of the area taken were set aside for other public purposes (public roads and landing places). Some 2,446 acres were set aside as Crown sections to be made

---

\(^{497}\) Document A63, p.460; doc A63(a), pt7, pp 3962–3963.

\(^{498}\) Document A63(a), pt1, pp 229; doc A63(a), pt 3, pp 1476, 1480.


\(^{500}\) Document A63(a), pt1, p 231; doc A63, p 463.

\(^{501}\) H H Ostler, Crown Law Office, to Under-Secretary of Lands, 7 December 1912 (doc A63(a), pt1, p 235).

\(^{502}\) Document A63(a), pt1, pp 235–237.

\(^{503}\) Document A63(a), pt1, pp 235–237.

\(^{504}\) Document A63(a), pt1, pp 235–237.
available for farm settlement.505 Today just 330 acres, or little over 11 per cent, of the original Māori land block remains in Crown ownership as part of the national conservation estate.506

Of the two Awakino block takings in 1912, the 94-acre Awakino 1 section 9 block was still Māori customary land, with ownership not determined by the Native Land Court.507 That meant lesser protections for owners in the way of notice or rights to object. The other 76-acre Awakino 1 section 12 block also known as Tauwhare, Tawiri, or Te Mahoe, had been set aside by the Native Land Court as a wāhi tapu as early as 1897.508 At that time, Pepene Eketone explained to the Native Land Court that Takerei Te Kaka had reserved the land from the early 1854 Mōkau purchase as a wāhi tapu.509 The court had then issued title to the site as a wāhi tapu reserve to be vested in 14 owners.510 We also heard the site marked the beginning of a great heke and claimant Hinekahukura Barrett-Aranui explained to our inquiry that the site was also an important wāhi tapu for customary burial processes.511 It appears that in 1911, officials mistakenly decided the land was still Māori customary land.512 Therefore the same lesser protections were considered to apply. The lack of any requirement to consult Māori meant there was little chance for Māori to inform officials of the legal protection already afforded the site or to negotiate to reach a more acceptable solution. Nor is it clear, officials would have felt obliged to consider their views. The 1910 Scenery Act provided some limited rights for Māori to seek permission to continue to access land containing wāhi tapu, which was considered sufficient to address their concerns although how the Māori owners felt about that process or even whether they knew of it is not known.

In all three 1912 cases, government officials followed the legal process provided for notice of the takings. In each case, the taking intention was gazetted and public notice posted in the Awakino Post Office.513 Why the Awakino Post Office was chosen and how that related to the location of any identified Māori owners is not known. In the case of the two Awakino takings, for the area considered customary Māori land, the lesser protections only required a gazettal and so the public notice was more than actually required. In each case, the public notices described the lands involved by their legal appellations. The notice for Tauwhare described the reserve as ‘Tekiona 12 Rahui Māori (16244 puruu), Section 12, Māori Reserve’, but made no mention of the block’s Māori names of Tauwhare, Tawari, or Te Mahoe.514

505. Document A63(a), pt1, p 238; doc A147(b), p123.
506. Document A63, p 467; doc A147(b), pp123–126. Between 1915 and the present, the 365 acres set aside for scenic reserve was further reduced due to cutting of bush cover and neighbouring landowners expanding their holdings into the scenic reserve, leaving 330 acres of former scenic reserve land still in the conservation estate today: see doc A147(b), p 125.
508. Park, Nga Uruora, p130.
509. Document A147(b), p 96; doc A142 (Walker), pp 89–90.
511. Transcript 4.1.5, p 103; transcript 4.1.15(a), pp 344–347.
513. Document A147(b), p 97; doc A63(a), pt7, p 3960.
514. Park, Nga Uruora, p147.
There was no requirement to try and serve notice on owners of what was understood to be Māori customary land.

No formal objections meeting the test of being well-grounded were received from the owners within the 40-day time limit for any of the 1912 takings and so no formal inquiries were held. Whether that was because the owners were unaware or believed there was little point or there was some other reason is not known. The two Awakino blocks were proclaimed taken as scenic reserves in February 1912 under the Public Works Act 1908.\(^\text{515}\)

Once the takings were proclaimed, compensation hearings could proceed, whether or not Māori owners participated. In each of the three 1912 takings, the taking authority was responsible for making the application and the Native Land Court for determining compensation. The court held compensation hearings for Mangapora at Auckland in June 1913. The court award of August 1913, provided £4,290 in compensation to the Māori owners and £4,410 to the block’s lessees.\(^\text{516}^\) The court awarded £211 to be paid to the Māori customary owners of Awakino section 9 in April 1913.\(^\text{517}^\) The compensation was paid to the Public Trustee to hold in trust for the owners until they were determined by the court.\(^\text{518}^\)

Anaru Eketone attended the compensation hearing for Awakino 12, the Tauwhare reserve, describing himself as one of the block’s ‘prospective owners’, possibly reflecting the difficulties with successions and other difficulties in keeping title updated for Māori land.\(^\text{519}^\) The court awarded £228 (£3 per acre) for Awakino 12 block in April 1913, with compensation to be held by the Public Trustee until owners were legally determined.\(^\text{520}^\) A lengthy effort then began to have owners determined and the award paid. In December 1913, Te Anui Mika requested his ‘purchase money’ for the taking.\(^\text{521}^\) Efforts to obtain payment continued but it was not until 1931 that the matter was referred back to the Native Land Court. In 1931, the court ordered the £228 compensation be distributed to those determined to be former owners. There was no compensation available for the lengthy delay over payment.\(^\text{522}^\)

Two final takings of Māori land for the Mōkau River scenic reserves, also of significant areas, were made in 1920. Those takings were of the Mangapapa B2 block of some 856 acres and the Mōkau–Mohakatino 1C2 block of some 178 acres.\(^\text{523}^\) The title and lease situation in some of the blocks was complex, but they were majority Māori land. The reserves had been originally recommended in 1911 but the takings were held up by a series of delays.\(^\text{524}^\)

\(^\text{515}^\) Document A63, p 460; doc A63(a), pt 7, pp 3962–3963.
\(^\text{516}^\) Document A63, p 466.
\(^\text{517}^\) Document A63, p 466.
\(^\text{518}^\) Document A63(a), pt 7, pp 3663–3664.
\(^\text{519}^\) Document A147(b), p 97.
\(^\text{520}^\) Document A147(b), pp 97–98.
\(^\text{521}^\) Document A147(b), p 98.
\(^\text{522}^\) Document A147(b), p 98.
\(^\text{523}^\) Document A63, pp 470, 485.
\(^\text{524}^\) Document A63, p 453.
The 856-acre Mangapapa B2 block, located upriver from the Mangoira block, was leased by the Māori owners. Discussions with lessees had established their general support for reserves along the river for tourism purposes, as long as their lease interests were protected. By 1919 and after the war, the lessees agreed to sell their lease interest to the Government for £1 per acre. In 1919, the 178-acre Mōkau–Mohakatino 1C2 block was still held as Māori land.

There is no evidence of consultation with Māori when officials decided on the reserves or to go ahead with completing the takings. Officials provided the required public notice of the intention to take in May 1919, on boards staked onto the riverbank. Officials also made efforts to notify some individual Māori owners as far as they could be ascertained and had notices ‘printed in English and Māori’ that were ‘posted up in some conspicuous place on each Block of land affected’. Europeans with interests were mostly individually notified. In the case of the Mangapapa block, where, unusually, title was also registered with the district land registrar, officials also went to some effort to identify owners on whom notice could be served. They contacted the district land registrar, the Native Land Court, and the Native Department. These takings reveal how starkly more difficult officials found contacting Māori owners compared with owners in general land even when they made some active efforts to identify owners. Officials struggled with the complexities of various lists of owners in Māori land, presumed owners and succession orders, but found few useful contact addresses. As a result, they were obliged to agree with the usual assumptions made about Māori land that, ‘it will no doubt be impossible to serve a copy of the Notice on each of such Natives’.

Officials decided instead that it would be ‘sufficient if a copy is served on twelve of the most important Native owners’. It is not known, as claimant Peter Stockman told our inquiry, how it was decided who was an ‘important’ owner, whether by size of share in the land or some other criteria. Officials served notice on 12 of the Māori owners from a total of about 60 individuals thought to

525. Stokes, Mōkau, p 156.
528. Document A63(a), pt 3, p 1558.
531. Under-Secretary for Public Works to Under-Secretary, Native Department, 11 August 1919 (doc A63, p 472); Under-Secretary for Public Works to district engineer, Stratford, 18 September 1919 (doc A63, p 473); doc A65(a), pt 3, pp 1578.
533. Under-Secretary for Public Works to district engineer, Stratford, 18 September 1919 (doc A63(a), pt 3, pp 1575–1576).
534. Under-Secretary for Public Works to district engineer, Stratford, 18 September 1919 (doc A63(a), pt 3, pp 1575–1576).
be owners of the block. Although it was far from all the owners, it was nevertheless further than officials were legally required to go showing just how ineffective legal protections were even with some goodwill on the part of officials.

No formal objections that met the test of being well-grounded were made by the Māori owners of the two blocks in the time period allowed. Given the delays in finding owners in Mangapapa, officials allowed extra time additional to the legal 40-day limit. Without formal objection no formal inquiry was needed and the lands were proclaimed taken in March 1920, under the 1908 Act. The application for compensation was made for Mangapapa in September 1920. The court hearing for compensation for Mangapapa B2 was heard over 13 and 14 September 1921. The lessees, but no Māori owners attended. The court delayed making an order for compensation for a further year to enable officials to contact the Māori owners 'to ascertain if they wished to be heard' although officials later reported they had received no indications of any interest. In April 1922, however, some Māori owners contacted the Government to protest delays with the compensation award. Whether they understood the process or the reason for the delay is not known.

The court awarded compensation in August 1922, ordering the Government to pay a total of £1,200 in compensation (the Government valuation of £1,107 plus interest). Of that, the Māori owners were awarded £554, the lessee and owner of 400 shares were awarded £130, and the sub-lessees received £516. The Māori owners’ share was to be paid to the Waikato–Maniapoto District Māori Land Board for distribution among individual Māori landowners. As Alexander has noted, this was a common requirement for such compensation awards. We did not receive evidence on how that distribution was made.

### 20.4.4.2 Mangaokewa Gorge scenic reserve

The scenery commission was also quick to take an interest in the scenic quality of the Mangaokewa Gorge. The Minister for Tourist and Health Resorts was reported as encouraging the commission to ‘reserve the beautiful scenery in the Te Kūiti Gorge, near the Waiteti Viaduct’ as early as August 1904. The commission received a 1905 assessment of the gorge confirming the ‘splendid scenery and bold limestone cliffs rising to a height of several hundred feet’ in addition to ‘millions of tons’ of ‘easily workable’ limestone. The commission recommended the acquisition of 138 acres of land in the gorge, all of which was Māori land. The
Map 20.4: Public works takings for the Mangaokewa Gorge scenic reserve
Government approved the commission’s recommendation in 1906.\textsuperscript{544} By 1906, however, there was some legal uncertainty about powers to take Māori land for scenery purposes. Officials turned to attempts to purchase the land required at Mangaokewa instead. Land purchase officer William Grace was instructed to negotiate a purchase with the Māori owners while a survey began of the land required for the scenic reserve.\textsuperscript{545} The presence of Grace and the surveyor alerted Māori owners, who wrote to complain, via their solicitor, that they had not been consulted about any taking and they objected to surveyors entering their land without permission. They also accused the Government of casting ‘greedy eyes’ on the block’s limestone deposits.\textsuperscript{546}

 Officials assured the owners the land had not been taken, and the intention was to consult and gain their consent to purchase their land, ‘so that their wishes may be fully considered and given effect to as far as possible.’\textsuperscript{547} Grace was confident he could buy the land for even less than the sum authorised, for £1 to £1 10s per acre instead of £2 per acre. He warned, ‘the natives through contact with Europeans get sentimental ideas as to the value’.\textsuperscript{548} The surveyor reported that the 138-acre reserve proposed by the Government would not be sufficient to preserve the gorge’s scenery and recommended the Government should instead acquire 563 acres of Māori land for the reserve.\textsuperscript{549}

 Grace was over-optimistic and made little progress with the purchase. However, shortly after new 1910 legislation confirmed powers to take Māori land for scenery purposes, in 1911, officials increased efforts to acquire the land. Government approved the recommendation for 563 acres in September 1911.\textsuperscript{550} Purchase efforts were ongoing through Grace’s successor, RA Paterson, but little progress was made. By then Māori owners wanted £15 per acre for their land, while Paterson believed that a range between 30 shillings (£1 10s) and £2 per acre was still a ‘good price’.\textsuperscript{551} Alerted to the further steps to have the land acquired for scenery preservation, Railways officials sought and received approval in late 1911 to have 49 acres cut out of the proposed reserve to extend the Waiteti railway quarry, as previously discussed.\textsuperscript{552}

 Unable to progress purchasing at the price they wanted, officials began to reconsider a compulsory taking. No evidence was provided as to whether the purchase officer or anyone else discussed the renewed taking proposal with the owners. A formal notice of an intention to take 514 acres for the Mangaokewa...
Gorge Scenic Reserve was issued in February 1912. A public notice was provided but there is no clear evidence as to whether owners were individually notified. No objections considered well grounded were made by owners in the 40-day time limit allowed and the formal taking was proclaimed in April 1912.\textsuperscript{553} As discussed, the narrow grounds for objection did not provide for serious consideration of Māori cultural concerns for the land, even though the land included burial sites and other taonga.\textsuperscript{554}

The Native Land Court hearing to determine the compensation award was held in Te Kūiti in late October 1912. The court awarded £792 6s 3d in compensation to be divided between the owners of the five blocks affected by the taking based on land valuations ranging from £1 5s per acre up to £2 per acre. This was not only well beneath the purchase price asked by the Māori owners, but was also well below the Government’s own valuation for the land of £1,472.\textsuperscript{555} No compensation was paid for the 24 acres of Mangaokewa river bed taken. The Government claimed that the compensation award had been reached ‘after conference & arrangement with the representatives of the owners’. We received no evidence on this this point.\textsuperscript{556} Officials acknowledged that the court’s final award had been a ‘highly satisfactory’ one for the Government.\textsuperscript{557} The Government also agreed to a request by one of the owners of the Pukenui block, Hiri Wetere Kareti, to exchange 30 acres of his land within the reserve boundaries for 10 acres of Crown land nearby.\textsuperscript{558}

As already discussed, the precedent set by Railways to obtain land for quarrying out of the original proposed reserve area and the presence of the existing quarry machinery and rail siding attracted local authorities to also seek approval to have parts of the gorge scenic reserve lands set aside for their own quarry purposes. In August 1912, the Waitomo County Council sought 15 to 20 acres from the northern end of what was now scenic reserve (taken from Māori) for their own quarry purposes. That was approved based on policies that scenic reserves were not to cut across more productive uses of land. It was claimed that the scenic qualities of the gorge in the quarry area were already ruined and to refuse the county’s request would be to ‘retard the advancement of the whole county by putting the county to very material extra expense in obtaining metal for their roads’.\textsuperscript{559} The 15 acres requested was transferred to the Waitomo County Council in 1919.\textsuperscript{560} Later still, in 1924, the

---

\textsuperscript{553} Document A63, p 570.
\textsuperscript{554} Document 835, p 13.
\textsuperscript{555} Document A63, pp 570–571.
\textsuperscript{556} E Bold to Short, 4 November 1912, handwritten note on Valuer-General to Assistant Under-Secretary of Public Works, 9 October 1912 (doc A63(a), pt 3, p 1629).
\textsuperscript{557} Under-Secretary for Lands to Minister in Charge of Scenery Preservation, 9 November 1912 (doc A63(a), pt 1, p 580).
\textsuperscript{558} Document A63, p 571.
\textsuperscript{559} Document A63(a), pt 1, p 574.
\textsuperscript{560} Inspector of Scenic Reserves to Under-Secretary for Lands, 19 September 1912 (doc A63, p 168).
\textsuperscript{561} Document A63, p 168.
Government passed special legislation to allow the sale of a total of 75 acres of scenic reserve land to another local authority, the Te Kūiti Borough Council, for a quarry and water reservoir.\textsuperscript{562}

The evidence indicates that officials abandoned purchasing at prices they felt were too high once they got the compulsory powers they needed confirmed. Instead, they turned to compulsory taking which enabled them to obtain the land relatively easily with no requirement to consider Māori interests and they could seek a compensation payment at the value of poor-quality agricultural land. The productive value of the land was quite apparent from the railway request and confirmed by the later requests from local authorities. Once those agencies no longer needed the quarry stone for their own purposes, there was no legal requirement for them to offer the land to the former owners. They were able to lease out quarrying rights themselves, obtaining a further source of continuing income from the taken land through land rentals and royalty payments. Both Railways and Waitomo County Council later leased out their limestone quarries to private operators.\textsuperscript{565} It has not been possible to quantify the value of the royalties from what was clearly a long-lived valuable resource lost to Māori owners, not only for a commercial income but in terms of their sites of significance.\textsuperscript{564}

In 1984, the land remaining in the Mangaokewa Gorge Scenic Reserve was classed as a scenic reserve under the Reserves Act, with a total area of around 489 acres or just under 198 hectares.\textsuperscript{565} Today, the Mangaokewa Gorge Scenic Reserve is vested in and administered by the Waitomo District Council.\textsuperscript{566}

\section{Kāwhia Harbour scenic reserves, 1913–24}

Officials wasted little time in seeking to acquire scenic reserves around Kāwhia Harbour once the 1910 amendment confirmed compulsory takings could be made from Māori land for such purposes. In April 1911, the inspector of scenic reserves, Edward Phillips-Turner, confirmed the importance of acquiring reserves around the harbour, reporting on the ‘steep wooded slopes’ and ‘quiet beauty emboldened by the presence of craggy limestone bluffs’.\textsuperscript{567} According to Phillips-
Turner, the most scenic of the rivers feeding into the harbour was ‘equal to the Wanganui at its best’.568 The matter was urgent, however, as that scenic beauty was under threat from bush felling.569 In response, the same month, the Auckland Scenery Preservation Board passed a series of resolutions to acquire a series of reserves around Kāwhia Harbour.570 The necessary surveys were prepared and, in May 1912, the Minister of Scenery Preservation approved the compulsory taking of the reserves under the Public Works Act 1908 and the Scenery Preservation Act 1910.571

Continuing partitions of the land, the outbreak of war, and a shortage of funds for scenic reserves delayed progress but the approved reserves were taken on a piecemeal basis over the following decade from 1913 to 1924, as local circumstances allowed.572 Claims before this inquiry concern Māori land taken for the Kāwhia Harbour reserves at Awaroa, Puti, Te Umuroa, and Oteke.573 Claimant Shirley Pu described the strong links she and her whānau retain with Kāwhia Harbour:

Our ties to the land make us go there as frequently as we can. It is where our tupuna lived and it is where many of our dead are buried. Our lands at Kawhia will always be the place that we call home. It was and continues to be very important to us to get out to the land, to see where we used to live, to visit the marae and urupā, to spend

---

573. The claims from Ngāti Hikairo hapū of Ngāti Taiharuru, Ngāti Tamainu, and Ngāti Kiriwai (Wai 1995, statement 1.2.9, submission 3.4.144) concern takings in Awaroa A2H1 block on 23 October 1919 for a scenic reserve: statement 1.2.9, pp 4–5; submission 3.4.144, p 4. Koha Hepi’s claim on behalf of hapū of Ngāti Mahuta, Ngāti Ngutu, and Ngāti Kiriwai (Wai 1974, statement 1.2.105, submission 3.4.192) concerns land taken in Awaroa A2H1 and Awaroa A2H2 for a scenic reserve: doc Q14(b) (Hepi), p 4; submission 3.4.192, p 3. Richard Williams filed a claim on behalf of Ngāti Mahuta and Ngāti Maniapoto (Wai 1497, statement 1.2.115, submission 3.4.203), some of whom are shareholders in or descendants of the original owners of Awaroa A2E2: statement 1.2.115, pp 3–4; submission 3.4.203, p 4; doc Q19 (Williams), pp 2–3). Shirley Pu (Wai 2084, statement 1.2.32, submission 3.4.174, pp 28–31) for Ngāti Tamainu and Ngāti Kiriwai claimants concerns scenic reserve takings of their land interests in the Hauturu West and Kinohaku West blocks to create the Te Umuroa and Oteke scenic reserves: statement 1.2.32, pp 6–10; submission 3.4.174, p 3. Ngāti Huia (Wai 1762, statement 1.2.126) claim interests in Hauturu West 2 and Kinohaku West 12 blocks taken for Te Umuroa reserve: statement 1.2.126, p 21. Ngāti Kinohaku claims (Wai 753, Wai 1585, Wai 2020, Wai 2090, Wai 586, Wai 1396, statement 1.2.102, submission 3.4.204) include interests taken in Oteke and Puti scenic reserves: submission 3.4.204, pp 28–28. The Tuhoro whānau (Wai 457, statement 1.2.113, submission 3.4.238) claim an interest in the land taken for the Oteke reserve: statement 1.2.113, p 9; submission 3.4.238, p 17. Claims brought on behalf of Ngāti Mahuta hapū (Wai 1588, statement 1.1.137; Wai 1589, statement 1.2.129; Wai 1590, statement 1.1.139; Wai 1591, statement 1.1.140) have interests in the land taken for the Kāwhia Harbour reserves: submission 3.4.143, pp 15–17, 38.
time on the land that our tupuna lived on. We visit all the different marae: Rakaumui, Mokoroa, Maketu and Waipapa.574

There is no evidence of any efforts to consult with local Māori over the decision to take the land for the reserves. However, the presence of surveyors in 1911 alerted some Māori owners to scenic reserve proposals for their land. That included the Awaroa scenic reserve, which included four partitions of the Awaroa A2 block in the inner Kāwhia Harbour.575 Some of the owners immediately contacted the Government with their concerns. In November 1911, Eugene Thom, a co-owner of the Awaroa A2E2 block with his four siblings, and the grandfather of claimant Richard Williams, complained that the proposed survey lines would cut his farm in two. He was not averse to protecting scenery and explained that he was already planning to reserve an area of the bush on his land, but the scenic reserve taking as proposed would prevent him from being able to develop his farm. He wrote: ‘It seems very hard when one is trying to make a home for it to be snatched away from him like this especially after he has laid out all his plans for the future in beautifying his farm & have it all laid out so as to be a credit to him’.576 He warned that if the reserve went ahead his land would be of ‘very little value’ and, apparently as a last resort, asked if the taking were to go ahead for an exchange of his land for another block of Crown land on the other side of Te Awaroa Stream.577

In stark contrast to the careful discussion with the leaseholders along the Mōkau River, in this case officials insisted that the only option for discussion was when the surveyor had submitted the survey plan. That had not yet been done but the owners could object then.578 That effectively meant the owners were placed in the position of objectors in a formal process that could only consider a narrow range of concerns and provided no opportunity to negotiate prior to decisions being finally made. Eugene and his brother Henry Thom then wrote several letters to Ministers protesting the proposed taking and seeking further discussions. They continued to explain in terms that should have instigated policy concerns that scenic reserves could not cut across productive use of lands. They explained that the proposal as currently understood would cut a strip from the middle of their block and render the remainder ‘practically . . . useless for farming purposes’. The proposed reserve would also include the block’s only source of clean water and an old urupā, ‘which we wish to keep for sentimental reasons’.579 They assured the Government they did ‘not wish in any way to wantonly destroy the scenery and do ourselves wish to reserve it wherever possible for shelter’.580

In spite of official refusals to engage in further discussions, the Thom brothers nevertheless persisted with suggestions that the partition boundaries recently set

574. Document s10(b) (Pu), pp 3, 9–10.
576. E Thom to W Kensington, 18 November 1911 (doc A63(a), pt1, pp165–166).
577. Eugene Thom to W Kensington, 18 November 1911 (doc A63(a), pt1, pp165–166).
578. Document Q19 (Williams), p 3; doc A63(a), pt1, p167.
579. Henry Thom to Under-Secretary for Lands, October 1912 (doc A65(a), pt1, pp168–169).
580. Henry Thom to Under-Secretary for Lands, October 1912 (doc A65(a), pt1, p169).
by the Native Land Court could be redrawn to exclude their urupā and the only area of high land on their farm. They also suggested an exchange of other land for their farm if the Government was determined to take the land. Henry Thom wrote:

Believing that the action of your department is justified in reserving scenery I would . . . assist in every way possible, as I recognise that it is in the interests of the community; yet again I pray that it will not be done so as to affect the interests of private property injudiciously. It is not compensation in £s.d that we want but land, and in an area that we can work.

The Thom brothers were assured that the Scenery Preservation Amendment Act 1910 provided for continued access to and use of urupā within scenic reserves taken from former Māori land as long as they applied to the Government for permission. They were not, however, given assurances the permission would be forthcoming. Nevertheless, Phillips-Turner visited the block and agreed to redraw the boundaries of the reserve to exclude a small three-acre terrace already in cultivation. At that stage, the larger question of a possible land exchange was not taken up.

The formal notice of an intention to take the land area of approximately 78 acres from the Awaroa blocks for a scenic reserve was issued in July 1915. The Government subsequently received four formal objections to the takings from Māori owners of the Awaroa blocks, three of them by telegram. Lands Department officials made an effort to obtain more details of the objections. They found that Te Puhi Paeturi, an owner in the Awaroa A2H and A2C blocks, objected because she wished to use the block’s timber and stone resources for herself. Poari Wetere objected on behalf of the owners of the Awaroa A2C block because he had no other lands and because the taking included a burial place and a tapu rock. Taka Taiharuru, an owner in Awaroa A2E and A2D, also objected because the land contained an urupā. Such sentimental concerns for urupā and wāhi tapu did not meet the official test of a well-grounded objection, however, with the inspector of scenic reserves also considering that the graves would be ‘better

582. Document A63(a), pt1, p176.
583. Henry Thom to inspector for scenic reserves, 16 December 1912, (doc A63(a), pt1, p175).
584. Document A63(a), pt1, p173.
587. Document A63(a), pt3, pp1588–1591. The telegrams, from Rangi Tuataka, Hua Terohe, and Paari Wetere, did not state the grounds for their objections. Subsequently, Lands Department officials obtained statements from owners of the Awaroa A2 blocks who objected to the taking, although these were not the same owners named on the telegrams, it is unclear whether they were the same individuals.
590. Document A63(a), pt3, p1596.
protected’ as a scenic reserve.\textsuperscript{591} Nor it seems did the other reasons as no formal inquiry was approved. Eugene Thom also objected to the taking of his whānau land on Awaroa A2E block. He again explained that the taking would leave him with no high ground to move stock to in case of flooding, it would lower the value of his farm and ‘we have no property anywhere else’ and as such would be left landless. He asked for an exchange of land so he could participate in modern farming opportunities, rather than just subsisting:

\begin{quote}
I would be willing for you to take or at least the Government take the whole section & give us the pick of another section of Government land at equal valuation. If the Government take the land I haven't sufficient land to make a living off. I need every acre to do my requirements. I am not one of the sort that are satisfied so long as they get a bellie full of pork & spuds. What I want is to work the land & go in for dairying. I started milking last season & packed my cream to Oparau & have shares in the factory. Which will prove that I am not a waster & only am writing just to try & make a fuss. I want the land to keep me not me keep the land.\textsuperscript{592}
\end{quote}

The commissioner of Crown lands was, however, asked to inquire into obtaining alternative lands for the owners of Awaroa A2C, as it was agreed they would be left with insufficient lands to support themselves.\textsuperscript{593} That appears to have followed the usual policy requirement with scenic reserves that they could not cut across productive land needs. For the same reason, the commissioner of Crown lands was asked to inquire into whether alternative Crown lands could be found for the Thom whānau.\textsuperscript{594} The commissioner replied that, while the specific section wanted by Mr Thom was no longer available, another section of the same block – section 8 of block x1 Kawhia North – was available.\textsuperscript{595}

In December 1915, Eugene, Henry, and a third brother, William Thom, signed an agreement consenting to exchange their interests in the Awaroa A2E block with a licence to occupy with right of purchase 90 acres of Crown land in section 8, block x1, Kawhia North.\textsuperscript{596} While three out of five of the block’s owners had agreed, legally the consent of the two remaining owners in the block was also required. Both remaining owners were, however, inmates of mental institutions and the Public Trustee held power of consent for them.\textsuperscript{597} Asked for legal advice, the Solicitor-General, John Salmond, advised that both legislative mechanisms available, section 11 of the Scenery Preservation Amendment Act 1910 and section 86 of the Public Works Act 1908 required the consent of all the block owners.\textsuperscript{598}
The difficulty of obtaining the consent of all the owners therefore made a land exchange likely ‘impracticable’. Salmond also questioned the wisdom of public expenditure on scenic reserves given it was wartime. His criticism seems to have delayed further progress on the Awaroa Scenic Reserve for the duration of the war.

With the war over, the possibility of an Awaroa Harbour scenic reserve was re-opened and, in January 1919, the Minister instructed that ‘the necessary steps’ were to be taken to secure the Awaroa scenic reserves. Shortly afterwards, in May 1919, when two of the serving brothers were still overseas, the Government issued a new notice of intention to take the Awaroa blocks. Officials advised that two of the three Thom brothers had not yet returned from their military service, while two other siblings remained inmates of mental institutions.

In July 1919, solicitors for Eugene Thom advised that he would no longer object to the taking of his land (now by partition Awaroa A2E2) if the Government would honour its earlier agreement for a land exchange. Henry Thom sent

---


---

The First World War Service of the Thom Brothers

The three Thom brothers, Eugene, Henry, and William, volunteered for service in the First World War. Arepata Taneti Paeturi (Eugene Thom) embarked from Wellington in November 1917 and served in France before being admitted to hospital in September 1918, suffering the effects of gas. He left for New Zealand on the Ruahine in May 1919. Sergeant William Napier Thom served in France, was wounded in September 1916 and later awarded a military medal and bar for ‘acts of gallantry’ at the battles of Messines and Ypres in 1917. He left for New Zealand in March 1919. Henry Thom also volunteered and spent time in military camp in New Zealand but was discharged prior to embarkation due to a medical condition.

---

599. Solicitor-General to Under-Secretary for Public Works, 3 February 1916 (doc A63(a), pt 1, p 209).
601. Document A63(a), pt 1, p 214; doc A63, p 533.
604. Document A63(a), pt 1, p 215.
in a new objection but then, presumably on the same basis, withdrew it.\textsuperscript{605} The Public Trustee then advised that Eugene and Henry had proposed purchasing the interests of their siblings in the Awaroa A2E2 block.\textsuperscript{606} The Public Trustee objected to the taking on the basis that a purchase proposal had been made.\textsuperscript{607} Officials decided that objection failed the test of being well-grounded as that matter could ‘be met by the payment of compensation.’\textsuperscript{608} Officials also refused to pursue the matter of a land exchange, deciding instead that matter could also be dealt with as a compensation matter after the formal taking. The 78 acres in the Awaroa blocks was taken for a scenic reserve in October 1919.\textsuperscript{609}

When it came to compensation for the taking, the Thom whānau continued to pursue a land exchange.\textsuperscript{610} The matter was pressing by January 1920, as ‘it is understood that Mr EA Thom has recently returned from the front and is anxious to settle down upon the land.’\textsuperscript{611} At that late point, officials decided there was, in fact, no legislative mechanism whereby an exchange could be made without the consent of all owners but they had failed to inform the Public Trustee.\textsuperscript{612} Officials decided to make the application to the Native Land Court anyway ‘to assess compensation in the ordinary way’ presuming the land wanted could still possibly be leased to Eugene Thom under the Discharged Soldiers Settlement Act.\textsuperscript{613} No mention was made of the fact that the Thom brothers had only withdrawn their objections on the basis of the Crown arranging for an exchange of land instead of monetary compensation.

In September 1920, the court awarded a total of £193 of compensation for the approximately 78 acres in the Awaroa blocks.\textsuperscript{614} According to claimant Richard Williams, his tūpuna’s farm was indeed cut in half by the taking, and the other half of his whānau’s former land is now run by an adjoining landowner.\textsuperscript{615} The owners were left with an economically unviable remnant of land, insufficient for their livelihood as they had informed the Crown. As a result, Eugene’s hopes to engage in farming on his own land were dashed.

The Puti, Te Umuroa, and Oteke Kāwhia Harbour scenic reserves were similarly recommended for taking for scenic reserves but progress was then delayed. The 100 acres for the Puti scenic reserve were taken from Māori land in the Pirongia West 3B2E2 and Mangaora 1–4 blocks.\textsuperscript{616} In that case, officials were willing to

\begin{itemize}
\item \textsuperscript{605} Document A63(a), pt 3, pp 1611–1612.
\item \textsuperscript{606} Document A63(a), pt 1, p 217.
\item \textsuperscript{607} Document A63(a), pt 3, p 1614.
\item \textsuperscript{608} Brosnan to Under-Secretary for Public Works, 16 October 1919 (doc A63(a), pt 3, p 1615).
\item \textsuperscript{609} Document A63, p 534; doc A63(a), pt 7, pp 4015–4016.
\item \textsuperscript{610} Document A63(a), pt 1, p 219.
\item \textsuperscript{611} Under-Secretary for Lands to Under-Secretary for Public Works, 14 January 1920 (doc A63(a), pt 1, p 219).
\item \textsuperscript{612} Document A63(a), pt 3, p 1617.
\item \textsuperscript{613} Under-Secretary for Lands to engineer in chief and Under-Secretary for Public Works, 17 August 1920 (doc A63(a), pt 3, p 1618).
\item \textsuperscript{614} Document A63, p 535.
\item \textsuperscript{615} Transcript 4.1.15(a), pp 1615–1616.
\item \textsuperscript{616} Document A63, p 512.
\end{itemize}
negotiate with the lessee of Pirongia West prior to the formal taking, noting the policy requirement to carefully balance scenery values with the needs of ‘profitable use’ of lands for settlement. The Under-Secretary for Lands assured the lessee officials would give his concerns the ‘utmost consideration’ and were willing to reach ‘a satisfactory arrangement’ by which the best of the scenery could be preserved while still allowing for due access to the road and harbour. The lessee was also able to negotiate the exclusion of five acres from the block nearest his homestead.

The notice of intention to take the remaining 10 acres of the Pirongia West block was issued in May 1913. The lessee formally objected on the grounds that too much harbour frontage of the 2,000-acre block was being taken. His objection was not upheld, and the land was formally proclaimed taken in August 1913. The application for compensation was made to the Native Land Court and the hearing to determine compensation was held in January 1914. The court delayed making an award for a year as nothing had been heard from the Māori owners or their representatives. After one year, in April 1915, the court ordered compensation of £27 10s, of which £22 would be paid to the Māori owners and the rest to the European lessee.

The rest of Te Puti was to be made up of parts of the Mangaora 1–4 blocks of Māori land, though these takings were further delayed due to war. Although no effort was made to consult with the owners, in 1919, Rihi Te Rauparaha, an owner in Mangaora 2 wrote asking about the Government’s intention for the rest of land proposed for the reserve. She was informed that plans were delayed due to the war, but the recommended Kāwhia reserves were still ‘under consideration’ and the ‘ultimate object’ remained of acquiring her land for a scenic reserve. Rihi Te Rauparaha wrote to her member of Parliament, Māui Pōmare, for help. She asked for her land to be removed from the scenery plans and explained she had sought a partition so she could retain the prized karaka, tree-fern, and puriri on her land. She intended to care for them as she and her whānau had done for years as both a customary source of food and relish. She explained that the land was also all she had for her livelihood.

Pōmare’s inquiries confirmed that plans for that reserve were still to receive final approval. Rihi Te Rauparaha wrote to Pōmare again in August 1922, asking for help to stay on her land and stating she was afraid of being imprisoned if she resisted having it made a reserve. She was very clear she wanted to keep her land, not money or an exchange for other land. She asked Pōmare to save her and Māori

---

617. Under-Secretary for Lands to C R Morris and Company, 1 March 1912, attached to C R Morris to Minister for Public Works, 7 July 1913 (doc A63, pp 513–515).
622. Document A63(a), pt 1, p 597.
from the injustice of the Act. 624 Officials still made no effort to directly consult with her but confirmed that very little of the block would be left to the owners if the proposed 55 acres were taken out of the land, from a total of 63.5 acres. 625

In this case, the scenery proposal was clearly going to cut across the owner need for the land for their support. The responsible Minister assured Pōmare that as long as the owners occupied the land and cultivated it for their own use, their occupation would not be interfered with. 626 During 1922 and 1923, Kawhia County Council officials complained that individuals were removing wood from the proposed scenic reserve at Mangaora and urged urgent steps to reserve it as ‘the only piece of scenic bush on the north side of the harbour’. 627 In response, officials stepped up efforts to obtain the final approvals to take the remaining reserves to permanently preserve the ‘picturesque bush’. 628 Survey plans were prepared by September 1923, confirming that the harbour reserves would total around 522.25 acres. Of this total, 444.5 acres was from Māori land and 77.75 acres from Crown land. 629 Believing the surviving bush around the Kāwhia Harbour was in ‘grave danger’ of destruction, Lands Department officials also urged the Minister to take urgent action to approve the reserves. By January 1924, approval was obtained to acquire the Puti, Te Umuroa, and Oteke scenic reserves. 630

The new recommendations for the Puti reserve continued to include the Mangaora 1 and 3–4 blocks but excluded Mangaora 2 based on the earlier promise made that Rihi Te Rauparaha’s land would not be taken while she continued to occupy. 531 Officials provided public notice of the formal intention to take the land in the Gazette and Kahiti and at the local Kāwhia post office. 532 Officials only felt obliged to serve individual notice on J Hughes, the owner of one acre of general land in Kinohaku West 11D3A block. 533 He subsequently made a formal objection which was dismissed when it became clear his land was not included in the proposed reserves. No formal objections were made (or accepted) from the Māori owners of the blocks and they were proclaimed taken in April 1924. 634

As was required, the Minister made the application for compensation for the taken Māori land. The Native Land Court compensation hearing for the takings for Te Umuroa and Oteke scenic reserves was held in January 1926. None of the Māori owners of the blocks attended. The court awarded £99, £7, and £4 for the taking of the three parts of the Hauturu West blocks for Te Umuroa Scenic Reserve 635, and £21, £81, and £54 for the three parts of Kinohaku West taken for

624. Document A63(a), pt 1, p 603.
Oteke Scenic Reserve. The compensation was paid to the Waikato–Maniapoto District Māori Land Court for distribution to individual owners. No further evidence was provided on that distribution.

In the case of the three Mangaora takings for the Puti reserve, the compensation application was delayed while officials considered whether the reserve would even be viable if Mangaora 2 continued to be excluded. In 1925, officials and the Minister agreed that the matter could wait as ‘Rihi is an elderly person and when she dies the next owners will probably sell’. In the end, the Mangaora 2 owners never sold and the land was never acquired but nor did the Crown revoke the reserve status over the other parts of the proposed reserve. The Māori owners of the Mangaora 1, 3, and 4 blocks were awarded compensation of £5, £50, and £15 respectively in February 1928, four years after the taking.

20.5 The Practical Implementation of Compulsory Public Works Takings of Māori Land in Te Rohe Pōtai, 1928–2009

The period from the late 1920s until around 2009 was a distinct change for public works in this district. After the period of rapid development, this was a more a time of consolidation for public works in Te Rohe Pōtai. Although compulsory takings occurred at a lesser rate, new powers continued to be provided for compulsory takings and were rapidly deployed. The compulsory takings of Māori land for aerodromes at Te Kūiti in 1936 and Raglan in 1941, for instance, followed quite shortly after the main legislative provisions were made in 1935. Growing concerns about flooding and river control also resulted in such takings as for flood control at Ōtorohanga. More commonly, compulsory land taking provisions were used to improve and consolidate existing works. Most additional compulsory takings for roads and rail, for instance, were for improvements to the existing networks (such as widening and straightening roads and electrification of the railway) although some new networks such as the gas pipeline were also added. There was also some improvement to extend road networks to more isolated parts of the district.

Much less Māori land was taken overall during this period. The total area of Māori land taken in this district from 1928 to around 2009 was about 2,300 acres and the areas taken for each work also tended to be considerably smaller. The huge takings for the hospital and the scenic reserves were over. However, the areas of Māori land remaining were also considerably smaller, and the land that was retained was important not only to support communities but also to protect important remaining taonga and wāhi tapu. So little land remained that by the later-twentieth century, public works takings began to form the major source of
loss for what little Māori land was left. A major issue for this period was also the restoration of lands to former owners once the land was no longer required for the original public works purpose.

Changes in technology, such as the move from steam to diesel engines, and a greater range of motor cars, as well as public demand and changes in rural populations, meant that land disposals for works that were no longer required or needed to be sited elsewhere became much more common. Such changes were heightened by various local authority and central government restructurings, especially during the 1980s. As discussed, during most of the mid-to later-twentieth century, the previous offer-back principle had been abandoned. Taking agencies could still offer land to former owners at their discretion but were not required to. Instead, they were required to give priority to other possible public uses and after that the greatest efficiency for the agency. We have already referred to this issue with regard to some of the later disposals for compulsory land takings in cases already discussed, such as Ōngarue township and Tokanui hospital.

By the 1970s, concerns about land inflation, Māori protests, and perceptions of the broad powers and high-handed actions of public works taking agencies combined to raise public concerns about continued compulsory land takings and the extremely large profits that now appeared possible from land disposals. Governments were obliged to consider such concerns leading to the re-introduction of offer-back provisions in the Public Works Act 1981. Similar patterns are evident in this district and the selected cases discussed below help illustrate how they practically played out. At the same time, the practical experiences in this district also helped shape national developments with Māori land-rights campaigns in the 1970s. The Tribunal notes in particular the lengthy campaign led by Tuaiwa (Eva) Rickard for the return of Māori land originally taken under compulsory provisions for the Raglan aerodrome and then disposed of to the Raglan Golf Course in 1971.

20.5.1 Roads and railways takings, 1928–90
Roads and railways continued to be a significant source of compulsory takings of Te Rohe Pōtae Māori land after 1928. As was the case nationally, the pattern of taking was more for consolidation and improvement than establishing entirely new routes, and existing works continued to attract successive takings. Railways continued to be a major landowner and an influential contributor to district businesses. Railways also continued to seek takings for ‘additional lands’ and to use lands for other railway-related purposes, including for yards and sidings and, in the years to 1990, for railway housing. With the restructuring, downsizing, and privatisation of railways, no significant takings of Māori land for railway purposes appear to have been made in this inquiry district after 1990.\(^{642}\) Just over seven acres of Māori land were taken under compulsory provisions in 1944 for six houses at Mangapehi.\(^{643}\) A further approximately six acres of Māori land were taken under compulsory provisions for a new approach to Mōkau Station in 1986.

---

643. Document A20, p 162.
rest of numerous small takings chipping away at remaining Māori land, occurred mainly between 1976 and 1990, and were for realignments associated with the electrification of the main trunk line, and a new 1.3-kilometre Poro-o-tarao tunnel.\textsuperscript{644} The later takings, made under a mix of public works and railways compulsory measures, also commonly involved agreements for exchanges of land with adjacent landowners.\textsuperscript{645}

As with the district generally, the issue of disposal of land acquired for railway purposes but no longer required became a significant issue. We have already noted the later disposals of quarry lands originally taken from Māori land. Much other railway land disposals, such as sidings and yards no longer required, were disposed in the decades from the mid-1930s to 1981, when offer-backs to former owners were no longer legislatively required and agencies had to instead look first at other possible public uses for the land or consider costs and convenience, such as making offers to adjoining landowners or on the open market. For example, just over a quarter of an acre (0.27 acres) at Ōtorohanga Station was set aside for disposal in 1941 and transferred to the Postal Department in 1950. The land was previously gifted by Te Rohe Pōtae Māori as a show of goodwill for the railway. It is not certain whether that was the same station land leased out by the department from as early as 1889. The land was subsequently transferred into private ownership.\textsuperscript{646}

Around one quarter of an acre at Ōngarue, originally taken from Māori land in 1902, under 5 per cent provisions where no compensation was payable, for the main trunk line, was considered surplus and then reserved for use for public buildings in 1942. The land was then used for a post office site and was a telecom site at the time Cleaver and Sarich prepared their evidence for this inquiry.\textsuperscript{647} Other small areas of railways lands, originally taken from Māori land, also appear to have been disposed of, often to adjacent landowners, although it is difficult to be precise about actual numbers. However, that appears the case for some 1.3 acres of land from part of the Kakepuku block taken for the railway in 1886. The land became surplus after curve easement work and, without legal access, was sold to an adjoining landowner in May 1981 just prior to the Public Works Act 1981 coming into operation.\textsuperscript{648}

From the early 1980s, railways restructuring and corporatisation made the rapid sale of surplus railway lands a commercial imperative.\textsuperscript{649} The new Public Works Act 1981 and the later Railways Act 1990 re-instated offer-back requirements to former owners or their successors under set conditions. Limited evidence was provided to this inquiry of how such offer-backs were implemented in practice in this district. Some of the surplus railway lands sold off from the early 1980s included lands with

\begin{footnotesize}
\item[644] Document A20, p 227.
\item[645] Document A20, p 174.
\item[646] Document A20, p 179.
\item[647] Document A20, p 179. At the time that Cleaver and Sarichs’ research was carried out, the remainder of the block was in Telecom ownership.
\item[648] Document A20, p 179.
\item[649] Document A20, p 178.
\end{footnotesize}
around 53 former railway houses, mostly from the former railway settlement at Te Kūiti. It has not been possible to establish the extent to which these lands were originally taken from Māori land. As noted, the 1984 sale of at least five railway homes on Carroll Street, Te Kūiti, appears to have included former Māori land taken for railway purposes in 1911 and used for railway housing.

The operation of the new provisions can be understood to an extent from the figures provided for disposals. Of a total 80.6 hectares of railway land in this inquiry district sold or exchanged between 1982 and 2009, 53.6 hectares were transferred to other government departments or Crown entities, mainly the Departments of Conservation and Māori Affairs, and the Housing Corporation. Some of the lands were also transferred to the Office of Treaty Settlements, presumably for settlement purposes. It is difficult to establish how much land has been returned to former Māori landowners directly under public works provisions. It appears that some properties appear to have continued to be sold without triggering the offer-back for the reasons allowed, such as lack of legal access. Three sections of land totalling 2.52 hectares at Te Kawa were disposed of to adjacent property owners, for instance, in 1986.

The evidence provided to this inquiry indicates that while Railways officials were aware that taking mechanisms had been used for the main trunk railway in 1886, very little was recorded of the gifts made by Te Rohe Pōtae Māori. It appears possible that a 2005 return of some Ōtorohanga Station lands recorded as a transfer to ‘Trustees for Māori Reservation’ was an example of a return through the recent public works offer-back process. Takings of Māori land for roads also continued after 1928, also at a much lesser rate. The later takings were more commonly for the purpose of improving and maintaining the existing road network. Compulsory takings of Māori land for road purposes also tended to involve smaller areas of land, for purposes such as road realignments and improvements to allow for more traffic travelling at higher speeds. According to Mr Alexander, such road re-alignments likely account for a large proportion of the compulsory takings of Māori land made in this inquiry district in the middle decades of the twentieth century before a further spurt of takings in the 1960s, reflecting new highway development.

One later case of a compulsory taking of Māori land for a road is considered in more detail. This case partly illustrates the irony of some more isolated Māori communities still lacking road access even well after the hectic period of road development of the decades prior to 1928. The case also helps illustrate the continuing practical impacts of public works provisions for providing effective requirements.

---

651. See doc A20, pp 161, 275. The homes were in the Otanake Survey District, Te Kūiti Borough, sections 12, 16, 20, 22, and 23 of block XV.
653. Document A20, p 266.
for prior consultation, protections for lands of special significance for Māori, such as those containing taonga and wāhi tapu, and for adequate monitoring of local authority takings.

Morrison Road was developed to provide improved access to one of the more isolated areas around Kāwhia Harbour, where some landowners, including Māori, still lacked good road access. The Māori land taken for the road in 1965 was taken under general public works provisions, as the 5 per cent rule was by then long-abolished. Māori owners facing possible compulsory public works takings still struggled, however, with what had become by then a largely ingrained view of taking authorities that it was too difficult to contact owners of Māori land. The introduction of land development schemes from the 1930s finally offered Māori owners new opportunities to develop their lands for farming along with the necessary infrastructure including necessary roads. The consultation necessary for land development also appeared to offer more opportunity for Māori owners to retain the balance they wanted between the potential benefits of road access and their desire to protect significant wāhi tapu. That was especially important with the immense significance and ancestral connections Māori communities maintained with lands around Kāwhia Harbour.

The Ngāti Te Wehi, Ngāti Patupo, and Ngāti Mahuta claimants in this case alleged the compulsory taking of Māori land for Morrison Road and the subsequent building of the road was undertaken without adequate consultation or compensation and the final route taken to build the road damaged their taonga. The taking and damage of taonga as a result caused severe distress and prejudice to the claimants and their tūpuna. The Ngāti Patupo claimants alleged they never received the compensation awarded for their land and the final route for the road cut directly through a corner of their block, making it more difficult for the owners to utilise their remaining land.

The Crown replied that Morrison Road was built in response to requests by local farmer David Morrison, but also the local tribal committee and local Māori

---

657. The Aotea South block was awarded to claimants from Ngāti Patupo, Ngāti Te Wehi, and Ngāti Mahuta in May 1887: doc A60, pp 470, 475. The claims of Ngāti Te Wehi are brought by Nancy Awhitu and Rose Pairama (Wai 1448, statement 1.2.44, submission 3.4.237), Pearl Comerford (Wai 1495, statement 1.2.44, submission 3.4.237), Petunia Mahara, Ronald Miki Apiti, Philip Mahara, and Boss Mahara (Wai 1501, statement 1.2.44, submission 3.4.237), Steve Mahara and Raymond Mahara (Wai 1502, statement 1.2.44, submission 3.4.237), Marge Apiti (Wai 1592, statement 1.2.44, submission 3.4.237), Jane Shadrock (Wai 1804, statement 1.2.44, submission 3.4.237), Isobel Kerepa (Wai 1900, statement 1.2.44, submission 3.4.237), John Mahara (Wai 2126, statement 1.2.44, submission 3.4.237), Karoha Moke and Tom Herbert (Wai 2135, statement 1.2.44, submission 3.4.237), Lorna Brennan and Bob Pairama (Wai 2137, statement 1.2.44, submission 3.4.237), Jack Mahara (Wai 2183, statement 1.2.44, submission 3.4.237), and Bob Reti (Wai 2208, statement 1.2.41, submission 3.4.237). Ngāti Te Wēhi say the Aotea South blocks are within their tribal rohe and many wahi tapu significant to Ngāti Te Wēhi are located there. The Ngāti Patupō-Aotea claim (Wai 2134, statement 1.2.109, submission 3.4.214) is brought by Marie Paul for Ngāti Patupō-Aotea. The Ngāti Patupō claim (Wai 1438, statement 1.2.101, submission 3.4.183) is brought by Allan RuBay for himself and all descendents of Ngāti Patupō.


landowners, and that the interests of Māori living on the blocks were another key consideration in the Crown supporting the road’s construction.\textsuperscript{660} The road was clearly of benefit to some local Māori: it provided access to Māori homes and allowed Māori children living on neighbouring lands to access the school bus without traversing the beach. The Crown submitted that, otherwise, there is insufficient evidence and detailed research for this matter.\textsuperscript{661} The Crown further submitted that there was an agreement with owners about sharing the costs of building the road with no compensation for the land because of these benefits (with the exception of one owner, who did not benefit from the road to the same extent as the others).\textsuperscript{662} There is also no documentary evidence from the time showing that Māori were concerned the route would affect wāhi tapu. It was known that part of the road would go through an urupā and papakāinga, but the protections requiring the Governor-General’s consent in such matters was followed. The areas of urupā and papakāinga were on land farmed by Mr Moke, who agreed to accept

\begin{itemize}
  \item \textsuperscript{660} Submission 3.4.310, p 20.
  \item \textsuperscript{661} Submission 3.4.310, pp 19–20.
  \item \textsuperscript{662} Submission 3.4.310, pp 20–23.
\end{itemize}
compensation because he already had road access and would not benefit as much as the others. The Crown contended that at least some Māori had requested a road and agreed to the construction, presumably aware of the route it would take. 665

The evidence concerning early efforts and agreements over what became Morrison Road is unclear and conflicting. It was agreed before this inquiry that the road was strongly supported and lobbied for by Mr Morrison, and that the road would provide access to his property. Mr Morrison was also able to enlist the strong support of the local county council. He appeared relaxed about what precise route the road would take through Māori properties as long as it continued to his land. 664 It is less clear about how much the road was agreed and supported by local Māori landowners whose lands the road would traverse on the way to Mr Morrison’s property. 665

It does seem as though at least some local Māori, including possibly some of the landowners affected, were likely to be open to the construction of a road, in principle. There is evidence that already by the time a possible road was recorded as being discussed, there was some concern amongst local Māori that their children had to cross mudflats to catch the local school bus. The local Māori tribal committee had apparently already raised concerns with the local county council, asking for a timber causeway to be erected across the mudflats for the children. The council had considered the proposal too dangerous for small children but had done nothing more. 666 Mr Morrison argued that a road would solve that issue and local Māori Affairs department officials appeared to agree. 667 Once the road was built, it also seems apparent that the local school bus and postal delivery route were then extended along what became Morrison Road. 668 It is possible that some local Māori landowners supported that view but there is no specific record of this.

It is also possible that the local Māori landowners would have agreed that a road would enable them to better participate in developing their farms with better road access if they had sufficient funds to either invest in farm development or roading (although it is known that one of the owners, Mr Moke, already had road access). The matter was further complicated from being entangled in proposals for a proposed Māori Affairs department Ōkapu land development scheme. It is also possible that any local Māori support was on the basis of likely support for farm development from the scheme and the likely consultation that would be required beforehand to include their lands and any road to access the scheme. 669

The evidence indicates that local Māori Affairs department officials were already considering the possibility of a land development scheme in the area in the 1950s and were likely talking with owners over that. The suggestions around

667. Document P14(a), app E, p. 11.
669. Document P14(a), app E, p. 10. For discussion of the Okapu Development Scheme, see section 17.3.4.2.3.
a road also appear to have become entangled in that land development context, with Mr Morrison, the local county council, and possibly some Māori owners all considering a road based on assumptions of land development. It appears that the local council would also have been more supportive of contributing funding to a road on the basis that Māori Affairs would also contribute as a part of a land development scheme. Māori Affairs officials still needed to gain the consent of most owners to have their lands in a scheme but once that was obtained the department gained considerable powers over the land, partly to overcome the difficulties of multiple land title. Nevertheless, the department was expected to take account of owner concerns with the land and to pay some farm development costs upfront, including a likely contribution to the road costs, all of which could be very attractive to owners.  

It is possible that some Māori owners would have learned of the road proposal as a result of those kinds of discussions, but it appears very likely that such awareness would have been in the context of a proposed Okapu Development Scheme. It seems, for example, that, although Mr Moke had road access, he agreed to a possible road in order to assist the other owners in obtaining land development scheme assistance, but on the understanding that he would receive fencing and compensation.

By February 1957, the prospect of the development scheme for the lands had been delayed. The scheme had been given a low priority, plans were placed on hold, and funding was prioritised elsewhere. Māori Affairs officials accordingly advised Mr Morrison of the policy change and advised he could try for a local council road subsidy from the Otorohanga County Council instead. Mr Morrison appears to have held out hopes the scheme was only delayed and continued to act on the basis that Māori Affairs would nevertheless continue to support the road. He appears to have persuaded the local council to take the same view, complicating matters still further.

A further site visit about the road took place in August 1957. The records of that visit indicate that Mr Morrison, the county council engineer, council representatives, a local Māori Affairs official, Mr Carroll, and some unnamed Māori owners attended. It is not entirely clear why Mr Carroll was still attending but it seems possible he was keen to protect land development prospects should the scheme be renewed. It is clear that the discussion was about a ‘tentative’ proposal and largely to explore possible sources of funding for the road. In his notes of the meeting, the county engineer describes a ‘tentative’ agreement concerning the road through Māori properties in Aotea South block and giving access to Mr Morrison’s property. Preliminary cost estimates and possible subsidies were discussed. These included a likely cost to build the road of some £7,000. It was proposed that the local county contribution would likely be £1,400 while Mr Morrison would

---

contribute £700 and the Māori owners £700. The land would be given free.  

This was a rough cost estimate as might be expected of an engineer. He made no attempt to either identify the actual Māori owners or their views or who amongst them had attended. It is not known how the assumption was made that the land would be given ‘free’.

The engineer’s note is tentative because while the possible road route might have been discussed, he would have known that it was too early to be precise. Similarly, the discussion had to be tentative, because while the usual council subsidy for the road could be assumed, a final county approval would still be required.

It appears that Mr Morrison also pressed Mr Carroll to agree to a written ‘draft’ agreement about the road. Whatever Mr Morrison understood, Mr Carroll had no legal standing to commit the Māori owners to any such agreement. Mr Carroll later confirmed that, in his view, the undated draft document was never intended ‘in its existing form to be held binding on any of the parties concerned.’ Presumably, at the time, Mr Carroll’s interest was in agreeing whether a land scheme development could possibly provide for a road should the scheme go ahead and the Māori owners agreed. The draft noted a possible route for the road, through a number of Aotea blocks in Māori land title, including through Mr R Moke’s land (Aotea South 382) and across the top end of the inlet ending at Mr Morrison’s boundary. The note possibly reflected Mr Carroll’s interest in the road, should the lands be included in the land development scheme, but that is not clear. The draft similarly noted that the proposed funding for the road would likely include a county subsidy, but this time the Māori owners’ contribution was to give the land free while the Department of Māori Affairs and Mr D L Morrison were to contribute £700 each to cover the unsubsidised part of the road.

The engineer notes and the draft ‘agreement’ both appear to reflect the focus of the officials involved, which is not surprising, but neither agreement could be considered legally binding. Neither made any attempt to identify or record the views of the owners of the Māori land to be affected or how those views might change should a land development scheme not go ahead as now seemed more likely. It is possible that at least some owners were aware of the discussions and some may have supported the proposals but there is no record of that even though their property rights were involved.

From that time, Mr Morrison referred to the ‘agreements’ as evidence of widespread support for his continued lobbying for the road. That lobbying also appears to have continued with strong support from the local country council, presumably on the basis that the road funding required would be forthcoming. The lobbying did cause the Minister to ask officials to inquire further as to the actual level of claimed Māori owner support for the road (including any conditions, such as

---

675. Document p14(a), app s, p 27.
676. This was likely the same draft agreement referred to in a June 1959 letter by a solicitor acting for David Morrison as having ‘been prepared by the [county engineer] for the Council at a meeting on the spot, some eighteen months ago’: doc p14(a), app t, p 28.
fencing, the owners wanted if such a road was to be built), whether they expected compensation for the land, and to what extent the proposed road would provide access to Māori homes.\textsuperscript{677}

There is little evidence of those inquiries. It appears officials relied to a large extent on information already supplied by Mr Morrison and the county council concerning the road, including the claimed agreements made in the context of departmental assistance through the Ōkapu Development scheme.\textsuperscript{678} There is no evidence of any official attempt to contact the owners direct for their views, especially in the absence of a land development scheme. Officials estimated that, on the basis of the agreement and on the proviso that the land development scheme would go ahead, the proposed road route would need to be taken along the southern boundary of the 3C1A block at a distance of no more than 300 yards from the Māori homes on that block.\textsuperscript{679} Based on that advice, the Minister agreed to commit the department to funding a £700 contribution towards the road's cost, providing that the Māori owners first agreed to their land being brought within the land development scheme.\textsuperscript{680}

No evidence was provided of the Māori owners ever being asked or agreeing to have their lands included in the land development scheme as required. The Otorohanga County Council and Mr Morrison both appear to have believed that was a formality that was not their responsibility and so they could go ahead with claiming ministerial support for the road. Further, public works provisions enabled the council to go ahead with building an approved road ahead of any formal taking. The few monitoring requirements for such actions made little difference once it was assumed ministerial approval was obtained.

The evidence indicates that Māori owners of the land affected by the road were still not properly identified or directly consulted about the road, whatever they may have heard about it. Nor is it clear that they were included in more detailed decisions over changes to a possible road route as a result of more detailed preparation.\textsuperscript{681} They had no opportunity, therefore, to consult properly over protections for taonga or wāhi tapu that could be damaged in building the road, even if they supported it in principle. Claimants also suggested to this inquiry that the route was changed to avoid lands that had since been transferred into general title to ensure that only free Māori land was included.\textsuperscript{682} The Tribunal did not receive evidence on that issue.

There appears little doubt that the area in the vicinity of the road contained highly significant wāhi tapu and taonga for local Māori communities. This included sites with very close associations with important Tainui tūpuna, the founding Aotea waka, and other sites of cultural importance as discussed in our
earlier outline of the tribal landscape of this inquiry district.\(^\text{683}\) The evidence is also very clear that there were urupā and papakāinga in the vicinity as was acknowledged by officials of the time. The response was to follow the public works protections provided of obtaining the consent of the Governor-General. That was formally done although it appears without reference to the owners and nor was this required. The engineer preparing for the formal taking in October 1965 noted that the road passed through two areas designated as urupā and papakāinga and that two fenced-off graves were visible approximately 80 feet (24 metres) north of the road reserve by the urupā. Nonetheless, formal Governor consent was obtained.\(^\text{684}\)

The claimants described their grief and outrage at the lack of consultation, the minimal and perfunctory implementation of protections, and the resulting damage to their wāhi tapu and taonga as a result of the road building. Claimants described to us accounts of protests by their whānau members against the road’s construction, much of those protests still being within living memory. We were told that Māori had already decided that they would oppose all road projects in their area that had not been not properly consulted about with them and carried out without their consent. That was the only way to ensure protection of the many important wāhi tapu of the area. Ngāti Te Wehi claimant Thomas Herbert told us, for instance, that they feared that the many wāhi tapu in the area might be damaged if roads were built without their permission.\(^\text{685}\)

Claimants told us that the building of Morrison Road confirmed their fears. They were concerned, Pita Te Ngaru told us, that the route chosen for Morrison Road would cut directly through important wāhi tapu.\(^\text{686}\) Raymond Mahara told us that the road building deprived his tūpuna of their ‘sacred urupa, papakainga and wahi tapu’.\(^\text{687}\) We were told of multiple eye-witness accounts of the unearthing of bones at several points during the road’s construction. According to claimant Trevor Malcolmson, the treatment of kōiwi during the building of the road was also ‘a huge slight on the mana of the whanau’ and showed ‘the lack of respect held towards Māori in the area’.\(^\text{688}\)

Claimants told us of their oral histories of the protests of that time. Raymond Mahara told us how, when road workers approached some of the blocks (3B2 and 3D) where the important wāhi tapu of the Waitetuna urupā, Wharenui Marae, and the papakāinga of Whatihua were located, five kuia of Ngāti Te Wehi met them: Ru Apiti, Nohinohi Heu, Rihi Te Ngaru, Polly Williams, and Pareturangi Tukuri. In the case of Aotea South 3C1A block, Ngāti Patupō–Aotea claimants describe how the kuia, Nohinohi who was then 100 years old, sat in front of the bulldozer. She lived in a kāuta (ponga house) on the top of Te Maania block and was known as ‘a keeper of Patupō history and tikanga’ as well as a staunch Kingitanga


\(^{684}\) Document A104(b)(1), p 68.


\(^{687}\) Document N26, p 1.

Thomas Herbert recalled his understanding that Nohinohi opposed the road there because she ‘didn’t want the road to cut across her puna paru’. As Mr Herbert explained, ‘I knew where that taonga was and it was used for dying her flax black.’ Further evidence of protests was provided by Jack Cunningham. He worked as a trainee for the Lands and Survey Department when the route for Morrison Road was surveyed:

When I went there, Lands and Survey were coming here to work at Aotea to construct the road there, but the road had not yet been commenced at that stage, only the surveyors had come to do their work. I was only young. My boss, the Chief Surveyor, could not speak Māori. When we arrived at the landing, these grand dames were sitting there. They had pulled out the pipes, they had pulled out the pegs, the marker pegs and all the equipment of the surveyors’ instruments that they had laid by their side and then my boss turned to me. I was only a young person, 16 years old perhaps. He said to me, ‘Go and talk to those people or that we will call the people to move them because they are breaking the law.’ So I went to them and this old lady looked at me. She knew who I was straight away. She said to me, ‘Don’t you come near me, I’ll hit you.’ I looked at her and I knew I will cease this work straight away. I better go back to Hamilton. If I go closer, they will murder me. My elders, my mother would murder me because those were her aunties, her elders.

The efforts of the kuia to stop the road going ahead were ultimately unsuccessful. As Raymond Mahara told us, ‘Our old kuia had no choice but to move away. However, they sat there and witnessed the whole thing, crying, powerless to do anything.’

689. Submission 3.4.214, p 6.
691. Transcript 4.1.12, pp 324–325.
Thomas Herbert and Trevor Malcolmson explained that there were a range of sites on the Aotea South and Okapu blocks where kōiwi have been found, including some near the wāhi tapu that the road was built across. Thomas Herbert’s father was the foreman employed by the county council for the road’s construction. He was present when John Mahara’s father, who was a machine operator, dug up human remains as the road was being built. John Mahara maintains that his tūpuna informed the council of the wāhi tapu which would be impacted by the road’s construction, but they ‘put the road through regardless’. John Mahara spoke to us of his father’s experience discovering finding bones while working on the road:

While he was excavating the land for the road, he dug up a kōiwi. He immediately stopped and put those kōiwi in a bag and brought it to Okapu Marae. My aunties Nohinohi and Turu Apiti received the kōiwi at the marae. My other Auntie Kuini asked her grandchild to go back to the house to get a suitcase. The kōiwi were then put in the suitcase and they had a tangi. It was then carried to the cemetery at the back of the marae and they buried it there. I was there when all this happened. I overheard from my mum that there were more human bones discovered and put in a different cemetery. I think this was the kōiwi that Thomas Herbert’s father discovered. The construction continued despite having discovered these kōiwi. These were waahi tapu.

Interviewed in 2011, Elizabeth Mahara of Ngāti Te Wehi also recalls hearing her father-in-law speak of having dug up bones during the construction of the road:

And my husband’s father dug quite a few bones out when they put the road through. Cause he was one of them that was on the digger and putting the road through that. And they picked up quite a few kōiwi. He was scraping the bank away and he was saying that there was a man and a woman together . . . they got all the bones, put it in a little suitcase, and they brought it back to the marae . . . and they had [a] tangi for it. And then they took it up to the urupa and buried it . . . he really got hurt when he, when he sliced the bank down and it came straight across. Husband and wife together, and, and sort of standing straight up in the bank . . . they were holding hands . . . my tupunas picked up quite a few old kōiwi and even in the old well, there was some kōiwi as well, but they had to take that kōiwi out and cut through that well to put the road through . . .

The building of Morrison Road was completed by December 1961. The county council then prepared to formally take the land from December 1962. The notice

of intention to take the road was issued in December 1964. As per public works provisions, the Māori Affairs Department acted for the Māori owners of the land, who made no formal objection to the taking. Some eight acres of Māori land was formally proclaimed taken from Aotea blocks for the road in 1965.\(^\text{700}\)

Shortly afterwards, in 1966, several Māori owners contacted the Māori Affairs Department to ask about the payment of compensation for the land taken. This was apparently to encourage the department to move on with the making the application for compensation as required. In preparing the application, officials became aware of the expectation that Māori Affairs would contribute to the costs of the road. It was only then, it appears, that officials began to inquire more closely into the ‘agreement’ claimed as authorising the taking. That included the council’s claim that, in terms of compensation to be paid, Māori owners had agreed to give their lands for free, and that Māori owners had also supported the road.\(^\text{701}\) Officials found that the claimed ‘agreement’ committing the department consisted of no more than the undated ‘draft’ signed between Mr Carroll and Mr Morrison in 1957. Further, considerable time had elapsed between the claimed ‘agreement’ of 1957 and the formal taking of the land in December 1965.\(^\text{702}\) During all that time there was no record of any arrangements made directly with the Māori owners, and as the Minister noted, such ‘firm arrangements should have been made before the road was constructed.’\(^\text{703}\)

Officials advised that in such circumstances the best option appeared to be to go ahead with the application for compensation to the court so the award could be determined in the usual manner.\(^\text{704}\) However, on further consideration, the Deputy Secretary for Māori Affairs decided that, technically, the ministerial memo of 30 August 1960 (approving the funding for the road, even with the qualification that the owners would need to agree to have their land in the development scheme) was still sufficient authority for the road to have gone ahead and that the land would be free and no compensation was required.\(^\text{705}\) As owners of Māori land were legally required by public works provisions to rely entirely on applications for compensation being made for them, that was the end of matter.

\textbf{20.5.2 Ōtorohanga flood protection works, 1965–74}

The Ōtorohanga native township, located close to the Waipā River, was known to be flood-prone, a vulnerability that was made worse by land clearance and other settlement activity.\(^\text{706}\) As part of national flood control schemes, the Waikato Valley Authority was established in 1956 to manage flood control in the Waikato and Waipā River catchments. The authority was made up of local and central

---

\(^{700}\) Document A104(b)(1), p 69; doc N63, pp 3415–3416; doc A63, p 158.

\(^{701}\) Document P14(a), app CC, p 41.

\(^{702}\) Document P14(a), app CC, p 41.

\(^{703}\) Document P14(a), app CC, p 39.

\(^{704}\) Document P14(a), app CC, p 41.

\(^{705}\) Document N26(a), p 5.

\(^{706}\) Document A62 (Basset and Kay), p 111.
government representatives with no direct Māori representation. By that time, flood protection had become a public work for which compulsory land taking provisions were available.

The claimants alleged that they were not consulted on the flood protection scheme and that they lost Māori homes and valuable wāhi tapu as a result of the flood protection works carried out at Ōtorohanga in the 1960s and 1970s. They said that the Crown failed to exercise sufficient care in providing notice of the works and that it has not apologised for damage caused to their sacred sites and homes due to the works.

In early 1958, prolonged heavy rain resulted in widespread flooding of the Ōtorohanga and Te Kūiti regions, severely affecting the Ōtorohanga township. The Waikato Valley Authority responded with recommendations for major flood protection works at Ōtorohanga that included willow clearance, diverting the Waipā River into a more direct route through the southern end of the township, and building stop banks along the new river course. The cost of the flood works was carried jointly by local and central government. It appears that there was also significant local resident support for the works and willow clearance work began in 1961 along existing river banks.

Works diverting the Waipā River and building stop banks along the new course were then undertaken during the early 1960s. Those works included the use of the Public Works Act 1928 and amendments to enable entry on private land for the works and compulsory taking of private land, where required. Compulsory takings of private land were made for the works between 1965 and 1974, in some cases after the work was completed. The compulsory land takings for the works included just over 30 acres of Māori land. A number of Māori owners were also required to move from homes along the banks of the Waipā River, in some cases with the relocation of houses or an exchange for alternative dwellings.

It appears that the general desire to effect works to protect against flooding were generally known about, although there was no direct consultation with Māori. The local council appears to have taken a lead role in takings, with assistance from the Ministry of Works. From 1962, the Māori Trustee was required to act for the
owners over compensation. After protracted negotiations between the Ministry of Works and the Māori Trustee, compensation was settled at $2,500 in 1975, for the land taken from the Otorohanga 1F4A and Orahiri 1 no 1 blocks for river severance and river channel.\(^{716}\)

The taking authorities appear to have followed the public works provisions for having special regard to takings of land containing buildings and burial sites. That included reaching agreements over some of the houses along the river for relocations and exchanges of dwellings. It also appears that some efforts were taken with works to allow for the fenced parts of two urupā affected by the works. However, for claimants, the protections were not nearly sufficient for all sites of importance along such an important waterway and nor did the assumptions, based largely on commercial value, allow for the ‘sentimental’ and historic value of some of the houses involved or the environmental damage to the health of the river and therefore of the local communities of the river.\(^{717}\)

Some of the land taken included an old homestead on Orahiri 1 sections 17 and 17B near the confluence of the Waipā River and Mangawhero Stream, which had ‘great sentimental value’ to local Māori as the former home of the chief Wahanui.\(^{718}\) The Rangitaawa family were direct descendants of Wahanui and lived in the old homestead. Claimants explained at our inquiry how important Wahanui and the homestead were in the history of Te Rohe Pōtae negotiations and in the understandings of the close links between their tūpuna and the river.\(^{719}\)

A number of families with close connections to Wahanui and the old homestead also lived on the site and were obliged to relocate as a result of the river works. Claimant John Henry explained how his whānau were obliged to relocate and felt the land exchanges were made with insufficient opportunity to participate in the decisions or have their concerns heard. His father, Haupokia Te Tata, was left with an exchange that saw his original land on Orahiri 1 section 17B, containing two houses and six acres, exchanged for Orahiri section 17B1, containing one acre and one house. The house was later found to be flood damaged and had to be demolished.\(^{720}\) Five other family homes in the vicinity were affected by the taking of the Māori land, as well as other houses associated with the nearby mill.\(^{721}\)

Two urupā were directly affected by the flood protection works. One of the urupā, Kaariki, is located on a hill south of the Waipā River and east of Ōtorohanga township, on Ohariri 1 section 20.\(^{722}\) Local Māori had close whānau members buried at Kaariki.\(^{723}\) A decision was made to use soil from the hill for building the stop banks, but without consultation about the possible extent of the urupā.

It appears that some recent fencing over part of the area was taken as a guide by

\(^{716}\) Document A63, pp 275–276.
\(^{717}\) Submission 3.4.140, p 1; doc O16, p 14; submission 3.4.160, pp 1, 23.
\(^{718}\) Document O16, p 15.
\(^{719}\) Document O4, p 3.
\(^{720}\) Document O16, p 15; submission 3.4.160, p 25.
\(^{721}\) Document O16, p 16.
\(^{723}\) Document O16, p 9.
Map 20.7: Public works takings for the Ōtorohanga flood protection works

Old river bed and Maori land

Food protection scheme affect on Maori land
contractors until changes in the soil colour and texture caused the contractors to alert Māori.\textsuperscript{724} Claimants felt their efforts to inform the council that excavations were extending into the urupā were ignored, as were their pleas to have the council stop the excavations.\textsuperscript{725}

The second urupā affected was known as Rangituatahi and was located on the two-acre Orahiri Y4 block.\textsuperscript{726} During 1963–64, Rangituatahi was formally declared a Māori reserve in an effort to better protect it; Māori Land Court records indicate between 20 and 30 graves marked by crosses on the block, dating from 1921 onwards.\textsuperscript{727} As with Kaariki, existing fencing on part of the block was assumed to be an indication for contractors, despite the whole block being set aside as a burial ground. As a result, works encroached into the burial reserve.\textsuperscript{728} The works took place prior to any formal taking and it was some three years later that the Otorohanga Borough Council formally began taking proceedings. The council appears to have followed the protections regarding burial grounds by first seeking written consent from the owners. That consent was obtained from two of the three trustees for the Rangituatahi urupā in 1968, allowing just under 20 perches of the urupā reserve to be taken.\textsuperscript{729} Claimants told this inquiry that there was little point by then in the trustees refusing consent as the works had already been carried out.\textsuperscript{730} The council formally notified the intention to take the land in March 1970 and the taking was proclaimed later that year.\textsuperscript{731}

Claimants told this inquiry of further serious impacts from the flood protection works for sites of significance of great importance to them that were not recognised by any public works provisions. That included for wāhi tapu of significant ancestral and historic importance to them, as well as for their ways of protecting the environmental health of the river. The Orahiri blocks at the southern end of the Ōtorohanga township, for example, were located in the vicinity of Huipūtea, an important site named after a 300-year-old kahikatea tree that stands on the site and commemorates an historic battle between invading Ngāpuhi warriors and the combined forces of Ngāti Maniapoto, Ngāti Matakorere, and Waikato. The site was remembered for the courageous actions of captured Ngāti Maniapoto women, who escaped by diving into the river from a large sandstone rock at the juncture of the Waipā and Mangawhero Rivers. Their actions were instrumental in the later defeat of the Ngāpuhi warriors. Huipūtea and the large sandstone rock nearby are both considered tapu by local communities because of their important historical connections and in respect of the heavy loss of life suffered by the Ngāpuhi

\textsuperscript{724} Document O16, p 10; doc A76, p 215.
\textsuperscript{725} Document O16, p 10.
\textsuperscript{726} Document A63, p 264.
\textsuperscript{727} Document A76, p 211.
\textsuperscript{728} Document A63(a), p 3450.
\textsuperscript{729} Document A63, p 264.
\textsuperscript{730} Document A63, p 264.
\textsuperscript{731} Document A63, pp 264–266.
warriors.732 Claimants were devastated to find the stop bank works resulted in the loss of the sandstone rock, which was either buried or submerged by the works.733

The works also caused serious concerns for ways of measuring and respecting the health of the rivers that surround Ōtorohanga, most especially for the important places for the taniwha who act to protect and provide a measure of the health of the rivers and that of the river communities.734 Claimant Tom Roa spoke of the use of the healing powers of waters at important river locations, or wāhi mana, on the Waipā River, including what was considered as the lair of the taniwha, Waiwaia. He spoke of his first-hand experience, as a sickly, new-born baby, when his uncle Te Wehi Tauā Kite blessed him and his mother with water from such a wāhi mana, on the Waipā River. Family history considered his health improved from that time.735 Claimants were distressed to find that, without reasonable consultation, or requirement to consider their concerns, several important wāhi tapu associated with Waiwaia were destroyed by the flood protection works and the building of the new stop bank.736 Such destruction has caused immense grief to claimants as, in their view, the works had unheedingly caused serious harm to their ‘guardian spirit of the river’ and loss of protection and health of their communities as a result.737

20.5.3 Te Kūiti and Raglan aerodromes

Our final cases concern takings of Māori land for two aerodromes at Te Kūiti and Raglan. A major issue surrounding these takings was not only the taking of lands for a new, additional purpose, but also how lands taken under the compulsory provisions of the Act could or would be returned if they were no longer required for the original work.

Māori land was taken at Te Kumi for the Te Kūiti Aerodrome in 1936. The lands taken are directly adjacent to State Highway 3 at Te Kumi, approximately five kilometres north of Te Kūiti township. The aerodrome site, easily visible to passing motorists travelling in or out of Te Kūiti, is bordered to the east by the Mangaokewa Stream, and to the south by Te Kumi Station Road. Today it is the site of the Te Kūiti Aerodrome, currently reserved as an aerodrome and owned by the Waitomo District Council.

The Ngāti Kinohaku/Rangiora Trust and Joseph whānau claimants, supported by the Ngāti Peehi and Ngāti Te Kanawa claimants, alleged that the taking of the Te Kūiti Aerodrome lands in 1936 inflicted ‘a gross injustice’738 and has been a

732. Document O16, p 8; doc O17(a) (Roa), p 3; transcript 4.1.6.
736. Submission 3.3.719(a), p 2.
738. Transcript 4.1.21, p 148.
long-standing grievance. It has severed their connections with their land and the adjacent Mangaokewa River.\footnote{739}

Māori land at Te Kōpua on the sandspit opposite Raglan township was taken for an emergency landing airfield (what later became Raglan aerodrome) in 1941 under special public works provisions provided for defence purposes. Civil Aviation later disposed of the land, transferring it to the Raglan County Council who partly leased it to a local golf club. After a lengthy struggle with Te Rohe Pōtae Māori, a large part of the land was returned with controversial conditions in 1979.

We received a large number of claims relating to the Raglan aerodrome.\footnote{740} The Crown's 1941 taking of Māori land at Te Kōpua, claimants say, led to the destruction of Miria Te Kakara, the loss of homes, their urupā, their cultivations and, eventually, the dislocation of an entire Māori community. The Crown's actions at Te Kōpua, the claimants argue, 'rendered many people landless, without homes and without a Marae to hold tangi or to practice their tikanga'.\footnote{741}

While the Crown did eventually return part of the aerodrome to its former Māori owners, the claimants believe that the Crown should have returned the land as soon as it was no longer required for defence purposes, at the end of the Second World War.\footnote{742} Moreover, in the claimants' view, the Crown's adoption of a 'fixed' point of view during the negotiations caused the delays over the land's return and needlessly subjected the former owners to an '11 year ordeal', resulting in great harm not only to themselves, but to the Raglan community at large.\footnote{743} The claimants finally emphasised that the return was incomplete, and not all of the land taken in 1941 has been returned.\footnote{744}

\footnote{739. The Ngāti Kinohaku claimants (Wai 1190, statement 1.2.11, submission 3.4.138) are descendants of the original owners of the aerodrome lands, including Kiore Pakore: statement 1.2.11, p.1. The Joseph whānau (Wai 1361) are the descendants of Whitinui Hohepa, another of the original owners of the Te Kumi 9 block: statement 1.2.95, p.6. Ngāti Peehi/Ngāti Te Kanawa (Wai 1606, statement 1.2.81) have interests in Te Kūiti Aerodrome lands and support the Joseph claimants: submission 3.4.169(a), pp7–8.}

\footnote{740. Haami Whakatari Kereopa and Vivian Te Urunga Morell Kawharu's claim (Wai 125, statement 1.1.6) is on behalf of 12 Tainui hapū of Whāingaroa, also known as Tainui o Tainui ki Whāingaroa or Tainui a Whiro. The name Tainui a Whiro was originally coined by Pōtatau Te Wherowhero, but was adopted by land campaigner Tuaiva Hautai (Eva) Rickard in the 1970s to 'unify the people and to defend and fight for the lands at Te Kōpua'. Claimants count the Te Kōpua and Papahua lands taken for the Raglan Aerodrome as part of their rohe where they have maintained ahi kā: submission 3.4.210, pp 9–10.}

\footnote{741. Submission 3.4.210, p 67.}

\footnote{742. Submission 3.4.139, p 19.}

\footnote{743. Submission 3.4.210, pp 68–70.}

\footnote{744. Submission 3.4.139, pp 19–20.}
The Tainui hapu o Tainui Waka claimants alleged the taking led to the destruction of their meeting house, Miria Te Kakara, their marae buildings, homes, and the loss of urupā and cultivations, eventually leading to the dislocation of an entire Māori community. The taking ‘rendered many people landless, without homes and without a Marae to hold tangi or to practice their tikanga.’ 

Claimants alleged the Crown failed to fulfil its promises to the Māori owners after the war, including to rebuild Miria Te Kakara, and to protect the urupā on the site resulting in loss or damage to graves. 

Claimants acknowledged that the Crown eventually returned part of the aerodrome to its former Māori owners. However, that was only done after a lengthy struggle when the land should have been returned as soon as it was no longer required for defence purposes, at the end of the Second World War.

Moreover, the Crown’s approach to the negotiations caused the delays over the land’s return and needlessly subjected the former owners to an ‘11 year ordeal’, resulting in great harm not only to themselves, but to the Raglan community at large. Additionally, not all of the land taken in 1941 has been returned.

After the war, the claimants say, the Crown failed to fulfil its promises to the Māori owners. Miria Te Kakara was not rebuilt, and the Crown’s failure to protect the urupā on the site led to many graves being lost or damaged.

The Crown acknowledged that the Te Kūiti Aerodrome acquisition was unusual for a public works acquisition in that the administrator of the public work was a private entity rather than the Crown. Nonetheless, the airport was acquired for the legitimate public purpose of an emergency landing ground, and complied with the public works legislation of the time. The Crown argued the available evidence does not support the claimants’ contention that Mr Pakoro’s land was acquired as the result of a ‘calculated manipulation by private party interests who stood to gain additional land to use for private purposes, with assistance and endorsement of two Crown agencies’. Instead, there were clear public interest considerations prompting the development of the aerodrome and subsequent acquisition of Mr Pakoro’s land. The Crown considered the aerodrome to be a strategic development as one of several regional aerodromes and emergency landing grounds. That is supported by the evidence that the Crown’s primary interest in the aerodrome was as an emergency landing ground rather than as a local or district airfield for general use.

The Crown argued there is also insufficient evidence to support a contention that Mr Pakoro opposed the acquisition of his land for the aerodrome. He was already leasing land for an aerodrome. Instead, Mr Pakoro’s key complaint was the
form of compensation – he wanted an exchange of land rather than the monetary compensation that was paid. The Crown contends that the amount of land taken was not excessive (17 acres 6 perches) but was only the amount necessary, and actually in use, for the aerodrome, and that compensation was paid to Mr Pakoro (or at least, to the Waikato-Maniapoto District Māori Land Board).

The Crown made no submissions on the claims relating to the Raglan Aerodrome.

---

754. Submission 3.4.310(e), pp 139–141.
755. Submission 3.4.310(e), pp 138, 142.
The lands now occupied by the Te Kūiti Aerodrome were formerly the site of a racecourse. In Te Rohe Pōtae, Māori race meetings had been held from at least the 1870s under the patronage of King Tāwhiao. The first recorded use of Te Kumi land for a racecourse is 1906. Shortly afterwards, in 1908, the two Māori owners of the land, Kiore Pakoro and Whitinui Hohepa, agreed to lease 17 acres of their Te Kumi 9 block to trustees of the Te Kūiti Racing Club for a term of 42 years. The lease allowed the owners to continue to graze stock as long as that did not ‘interfere with the operations of horse-racing or preparing or training horses or horse racing or the carrying on of any other form of sport pastime or exercise’. The lease terms also prohibited the removal of boundary fences. Somewhat unusually, clause 6 of the lease provided that the lessees would make improvements to a certain value but excluded the owners from liability to pay for any improvements once the lease ended. The issue of improvements had become an important consideration for Māori owners once they began to find out that the value of improvements could be a barrier to ever being able to afford to regain their lands. Clauses excluding improvements, however, were also presumably reflected in lower rentals. Clause 6 would become important later when the land became subject to a compulsory public works taking.

In 1913, the trustees for the racing club, Lusk and Steel, purchased the freehold of nearby Te Kumi 7c and 8b1 blocks for the racecourse. In 1929, Kiore Pakoro and Whitinui Hohepa partitioned their interests in the Te Kumi 9 block. Kiore Pakoro then became the sole owner of Te Kumi 9a, part of which was under lease for the racecourse. At about the same time, the Te Kumi Station Road was built, splitting Te Kumi 9a block in half. The northern portion of 9a was the 17-acre area leased to the racing club trustees, while Kiore Pakoro retained the southern portion of the block for his own use.

Annual race days at the Te Kumi racecourse were well attended in the first two decades of the twentieth century. A February 1913 race meeting was estimated to have drawn a crowd of around three to four thousand people, made up of Te Kūiti locals and an ‘exceptionally large’ attendance of visitors (the railways having put on special trains to cope with the demand). By the early 1930s, however, small racing clubs such as Te Kūiti began to struggle financially. The last race meeting held at the Te Kumi course was in April 1932. The demise of the race club left

---

758. Document A63(a), pt 2, p 1115.
759. Document A63(a), pt 2, p 1116.
760. Transcript 4.1.14, p 688; doc A63(a), pt 2, pp 1114–1115.
763. Document S30 (Wi), p 6; doc A63(a), pt 2, p 1147.
a large area of relatively empty flat land that soon drew the attention of the local aviation community. Local solicitor and First World War amputee, Henry Morton, was one of the most enthusiastic, having already been part of the first flight to Te Kūiti in 1928, in an airplane owned by the Auckland Aero Club.  

Mr Morton, who would later also become mayor of Te Kūiti, was made president of the newly formed Te Kūiti Aero Club in 1933, of which he was a founding member. Between 1933 and 1935, local aircraft enthusiasts of the Te Kūiti Aero Club pushed for and eventually helped develop a former race course in Te Kumi to be turned into an airfield. Their efforts resulted in considerably more improvement than was required for a basic emergency landing strip but there is no evidence at this time that officials were aware that some of the Te Kumi land was leased, nor did they seek confirmation of legal title details before providing the assistance.

By February 1935, the Government had taken control of the airfield’s development, with continuing assistance from Morton’s aero club. This appears to have reflected the growing interest in airfields for military and civilian aircrafts and for training military pilots. This was also apparently done with no checking on the underlying title of the lands. The title issue became more prominent, however, with a public dispute by October 1935, between the aero club and racing club over the ownership of the racecourse and now airfield land. Morton apparently believed the agreement made earlier was definite while the racing club insisted that no formal agreement was made and it still needed to consider financial options. That caused local council and Public Works officials to consider, apparently for the first time, the title issue and the need to have it sorted, although they remained reluctant to take sides in what they regarded as a private dispute.

The dispute resulted in a public meeting held at Te Kūiti to discuss the future of the land. Local newspapers provided extensive coverage, although with a focus on the best use of the land in the public interest, although with little apparent regard for the views of the owner of the part of the land that remained privately owned Māori land. The meeting agreed that an airfield was of local and national importance. It was also agreed that the local council was the most appropriate body to take over the airfield and could then lease it back if necessary to the aero club. The council was not averse to the idea but wanted more detail before it committed ratepayer funds. Again there is no evidence of consideration or even knowledge of the leased part of the land.

769. Document A63(a), pt 2, pp 1089–1092.
772. Document A63(a), pt 2, pp 1097–1098.
774. Document A63(a), pt 2, p 1104.
775. Document A63(a), pt 2, p 1104.
Less than a week after the meeting, the racing club trustees signed a formal agreement to transfer the racing club interest in Te Kumi 7c, 8b1, and 9 to the aero club, effectively immediately. Again, there is no evidence that at the time this the kind of interest in the land was identified or discussed, including that Te Kumi 9 was a leasehold interest only. There is no evidence that any efforts were made to contact the sole Māori owner of that land at the time and it was legal for the lease interest to be sold. It was not until some time later, in January 1936, that central government officials appear to have become aware that Te Kumi 9 was still Māori land under lease or that the terms of the lease meant it was due to expire in 1950, with no right of renewal, and no liability for the owner to pay for improvements. This was well after local body and central government funds had been available. For officials, if an airfield was to continue after the lease expired, there were just two options: either purchase the land under lease and pay for the improvements or seek the use of the compulsory provisions of the recent Public Works Amendment Act 1935 for an aerodrome. Even with a compulsory taking, officials acknowledged that the compensation would still need to include the value of improvements. They also understood the problem was that considerable financial support had been provided to the airfield without a proper check on the land title.

Civil Aviation officials were nevertheless still very keen to retain the airfield, including for use as an emergency landing ground. Such an airfield was recognised as having local and national importance including ‘as a very valuable emergency ground for the Main Trunk Air Route’. The site was also ‘the last possible emergency ground before entering the very broken country in the central region’. Officials also continued to regard the airfield as more than an emergency landing strip with potential to also be used as a training ground for military aircraft. They advised Morton to consider acquiring the leased Te Kumi 9 block, ideally by negotiating with the Māori owner to purchase the freehold title of the land. As part of the purchase negotiation, they advised Morton should also seek the owner’s agreement to forego any claim for improvements made by either the Government or the club for the airfield. Officials appear to have been well aware that such an agreement would not be in the owner’s interests as they also advised that such an agreement would also require the consent of the Native Land Court.

If the owner refused to sell, then officials advised that the alternative was for the club to use the public works legislation ‘so that the Club will not have to pay the natives for the improvements which are being carried out.” The focus, clearly, was on minimising costs to the club and possibly also the Government. The club itself could not legally use compulsory land taking provisions against private property.

---

780. Document A63(a), pt 2, pp 1109–1110.
781. Document A63(a), pt 2, pp 1109–1110.
783. Document A63(a), pt 2, p 1120.
784. Document A63(a), pt 2, p 1120.
Presumably, officials considered that the Crown and club (and possibly council) interests were now so aligned that the Government could legitimately consider the taking as for a government or public purpose.

Morton replied that he thought that the owner, Mr Pakoro, would be willing to sell the leased land. The problem was that the club could not afford to pay the likely purchase price. Therefore, Morton preferred the alternative of a compulsory taking under the Public Works Amendment Act 1935. Morton also suggested a possible alternative: that the lease could just be left as it was, as Te Kumi 9 was only a relatively small strip down the southern end of the aerodrome and ‘not by any means essential’ to the landing ground. It is unclear whether by that Morton meant the lease could just run on as the costs including for any improvement would not be onerous anyway or whether he meant the land could be excluded from the airfield and so no taking was needed. That caused public works officials to consider whether the land was indeed required. However, the Air Department insisted that it was, and nor did they want to remain liable for paying rent, wanting to ‘avoid extravagant payments having to be made on improvements now being made by the Dept’. Clearly, the taking was seen as a means of reducing financial costs.

As officials considered the issue, Morton complained about the delays and bowing to pressure from both the club and the Air Department, public works officials recommended the Government immediately take the 17 acres of Te Kumi 9 under compulsory public works provisions for an emergency training ground. They still considered it unavoidable, however, that ‘the natives will receive the benefits of improvements already made in the preparation of the grounds for an aerodrome’. Clearly, a training ground involved more than just an ordinary emergency landing strip, presumably underlining the additional land needed from Te Kumi 9. There is no evidence that officials consulted directly with the known one owner of the land. The formal notice of the intention to take the 17 acres was issued in May 1936. As was usual, officials posted public notices of the taking in the Te Kūiti post office and in local newspapers. Even though they knew there was just the one owner, Kiore Pakoro, there is no file record of any effort to serve notice on him individually. This was although the legislation required such notice where it was feasible. No formal, well-grounded objection was made within the 40-day time limit and Te Kumi 9A was formally proclaimed taken under public works provisions in August 1936.

All parties before this inquiry agreed that the evidence indicates that Kiore Pakoro was most likely unaware of the formal taking to that point. That is

---

786. Document A63(a), pt 2, p 1121.
790. Document A63(a), pt 2, pp 1122–1125.
supported by the evidence of Mr Pakoro that he learned of the taking after reading of it in the local newspaper in September 1936, a month after the formal taking. Signing himself Kiore Tuariri Hohepa, Mr Pakoro wrote to the Native Minister about the taking of his land at Te Kumi. Only the English translation survives, in which Mr Pakoro noted that ‘The Māori lives on in ignorance, but on turning round finds the European moving a great distance ahead’ and asked the Native Minister, ‘the parent of the widow, the poor and the orphan’ to help him obtain land in exchange, as he wanted land rather than money. He identified a nearby block, Te Kumi 3B1 lot 3 and 11A B3, containing 14 acres. It was a smaller area than his, but he wanted the matter settled and understood it was for sale.

The Native Minister instructed officials to make enquiries about that possibility and the local Native Affairs department field officer reported that a different block, Te Kumi 8A, was currently unoccupied and owned by the Small Farms Board of the Department of Lands and Survey. It was also next to lands owned by Kiore Pakoro and his children. It was not explained why the different land was suggested or why it was not offered but it appears that it was government policy to only contemplate land exchanges involving Crown, not private, land. That is possibly also why, in this case, officials were reluctant to a land exchange, advising instead that Mr Pakoro would be free to purchase other lands with the compensation money he would receive. Whether that was explained to Mr Pakoro is not known.

As was still the case by then, the Minister remained responsible for making the application for compensation when Māori land was taken, even though in this case there was just one owner who was known and could have applied. In this case it appears that Kiore Pakoro (Kiore Tuariri) nevertheless wrote to the Government to hasten the action or possibly because he was not aware of the requirement. His letter written in September 1936, via an interpreter, asked ‘by what means’ the Government was acquiring his land. The letter stated that ‘he is not opposed to this but will of course be entitled to full compensation’. The meaning of the letter was disputed in this inquiry, as to whether or not it was evidence that Kiore Pakoro agreed to the taking and was only concerned with the compensation or had been told the taking was made and felt his only option was over compensation.

The Native Land Court heard the compensation award in April 1937. Kiore Pakoro appeared as did the Crown land purchase officer, and Mr Morton. At the hearing, Mr Pakoro repeated his request for a land exchange – presumably the

793. Document A63(a), pt 2, p 1144.
797. Document A63(a), pt 2, p 1135.
798. Submission 3.4.310(e), p 140.

Downloaded from www.waitangitribunal.govt.nz
same private land blocks he had previously indicated were for sale. \textsuperscript{799} The purchase officer explained that the Crown would not usually make a land exchange agreement when private land was involved and was ‘not prepared to consent to depart from the usual procedure.’ \textsuperscript{800} The court also heard from Charles Johnston, the engineer in charge of government improvements at the airfield who estimated the Government had already spent £900 in improvements on the Te Kumi 9 block alone. \textsuperscript{801} Local valuer Robert Cole, however, estimated the capital value of the Te Kumi 9 land as £265, made up of a land value of £170 and improvements of £95. \textsuperscript{802} He recommended that £157 be granted to Kiore and £108 to the lessees, but did not explain how he arrived at that. It appears he was following the usual practice of dividing the value of the losses between the lessee and the Māori owner, although in this case there was no rights of improvement value for the lessee.

The court adjourned for a lunch break and advised Kiore Pakoro to obtain his own valuation evidence. He was left to arrange that in a short time. \textsuperscript{803} Nevertheless, when the court resumed, Mr Pakoro brought Native Affairs field officer Pei Tē Hurinui Jones with him who also asked for a land exchange on Mr Pakoro’s behalf. \textsuperscript{804} That presumably was still intended instead of monetary compensation. It is not clear whether the Crown land suggested was still under consideration at this time.

The court issued the decision a week later. \textsuperscript{805} Relying upon Cole’s valuation of £265 for the block’s capital value as at 1 February 1937, the court awarded compensation of £170 to Kiore Pakoro and £95 to the aero club. \textsuperscript{806} The court considered that ‘under the circumstances the lessee should have the value of the improvements.’ \textsuperscript{807} It is unclear what the ‘circumstances’ were that made the court decide the lease terms could be set aside. Nor is it clear whether the court was aware of the 1908 lease terms. The Crown purchase official, Brosnan did not directly raise the terms at the hearing, although he and other officials were clearly aware of it. \textsuperscript{808} It is possible that the court was aware but decided the ‘circumstances’ meant it did not apply. That circumstance was presumably the public and ratepayer money already spent on the airfield. Whatever the reason, the lease term that was meant to protect the owner and presumably for which a lower rental had been agreed was now set aside and the aero club received compensation of £95 for improvements. As was required at the time, even though there was just one owner who could have been paid the compensation direct, Kiore Pakoro’s compensation was paid to the Waikato-Maniapoto District Māori Land Board for distribution with whatever

\textsuperscript{799} Document A63(a), pt 7, pp 3702–3703; doc A63, p 642.
\textsuperscript{800} Document A63(a), pt 7, pp 3702–3703; doc A63, p 642.
\textsuperscript{801} Document A63(a), pt 7, pp 3702–3703.
\textsuperscript{802} Document A63(a), pt 7, p 3704.
\textsuperscript{803} Document A63(a), pt 7, p 3704.
\textsuperscript{804} Document A63(a), pt 7, p 3705.
\textsuperscript{805} Document A63(a), pt 2, p 1150.
\textsuperscript{806} Document A63(a), pt 2, p 1151.
\textsuperscript{807} Document A63(a), pt 7, p 3706.
\textsuperscript{808} Document A63(a), pt 2, pp 1122–1123.
administration costs that attracted. The court made no mention of why the land exchange option was not considered feasible. The much smaller anticipated award to the owner (Mr Pakoro) when he had to share the value of the improvements with the club, meant he was also much less likely to be in a position to purchase the lands he wanted as officials had decided against pursuing the land exchange option.

After using the compulsory provisions, the Government promptly leased the taken land back to the aero club.\textsuperscript{809} Under the terms of the new lease agreement, the Government reserved for itself the right to be compensated for its investment in the aerodrome should it cease to operate.\textsuperscript{810} In 1940, with many club members serving overseas with the armed services, the aero club asked the Government to also take over the two freehold blocks making up the airfield.\textsuperscript{811} The Government obliged, taking the remaining aerodrome lands under the Public Works Act in 1941.\textsuperscript{812}

By 1961, and well after wartime need for military pilot training at Te Kūiti had ended, the Government reserved the airfield land under the Land Act for aerodrome purposes, and vested the Te Kūiti Aerodrome land in the Te Kūiti Borough Council.\textsuperscript{813} Today, the Te Kūiti Aerodrome land is Crown land vested in trust in the Waitomo District Council for airport purposes.\textsuperscript{814} According to the claimants, the lands taken from their tūpuna for an aerodrome are now no longer used for an aerodrome, and are instead used for horse stables and grazing.\textsuperscript{815} The land has not been offered back to the former owner, Mr Pakoro, or his successors or whānau.

\textbf{20.5.3.2 Raglan Aerodrome, 1941}

Raglan is located on the Whāingaroa Harbour, in the far north-west of the district. In 1941, the Crown used public works provisions to take Māori land at Te Kōpua, Raglan, for an airfield. The Te Kōpua land is on the sandspit opposite Raglan township. Te Kōpua was, and remains, a place of immense significance for local Māori. The land when taken, included a whare tūpuna, Miria Te Kakara, a papakāinga, extensive kūmara cultivations, and burial grounds.\textsuperscript{816} When the site was no longer required for an aerodrome it became the subject of a lengthy, bitter, struggle to have the land returned to the Māori community. That struggle also became nationally prominent in the modern Māori land rights movement from the 1970s. In 1987, after a sustained protest campaign, the Crown returned part of the aerodrome to its former Māori owners. The return was a significant step by the Crown to address previous injustice. The case has been selected to help illustrate not only the practical implementation of takings in this district but the difficulties

\textsuperscript{809} Document A63, p 648.
\textsuperscript{810} Document A63, p 648.
\textsuperscript{811} Document A63, p 648.
\textsuperscript{812} Document A63, p 648.
\textsuperscript{813} Document A63, p 629.
\textsuperscript{814} Document S53 (Joseph and Joseph), pp 9–11; doc S30(a), p 7.
\textsuperscript{815} Document S30, p 9.
\textsuperscript{816} Submission 3.4.210, p 67.
Māori encounter in having land taken under compulsory public works provisions returned when no longer required for the original work.

As noted, by the mid-1930s, the Government was encouraging the development of commercial aviation including major air routes between cities and towns. One such route took aircraft along the North Island’s west coast from Auckland to New Plymouth. As was usual, the Government also wanted to encourage the provision of emergency landing strips for aircraft safety, not especially easy along the rugged western coastline.\(^{817}\) Two Civil Aviation engineers visited Raglan in 1936 to help identify possible sites, holding discussions with the local Raglan council and some residents. A short list of preferred sites was developed with two sites eventually considered most suitable. Both were on farms in general title; one at Karioi, south-west of Raglan, and the other in the Waikato, north-east of Ngāruawāhia. \(^{818}\) It appears that, at the time, the most basic of the emergency landing strips were little more than a strip on a farm field. The government policy in such cases was to enter a long-term lease with the private owner at a nominal rental. The owner was allowed to keep grazing sheep on the airstrip land as long as it was not obstructed for landings. \(^{819}\) In the two preferred sites, private farm owners were understood to be willing to allow part of their farms to be used that way. \(^{820}\) It was later suggested that the sandspit area opposite Raglan township was one of the early sites investigated but not pursued. If so, there is no record of it and it did not make even the shortlist unsurprisingly as it contained marae buildings, houses, cultivations, and an urupā.

No further progress was made on the initial recommendations although the desirability of an emergency strip for aircraft remained. In 1938, a different aviation engineer visited Raglan and, without discussion with either the local council or residents, turned his attention to primarily the Te Kōpua sandspit site opposite Raglan township. \(^{821}\) He recommended a large area of 181 acres on the sandspit would be required in the Te Kōpua and Papahua blocks. The majority of the recommended area, 147 acres, was Māori land, although the final taking would reduce that area to just under 90 acres. The remaining 34 acres recommended was a public recreation reserve on the sandspit that the local council claimed had been gifted to the town by Māori in 1923. \(^{822}\)

Apparently surprised by the decision, the Raglan council and several residents protested against the recommendation, claiming there were ‘other and better areas


\(^{818}\) Document A63, p656 ‘Kawhia Aerodrome Site’, *Auckland Star*, 13 February 1936, p5. Later that year, Gibson would be instrumental in the Government’s decision to take the Te Kūiti Aerodrome: see section 20.5.3.1.

\(^{819}\) Document A63, p658.

\(^{820}\) Document A63, pp656–657; doc A63(a), pt6, p3318.

\(^{821}\) ‘New Aerodrome’, *New Zealand Herald*, 6 December 1938, p13; doc A63(a), pt6, p3321; doc A63, p657.

\(^{822}\) Document A63, p658.
suitable for aviation purposes.\textsuperscript{823} It was claimed that the sandspit had previously been considered and rejected as unsuitable for an airfield and that, as Māori had already ‘gifted’ land for a reserve on the spit, to seek more land there would be a ‘breach of faith’.\textsuperscript{824} However, circumstances had changed, war threatened and Government officials had become convinced that something more than a basic

\textsuperscript{823} ‘Reserve at Raglan’, \textit{New Zealand Herald}, 17 December 1938, p 21; doc A63, p 659.

\textsuperscript{824} Document A63(a), pt 2, p 1051.
emergency strip was required. They advised that the Raglan sandspit was now considered 'the only suitable area for an emergency landing ground near Raglan' and would most likely be developed for an emergency aerodrome.\textsuperscript{825} Officials responded to local pressure by agreeing to continue inquiries for an emergency landing strip as well but insisted that 'extensive searches . . . by air and land' had already confirmed Raglan sandspit as their best site.\textsuperscript{826} Some further inquiry was made into a landing strip site further south at the mouth of the Marokopa River, and at nearby Waikawau, mid-way along the coast between the Kāwhia Harbour and the Mōkau River. However, that consideration was placed on hold with the outbreak of war in 1939.\textsuperscript{827}

The official view had become that an airfield was required not just a landing strip and for military as well as civilian aircraft.\textsuperscript{828} It appears that military uses had become increasingly important even if the airfield would also be available for emergencies for civilian aircraft. It was noted, for instance, that an emergency ground was required for military aircraft flying out of the RNZAF base at Whenuapai, as well as for aircraft travelling on the New Plymouth to Auckland route.\textsuperscript{829} Regardless of considering other possible emergency landing strips, officials pushed ahead quickly with efforts to begin construction of an airfield at their preferred Raglan sandspit site.\textsuperscript{830} Officials had also decided the land would be taken under compulsory public works provisions. There is no evidence of any consideration of a lease, or even any efforts to directly consult with Māori over the decision.

In November 1940, surveyors entered the Māori land on the Papahua and Te Kōpua blocks to prepare the necessary survey plans.\textsuperscript{831} The survey would confirm that the proposed aerodrome landing ground would include not only the whare tūpuna, Miria Te Kakara, and other marae buildings but also four houses and two cultivations.\textsuperscript{832} It is possible that local Māori owners had heard rumours about their land being required by this time but there is no record of any efforts to make direct contact and discuss the matter. It is also possible that if the site was considered on the first visit in 1936, there may have been some general discussion about an emergency ground but, if so, there are no records.

Māori owners of Te Kōpua and Papahua lands protested the presence of surveyors on their land without their permission. As was often the case, they began by attempting to protest directly to Ministers of the Crown. The Reverend T' Manihera, telegraphed the Minister of Public Works on behalf of himself and the other owners to protest that the surveyors had not sought permission to enter their land. He noted their concerns that after already 'presenting twenty acres to

\begin{flushleft}
830. Document A63, p 661; doc A63(a), pt 2, p 1067.
\end{flushleft}
Flight-Lieutenant Esmond Allan Gibson’s Recall of Promises Made

In the late 1970s, in the midst of the highly publicised struggle to have the Raglan aerodrome land returned, Esmond Gibson came forward to speak of his recall of events leading up to the compulsory taking. Mr Gibson was one of the engineers first sent to look for a site near Raglan in 1936. He later became a senior Crown Aviation official and eventually director of Civil Aviation and so was involved at various stages of the taking. In 1978, Mr Gibson wrote to the Minister of Māori Affairs, and made subsequent media appearances and public statements, claiming that he had promised Māori owners of Te Kōpua that their land would be returned to them once it was no longer needed for war purposes. Mr Gibson claimed to have made the promise in February 1936, when first visiting Te Kōpua while searching for sites. He recalled meeting and speaking with two Māori men who were described to him as leaders in the local community. He did not recall any other details about the men, except that they were returned First World War soldiers.

According to Mr Gibson, one of the men suggested that ‘the elders might be persuaded to allow the land to be used as an emergency aerodrome so long as no buildings were erected on it and it was returned to the tribe as soon as the need for use as an aerodrome terminated’. Gibson said he assured them that if the land was made available, the Government would honour this promise. He understood that the Air Department had later sent a letter to the owners to this effect, although he did not see a copy. Soon afterwards, he claimed, the Public Works Department was ‘given permission to enter the land and start construction’, and at this point, his personal involvement with the taking ended.

Mr Gibson’s account is not confirmed by the official record and it is possible he conflated discussion in 1936 with those of later, in 1940, when he was also responsible for authorising the urgent construction of the emergency airfield on the sandspit. In the mid-1930s, the records and the chosen preferred sites suggest that officials were still looking at leasing a farm field for an emergency landing strip. It is possible that Mr Gibson may have visited Te Kōpua when searching for a site, although

---

1. Document A63(a), pt 1, p 981.
5. Document A63(a), pt 1, p 985.
official records do not indicate that Te Kōpua was then one of the preferred sites.\(^6\) That was likely understandable as it was not an empty farm field but contained buildings and cultivations. The firmer choice of Te Kōpua is not evident in the official record until 1938 and then on the advice of a different engineer. However, if Mr Gibson had visited Te Kōpua earlier, and it seems that council officials understood he had, it would not have been unusual for any official at that time to assure private landowners that if land was required for a public work it would be offered back once it was no longer required. That was a standard principle of earlier public works takings, still continued although about to be steadily weakened from the mid-1930s.

It also seems possible that Mr Gibson may have conflated his earlier inquiry with his later role in authorising the urgent acquisition of the sandspit site. Having become a senior Air official, Mr Gibson was also involved, in 1940 and 1941, in authorising the urgent construction of the emergency aerodrome at Te Kōpua in Raglan. The context by then was that the land was ‘definitely required’ for defence purposes.\(^7\) Possibly, in that context, rather than the usual leasing of a field more likely in peace time, Mr Gibson may have felt even more convinced that if the land was no longer required for defence purposes, it should be returned. However, it is important to note that any such consideration is not detailed in official records. Mr Gibson’s account of a meeting with two Māori men at Te Kōpua nevertheless fits with the later statements of the former Māori owners that Crown officials had told them that the land would be returned to them as soon as it was no longer needed.

How long that need might stretch appears to have become further confused with the general wartime emergency of the late 1930s and early 1940s.

Later, as director of Civil Aviation, it might be thought that Mr Gibson would urge the return of the Raglan Aerodrome land to the former Māori owners once it was no longer needed by the Crown. There is no official record that he did that. However, it is also necessary to note that by that time, the requirement to offer-back to former owners had been abandoned and there were other policies in place such as to require other public uses for such land. The offer-back requirement would not be reinstated until much later, in 1981.\(^8\)

---

the township’ for the park, they now found the department encroaching on their homestead properties. The Minister promised ‘very careful consideration’ of the owners’ ‘interests and homestead properties’ when deciding the final position of the airstrip.

Separately, the Reverend wrote to the Native Minister to protest for ‘my Māori people the Tainui tribe as a whole’ to the survey carried out without their permission. He asked how this could be done and said it seemed very like the land confiscation, a recent commission had inquired into and admitted to having been wrong; ‘today as it seems, the same thing has occurred’. He informed the Minister that the owners wanted to help if the land was required for ‘an Emergency Ground for planes for the duration of the War’ and they would be willing to reach an agreement if they could just meet with those in charge. He reminded the Minister that the land also included the few fenced acres they held as a kūmara plantation. Clearly, by that stage there was already a strong understanding amongst owners that the land was wanted in large part for the wartime emergency not just an ordinary landing strip. The Native Minister passed the concerns to Public Works whose officials continued to insist that that the proposed airfield was ‘essential’ to aircraft safety and that ‘very extensive investigations’ had shown the site was ‘the only one in any way suitable for a landing ground’. They agreed that no construction of the airfield would begin until ‘the question has been finalised with the Native owners.’

It is not entirely clear how the Government decided on how the taking would be implemented. Perhaps, in spite of the telegrams, it was considered that serious trouble was possible and possibly as well defence concerns were uppermost for the airfield. Regardless, a decision was made that the taking would not be under the ordinary provisions as was possible for aerodromes generally but under special defence taking provisions in a separate part of the Public Works Act. As noted, those special provisions provided considerably less protections to private owners and provided tougher measures including to arrest anyone resisting. They not only enabled a right to enter and begin construction on land needed for defence purposes, before the land was formally taken, but also provided that obstruction by owners risked arrest. If further opposition was forthcoming, officials noted that resistance could also be addressed under Defence Emergency Regulations.

Airfield construction was pushed ahead with Cabinet approving the expenditure in June 1941. In July 1941, the land was formally confirmed as required for

838. Document A63(a), pt 6, p 3332.
defence purposes. That formal step meant that the special defence provisions in the Public Works Act 1928 could be applied for the compulsory taking. Ofﬁcials also conﬁrmed that it had been decided that an outright taking of title ‘without leaving any rights in the natives’ was needed, not the more usual policy of leasing a farm field for an emergency strip. It was only as construction was already beginning that, in July 1941, ofﬁcials and an interpreter met with around 25 of the block’s Māori owners at Te Kōpua. The meeting was presumably to meet the public works requirements that for land being taken that contained buildings and cultivations (but not at this time burial grounds) either the owner consent was required or the consent of the Governor General. It is not clear that the owners understood the limited purpose of the meeting. Ofﬁcial notes of the meeting describe it as to ‘explain to the principal owners the necessity for taking the land as an emergency training ground and if possible to get an opinion from the Natives as to their wishes regarding an alternative site for the marae and for those dwellings which will be moved in the course of construction work.’ Presumably in view of the consent needed, the notes reiterated that as far as could be gathered, the principal owners were present. The reference to a training ground further conﬁrmed that more than a landing strip was required. A training ground possibly also helps explain why ofﬁcials wanted to take the full title for the site and wanted it located relatively close to a township for pilots in training. The request to owners to consider alternative sites further conﬁrms the limited nature of what was up for discussion.

The ofﬁcial notes of the meeting reﬂect the different focus of the ofﬁcials involved. However, they indicate that the owners agreed to relocate their marae 200 yards (180 metres) to the south-west of the current site, and the Public Works Department had agreed to relocate the meeting house and cookhouse and re-erect them ‘in good order’ on the new site. The department would also provide drainage and road access to the new site. Alternative housing would be constructed next to the marae to replace two occupied dwellings on the Te Kopua 2B block. The urupa on the site would ‘not be interfered with in any way’. Some notes, also refer to Māori owner agreement to the relocation only arrived at ‘after some opposition’. A later note suggested the Māori owners’ consent was reluctant at best and it was clear that some buildings while still serviceable were not sufﬁciently sound to be moved. The owners’ attitude was described as; ‘we will not object to the scheme because it is a war necessity’ but given their homes and gardens were

846. Document A63, p 669. The Kereopa whānau home and an adjoining ūrupa were initially to be part of the taking, but were later excluded, although their access track and land next to the cottage used for cultivations were affected: doc A63, pp 674, 676.
also being taken, they expected the Government would at least build new homes for them.\textsuperscript{849}

On 4 August 1941, a Health Department inspection found the proposed new site for the wharenui and housing was too wet for dwellings to be erected there.\textsuperscript{850} The next day, officials returned again to meet again with some of the Māori owners. It was noted that the owners present agreed that, to enable the airfield construction, 'the marae buildings should be dismantled and the material stored until the marae site could be determined by the Court'.\textsuperscript{851} Three potential sites were discussed; on the south-west corner of the Te Kopua block, including an unused school reserve; on the hill immediately above the existing site, and on the nearby Rakaunui 2 block, where the owners were said to be 'prepared to set aside three acres for a marae'.\textsuperscript{852} The owners who attended the meeting were not named, and nor is it clear officials attempted to inform the rest of owners in the land.

Satisfied that consent requirements were now satisfied, the same day the Government issued notice of its intention to demolish the buildings. Demolition started seven days later on 12 August 1941.\textsuperscript{853} Construction work was already underway by early September 1941.\textsuperscript{854} The land was still not yet formally taken. The compulsory taking of just under 90 acres (89 acres 3 roods 30 perches) of Māori land for defence purposes in the Te Kopua and Papahua blocks was formally proclaimed on 19 September 1941.\textsuperscript{855} The lands taken included the whare, Miria Te Kakara, the adjoining marae buildings, four houses, and an urupā.\textsuperscript{856} On 4 October 1941, a newspaper article reported that bulldozers were working 24 hours a day under floodlights, 'levelling sand dunes and removing scrub' and shifting an estimated 125,000 tonnes of soil.\textsuperscript{857}

As was required, the Minister had to apply to the Native Land Court to determine compensation for the land taken. The court hearing for the compensation award was held on 2 October 1941, at Raglan.\textsuperscript{858} Owners who attended informed the court that they wanted the whare Miria Te Kakara relocated to their land on the top of Te Kopua 2B block.\textsuperscript{859} The Crown representative agreed that Miria Te Kakara and the marae cookhouse would be relocated to their new sites, and new houses would be provided for three of the block's occupants.\textsuperscript{860} Road access was also promised to the new site, at an estimated cost of £600.\textsuperscript{861} The court ordered

\begin{itemize}
  \item \textsuperscript{849} Document A63, p 672.
  \item \textsuperscript{850} Document A63, p 670.
  \item \textsuperscript{851} Document A63(a), pt 6, p 3340.
  \item \textsuperscript{852} Document A63, p 671.
  \item \textsuperscript{853} Document A63, p 672.
  \item \textsuperscript{854} Document A63(a), pt 2, p 1177.
  \item \textsuperscript{855} Document A63, p 676.
  \item \textsuperscript{856} Document A63, p 676.
  \item \textsuperscript{857} 'Emergency Aerodrome', \textit{New Zealand Herald}, 4 October 1941, p 10.
  \item \textsuperscript{858} Document A63, p 677; doc A63(a), pt 7, p 3634.
  \item \textsuperscript{859} Document A63, p 677.
  \item \textsuperscript{860} The occupants named by the court were Hua Matai Hounuku, Tuwhatau Pahi, and Hemo Haere Hika: doc A63(a), pt 7, p 3636.
  \item \textsuperscript{861} Document A63(a), pt 7, p 3636; doc A63, p 679.
\end{itemize}
compensation of £60 to the owners of Papahua 1 and £565 to the owners of the Te Kopua block. In addition, £100 was to be paid to Riria Kereopa to compensate for damages caused by lost access and £10 to Tuwhatau Pahi for additions to temporary accommodation required. The total awarded was £735. The compensation amounts were paid in January 1942, although at least one of the owners, the kuia, Herepo Rongo, refused to accept the payment, calling it 'black pennies' or tainted money.

By February 1942, over a year after the court award, the Government had partially constructed the access road to the new meeting house site, but otherwise had made no progress towards fulfilling the agreement with the Māori owners. It appears that officials believed work was stalled by disputes over the new location of the meeting house. They understood that most owners now wanted it re-erected on Rakaunui 2 block. From later evidence on file, it appears that the delays and confusion over the site were largely the result of further land partitioning. Nevertheless, delays with the relocation of the meeting house also delayed building the promised new houses, leaving some without accommodation. Over 1942 and 1943 two of the block’s former occupants, Hemohaere Hika and Hua Matai Hounuku, successfully applied to be paid out in cash in lieu of the cottages still to be built for them.

The matter of the marae site remained. Early in 1943, Public Works officials asked the court to confirm the final site. In March 1943, following a meeting of owners, all but one of those present agreed the meeting house should be on the original Te Kopua 2B site. That confirmation was, however, followed by a further three-year delay. This time it appears to have been largely the result of the loss of the timber stacked for the marae buildings, including the dismantled meeting house, Miria Te Kakara. The timber had been stacked in the open next to the aerodrome construction site and was later found missing. No government agency would then agree to pay to replace the timber required for the marae.

In response to owner complaints about the continuing delays, the Minister of Public Works alleged the blame lay with local Māori and it was therefore ‘unreasonable’ to insist the department comply with the court order. He offered no proof...
that the Māori community at Te Kōpua were aware of or involved in the removal of the timber, simply stating that the residents ‘must have known’ what was happening to the stacked materials.  

He also blamed the loss partly on the original delay in deciding on the new site, although acknowledging that the site issue had been resolved three years previously. On further inquiry, Native Department and Lands officials involved in the original agreement reminded officials that they had advised at the time that the original timbers were old and while they would last on their original site for some time, they were considered to be of little value for new building even then. It also appeared no arrangement had been made to properly store the dismantled meeting house.

Officials decided the best option would be to refer the matter back to the court to adjust the original award. The judge advised that while he could not vary the award, there was ‘nothing to stop the parties to the award coming to an agreement’ outside of court. He accepted that Public Works officials had encountered delays over the marae site as a result of later land partitioning and so were entitled to some allowance for the loss of materials, but nor did he think they were entirely free from blame and they could have taken greater care of the materials. At the judge’s suggestion, in May 1948, the Government facilitated a meeting between Mr Turei, a former Māori Affairs department official closely acquainted with the area, and local Māori on the future site for Miria Te Kakara. What Mr Turei described as ‘quite a representative gathering’ was fairly evenly split between the main options of continuing with the Te Kōpua site because it was ancestral land and the original home of Miria Te Kakara, or the Rakaunui site, as it was closer to settlements and a water supply. This time, the vote was narrowly in favour of Rakaunui and the court shortly afterwards, in May 1948, issued an order confirming the site on Rakaunui.

In March 1949, the Government transferred £330 to the Waikato-Maniapoto Māori Land Board, thus completing the change from the original promise to rebuild Miria Te Kakara into a monetary sum unchanged from a decade earlier.

As early as 1942, Māori owners began to consider future uses of the land once the war was over. Two of the former owners, Tumu Paekau and Te Mira Tuteao Manihera, wrote to P K Paikea, Minister in Charge of the War Effort, asking that their former lands, once returned, be used for the resettlement of Māori returned servicemen. With the end of the war in 1945, however, there was no official effort

876. Document A63(a), pt 1, p 934.
877. Document A63(a), pt 1, p 935.
881. Document A63(a), pt 6, p 3396.
to return the land to the former Māori owners. As an operating aerodrome, the land was considered still required for a public purpose. In 1953, following government policy by then to shift control of regional aerodromes from government to local bodies, the Government asked the Raglan County Council to take over the Raglan Aerodrome.\footnote{Document A63(a), pt 5, p 2834.}

There is no evidence that government officials sought the views of the former Māori owners before offering the aerodrome to the council and nor an offer-back required any more under general public works provisions then applying. The defence taking had legally removed all owner interests in the lands and there was apparently no consideration either that the use of the much harsher defence provisions with less protection might have warranted some further consideration of the former owners. The Raglan council turned down the Government’s offer, presumably because it was unwilling to take on the costs of the airfield’s maintenance.\footnote{Document A63(a), pt 5, p 2834.}

In 1957, however, the Raglan County Council took an additional strip of aerodrome land for the construction of a road over the Pokohue River estuary.\footnote{Document A63, pp 704–705.} The construction of the new road left a surplus four-acre strip of land between the new road and the neighbouring Māori properties. In 1962, the owners of the incorporated Te Kopua blocks requested permission to buy back the surplus strip from the Government.\footnote{Document A63, p 705.} However, their efforts to purchase back the four-acre strip would soon be subsumed within a larger struggle for the return of the aerodrome lands in their entirety, spurred on by the council’s offer to lease the aerodrome to a local golf club.

Just over a decade after the first offer, in July 1968, aviation authorities again approached the Raglan County Council to take over regional responsibility for the aerodrome. This time, the council, having found a means of offsetting the costs of the airfield’s maintenance, agreed. During 1968, in private talks with the local golf club, the council reached an informal agreement to lease part of the aerodrome back to the golf course for further golfing development. The council agreed to accept responsibility for the aerodrome, on the condition that two of the three runways could be closed, and the surplus land leased to the club. Rent from the golf club would offset the costs to the council of maintaining the remaining airstrip.\footnote{Document A63(a), pt 5, pp 3114–3115.} In July 1968, the Department of Civil Aviation agreed to the council request.\footnote{Document A63, p 716.}

On 27 August 1968, Tuaiwa (Eva) Hautai Rickard, a daughter of one of the original owners of the Te Kopua block, Riria Kereopa, wrote to the Minister of Māori Affairs to object to the land being transferred to the council without first consulting its former Māori owners.\footnote{Document A63, p 715; doc A63(a), pt 5, pp 3114–3115.} Her letter would mark the beginning of Rickard’s part in what would be a decades-long campaign of letter-writing, submissions,
deputations to Ministers, meetings, and direct protest action, to secure the return of the aerodrome lands.

In September 1968, the Raglan council held a public meeting to discuss a proposal to lease the aerodrome to the golf course.\textsuperscript{890} Around 200 members of the public attended, as well as council staff.\textsuperscript{891} Some former Māori owners were present, including Tuaiwa Rickard, who questioned councillors on whether children could still cross the aerodrome on their way to school and she was assured that
mother’s death, Rickard was visited (or possibly possessed) by her mother’s spirit. She also became more involved in Christianity, incorporating it into her Māori beliefs. As she fought for the land, her spirituality and connection to the land grew stronger.

From 1976 to 1990, Rickard, along with Douglas Sinclair and Dan Te Kanawa, acted as a negotiator on behalf of the original Māori owners for the return of the Te Kōpua land, including the Raglan Golf Course. Throughout the many years of negotiation, she maintained they wanted the substance of the land returned, not just the shadow.

As part of this long campaign, Rickard was arrested for wilful trespass in 1978, when 12 tohunga and local supporters tried to hold a titi tihu ceremony at the urupā during a golf tournament. The police arrested Rickard and 16 other leaders. The case was dismissed on a technicality, but the media coverage of Rickard’s arrest had a major impact on the land movement.

After Te Kōpua was returned, Rickard established educational facilities and emergency housing on the land. She continued to be politically active, leading 2,000 people on a hīkoi in February 1984, standing for Parliament for Mana Motuhake, and forming her own political party (Mana Māori) in 1993.

Rickard passed away in 1997 and is buried on the land she fought for, overlooking the Whāingaroa Harbour.

---


The meeting concluded with a vote approving the motion to lease to the golf club, unanimously according to the meeting minutes. Later in 1968, on the basis of that public meeting, the golf club president, also a Raglan county councillor, confirmed to government officials that the wider Raglan community supported the golf course, and that former Māori owners present at that meeting had offered no objection.
In late November 1968, the golf club also began constructing the golf course, even before it obtained the formal lease of the land.\textsuperscript{895} It appears that Lands officials were only then alerted to the proposal and were immediately concerned about possible threats to public access from the golf course and lack of proper process followed by Civil Aviation in agreeing to the deal without first going through the required formal process of government agencies for the disposal of such land.\textsuperscript{896}

While formalities had not been followed, officials nevertheless considered the agreement could stand.\textsuperscript{897}

Even while strict legal formalities had not been followed, the council went ahead with its lease with the golf club in April 1969. The lease for 63 acres 3 roods 20 perches was for 33 years with one right of renewal.\textsuperscript{898} Government officials then went about retrospectively legalising the transfer to the council. Civil Aviation authorities pushed for the entire aerodrome area to be declared surplus and vested in the council, even though now clearly only part was required for the airfield and the rest should have been surplus. However, Civil Aviation was concerned that if the council could not obtain funds by leasing out the surplus, then it would continue to refuse to take over responsibility for the airfield.\textsuperscript{899} The Lands Department agreed and allowed the entire area to be remain as aerodrome and be transferred to council ownership in October 1969.\textsuperscript{900}

The agreement left the former Māori owners of the taken Te Kopua and Papahua blocks without any chance to press their case for surplus land to be returned to them. Nor do their concerns appear to have been passed on to the Government departments involved. There is no indication of any other government attempt to consult and given the transfer process adopted they were not legally required to do so. In addition, local officials had been assured that a public meeting including former Māori owners had supported the golf club proposal.\textsuperscript{901}

During the early 1970s, Tuaiwa Rickard continued to correspond with Ministers over her whānau’s former lands, to little effect. However, by the mid-1970s, Māori protests about land rights generally were beginning to have some impact. In 1975, Whina Cooper led Te Matakite o Aotearoa in a highly publicised land march to Parliament. Following the march, Rickard aligned Tainui Awhiro’s cause with the wider Māori land rights movement, forming a local branch of Te Matakite. One of the branch’s first actions, in January 1976, was to write to the Minister of Māori Affairs to demand the return of the entire golf course ‘we are not asking for the return of one acre but the return of 63 acres 3 roods 20 perches now used by the

\textsuperscript{895} Document A63(a), pt 5, p 3112.  
\textsuperscript{896} Document A63(a), pt 5, p 3118.  
\textsuperscript{897} Document A63, p 720.  
\textsuperscript{898} Document A63, p 722.  
\textsuperscript{899} Document A63, p 721.  
\textsuperscript{900} Document A63, p 722.  
\textsuperscript{901} Document A63, p 719; doc A63(a), pt 5, p 2494.
We contend that it is wrong in principle and morally dishonest that land forcibly taken by the Crown for a specific purpose be vested in another person or body without first offering those lands to the original owners or their legal successors, on termination of the specified use.\(^{904}\)

In April 1976, Te Matakite o Aotearoa staged a one-day occupation of the golf course, centred on the urupā, aimed at pressuring the Government to respond.\(^{905}\)

In May 1976, the Minister of Lands, Venn Young, announced a decision to return the Raglan Aerodrome land to its former Māori owners.\(^{906}\) The decision to return the land was precedent-setting at the time.\(^{907}\) Nevertheless, the return was strictly conditional on terms that were intended to protect the interests of the golf club and Crown finances. These included that the golf club be allowed to see out its current lease, which expired in 2002, with a right of renewal until 2035. The former Māori owners would then be required to purchase the land back from the Government at market value of $61,300. That was considered not ‘particularly onerous’ by the Minister as the Māori owners would continue to receive a rental from the golf course while they waited for the lease to expire.\(^{908}\) There was no consultation with Māori before announcing the decision. Tainui Awhiro rejected the terms as an arrangement that would ‘give them the shadow of the land but not its substance’ leaving their lands unavailable to them for decades, and then having to buy the land back at market rates.\(^{909}\)

A lengthy saga followed from 1976 to 1990 in an effort to both have the land returned and the requirement for market value rescinded given the length of time the land had been lost. That struggle is now so well-known and such an iconic part of modern Māori land rights history that lengthy explanation is not required again here. In public works terms, however, the struggle was also precedent-setting, contributing significantly to the re-instatement of the offer-back requirement for compulsory land taking in the Public Works Act 1981 and in subsequent policy changes allowing that market value did not always have to be required for returned Māori land. At the time, however, the lengthy saga was played out very publicly with struggles every step of the way, whether in negotiation, court battles or through occupation and arrests at the golf club.\(^{910}\)
Eventually the golf course was relocated to a new site, purchased with government assistance, in November 1983. That did not end the struggle, however, as even with the golf course land eventually revested (minus the airstrip) Māori owners continued to contest the conditions of the land’s return. It was not until June 1987, that the Minister finally agreed to the unconditional return of the land, without payment. In return, Tainui Awhiro had to give up any claim to rentals collected from the golf course during the period of negotiations from 1980. The 1981 public works provisions were now in force requiring the careful preparation of lists of individual successors and their respective shareholdings creating further delays. The court order unconditionally returning the land was finally signed on 26 June 1990.

Today, the former aerodrome lands at Te Kōpua are held under an ahu whenua trust, with shares held by the successors of the former owners. The land is used for a range of activities including kūmara cultivations, a whānau camping ground, and a kohanga reo. Part of the land is leased to a local farmer to bring in additional income. The aerodrome reserve and recreation reserve parts of the land were not returned.

20.6 Treaty Analysis and Findings

As we have discussed, the Tribunal has reached a well-established view that the compulsory taking of Māori land for public works is, on its face, a direct infringement of the Treaty guarantee to protect Māori in their lands. Nevertheless, the Tribunal has also reached the view that the balancing required between the exercise of kāwanatanga and the protections guaranteed to Māori for their land, means that, in some exceptional circumstances, a compulsory taking of Māori land for a public work can be Treaty compliant. It follows that what constitutes exceptional circumstances is likely to apply only in rare cases and only after careful consideration.

Because the qualification of an exceptional circumstance is so important, the Tribunal has gone to some effort over several inquiries to consider what an exceptional circumstance might include. It is not enough sufficient, for example, to be a matter of cost or efficiency for the Government, or a matter of convenience, general public interest or that only a small area of Māori land is involved. Essentially being exceptional means that a compulsory taking of Māori land is only Treaty compliant as a last resort in the national interest. The Tribunal has agreed that it is not useful to be too prescriptive about what a last resort in the national interest entails in any circumstance and that must be worked out between the Treaty partners. Having considered a range of compulsory takings of Te Rohe
Pōtae Māori land in this district, for a variety of public purposes, and considering the way the taking process has worked over a variety of cases, we are confident that well-established Tribunal view also applies in this district and adopt it for our analysis.

We also adopt the qualifications that the Tribunal has developed to guide what might be considered tests for the exceptional circumstances of a last resort in the national interest. That begins with genuine and meaningful consultation between the partners to work out what is a last resort in the national interest in any circumstance. We consider the issue of consultation in more detail in the next section. In the meantime, alongside careful consultation we also adopt the following considerations that need to be taken into account as identified by the Tribunal over previous inquiries:

- possible feasible alternatives to a compulsory taking of Māori land whether an alternative to outright taking of title (such as a lease) or an alternative site for the work;
- well-informed consideration of the importance of the land and any sites on it to Māori, including interests of intrinsic concern to Māori, such as taonga and wāhi tapu on the land, ancestral and whakapapa connections to the land, and the state of remaining holdings of Māori land;
- only the minimum amount of land necessary for the work must be taken;
- the land must be used for the purposes for which it is taken;
- harm or damage to taonga sites and wāhi tapu of concern to Māori should be avoided;
- redress or compensation must be made for the land taken; and
- the taken land is to be restored to the former owners and their whānau as soon as no longer required with the least possible cost and inconvenience to the former owners.

We welcome the Crown acknowledgement in this inquiry that it could have consulted better and the description of Crown policy which appears to at least begin the process towards adopting the requirements we set out above. That includes the Crown acceptance that a taking might not be Treaty compliant for reasons such as a failure to consult with Māori, a failure to pay fair market compensation for the land taken, a failure to protect sites of importance to Māori, the taking of excessive land, and a failure to ensure that Māori have not suffered adverse social economic or cultural impacts. That appears to us to offer significant potential for agreement to ensure the public works regime is made more Treaty compliant and redress is provided for the impacts of previous Treaty breach.

It is of concern to us, however, that in spite of this, the Crown has only made two concessions of Treaty breach for compulsory takings of Māori land in this district and has not conceded general Treaty breach with the public works regime. The reason for this discrepancy remain unclear to us having considered the patterns evident in the many cases we have selected to illustrate the operation of the regime generally in this district. We have numerous cases before us of damage and loss to taonga and wāhi tapu. We have numerous cases of land takings for future use rather than immediate need, such as the Mangaokewa Gorge Scenic Reserve,
where the Crown had advice such a large area was not required, and shortly after parts of the reserve were given over for quarry purposes. Another example is the relatively large amount of Māori land taken for a government public building reserve at Ōngarue in 1902 on an expectation of growth and largely to pre-empt expected rises in property values to protect the public purse. The Tokanui hospital and other scenic reserves also involved very large areas of land. We also have evidence before us of officials resorting to compulsory taking when purchasing was too slow or had too many protections for land Māori required or simply out of convenience or cost. We also note the many failures to restore taken land to communities, often also out of convenience or cost for the Crown or because the operative provisions are too weak or have too many loopholes.

The public works regime has similarly failed to require serious consideration of alternatives to outright takings of Māori land required for public works. Early provisions required outright takings, but even as such requirements began to soften, and greater negotiation was encouraged, the assumed difficulties of contacting Māori owners made such options effectively less available for Māori land. Overall, the figures for this district confirm that such alternatives as leasing land required or taking easements, were rarely used overall and even less so for Māori land. The evidence indicates that in most instances, taking a lesser interest in Māori land did not occur in this inquiry district until the 1950s and 1960s, well after most takings were made. They were also largely limited to easements connected with the construction of water pipelines in the Ōtorohanga region. In most cases, the regime did not encourage such consideration for Māori land and in practice some cases show, on the contrary, that even where it was policy to lease, such as for emergency aircraft landing strips, the Crown nevertheless pursued a policy of taking title for both Raglan and Te Kūiti airfields.

The claimants alleged that the results of an inequitable public works regime when applied to Māori land were such that Māori communities were obliged to bear the greater burden of providing for settlement and Māori land was effectively targeted for compulsory taking. We do not have any evidence of any deliberate conspiracy or policy to use the regime to target Māori land for compulsory takings. However, we do feel that the context of poor protections for Māori land, the lack of adequate requirement to consider alternatives to taking Māori land, or to adequately consider Māori interests in their land, the availability of taking regimes that provided no compensation for taken Māori land, the apparent ease with which officials could resort to compulsory taking if purchasing was too slow or had too many protections, and the ease with which difficulties with title could be used to avoid contacting or negotiating with Māori, and the lack of adequate Crown monitoring combined to create a climate whereby the end result was to make it tempting for taking authorities to resort to compulsory taking of Māori land.

The experience of this district confirms to us that we can adopt the established Tribunal view that the Crown delegate out its Treaty responsibilities including the responsibility for the impacts of Treaty breaches, when it delegates powers of compulsory taking to local and special purpose authorities. We confirm that any land
taking powers devolved to local and special purpose authorities for public works cannot override or replace the Crown’s responsibilities to protect Māori land. It is evident to us that many of the compulsory takings of Māori land for public works in this district, whatever the taking authority, do not meet the test of a last resort in the national interest. On the contrary many of the compulsory takings of Māori land have been made for routine local purposes such as rubbish dumps, recreation grounds, and government buildings that could just as easily have been located elsewhere. Many local quarries, shingle pits, scenic reserves, and local roads also appear either not to meet any national interest test or could have been located elsewhere or an alternative such as leasing (and paying royalties) was clearly available.

In many cases, the land could have just as easily been purchased but it is evident that a purchase was considered easier, cheaper for the Crown or local body, and more convenient for the taking authority. The use of compulsory takings is also concerning when the compulsory taking was made, as was the case for Tokanui in this district, to avoid minimum protections for subsistence in land purchase requirements. Some kinds of takings, such as for scenery preservation were undertaken according to policy requirements that recognised other uses were possible and therefore were never a last resort. Even the relatively few cases where it seems the test might have been met such as an airfield for a war emergency does not bear closer inspection. In both our airport cases, the owners were willing to lease the land and/or have it used for temporary war purposes. Ironically, the work that appeared to most closely meet the last resort in the national interest test was the one that set a precedent for consultation, over the main trunk railway.

The Crown has cautioned us against attempting to draw conclusions about the public works regime as a whole, urging us instead to examine each taking individually in this district on a case-by-case basis. The Crown has also asked us to take account of the rapid development of this district, especially in the first three decades of the twentieth century. In the Crown’s submission, this rapid development required urgent, compulsory takings to provide infrastructure urgently required for the rapid settlement of the district and for public benefit. We agree that it is important to take account of this context. We note, however, that it is by no means certain that compulsion always meant speed. It seems most unlikely that such rapid progress could have been made with agreements over the main trunk railway without the prior consultation with Māori and relying instead on identifying each individual owner.

We received significant evidence of Māori willingness to support various works required, ranging from railways, to quarries, to townships and scenic reserves, as long as they could participate in decision making and in opportunities for economic benefit. We will be considering cases in more detail in later chapters. However, we also need to consider the regime as a whole and the context that provides. We cannot hope to consider how a test of a ‘well-grounded’ objection might apply for a case, for instance, if we do not understand the limitations imposed for such a test in terms of the general public works regime.

The Crown submitted to us that in many cases, the legal provisions were fully followed by officials when compulsory takings were made. We agree that was often
the case and that raises the issue of the wider failures of the general regime in which they worked. Even when officials tried to notify owners, for example, in some cases such as the scenic reserves they were defeated by the sheer complexity of the task while the Crown failed to provide for an effective representative entity for the owners until the 1970s.

We have considered the general public works regime applicable to this district in some detail in earlier sections of this chapter. Alongside the consideration of general patterns revealed by our cases and the evidence of takings of Māori land presented to us, we adopt the findings of previous Tribunal inquiries that the public works regime is not and has not been Treaty compliant as it was implemented in this district. In our view, as a result of this failure, there are no cases we have considered for this district that justify a compulsory taking as a last resort in the national interest.

We find that the Crown has breached article 2 and Treaty principles of partnership, active protection, and protection of tino rangatiratanga with the general public works regime provided for this inquiry district, in particular by failing to require compulsory takings of Māori land for public works to be a last resort in the national interest. In this district that breach was compounded by the failure to honour the precedent and expectations set with negotiations for the main trunk railway.

It is evident from our inquiry that the Crown introduced and implemented its general public works regime to this district and amended that regime over time without consulting or obtaining the direct consent of Te Rohe Pōtae Māori. Nor did the regime as it was provided require consultation with Māori when their land was taken for individual public works in this district. The cases we discuss in this chapter reveal a consistent pattern of failure to consult when proposals and decision were being considered. Te Rohe Pōtae Māori were reduced to a limited role as objectors. Case after case shows how owners only found out by mistake prior to notification of taking intentions if they found out at all.

This failure of consultation was particularly disappointing in this inquiry district when the main trunk railway negotiations between the Crown and Te Rohe Pōtae Māori provided a clear precedent of what could be achieved with genuine efforts to consult prior to the decision. That precedent occurred before the introduction of the public works regime to this district and in our view was a major missed opportunity. While we have been critical of the extent to which the Crown later honoured this consultation, it nevertheless showed that careful consultation and agreement over a major public work was both possible and realistic. The Crown proved that consultation could achieve a rapid and effective response. Te Rohe Pōtae Māori were very clear they were willing to negotiate and were ‘fully alive’ to the potential benefits of works such as road and rail for everyone’s interests, as long as the dangers for their land and interests could be mitigated and their mana whakahaere in their district was recognised. They even showed practical demonstration of their goodwill by gifting some of the railway land required. In our view, the Crown willingness to consult over the railway and the negotiations themselves encouraged Te Rohe Pōtae confidence that negotiations and consent
would be considered the norm when further public works were required and that placing them at even greater disadvantage when they were confronted with a major complex regime that provided no requirement for genuine consultation.

The significant implications for Te Rohe Pōtai Māori of a sudden and rapid introduction of settlement with associated infrastructure demands made the need for full and genuine consent over public works requirements even more pressing. The failure to consult and obtain Te Rohe Pōtai Māori consent was especially egregious, given that the Crown, having just completed negotiations, knew full well who it needed to negotiate with, what Te Rohe Pōtai Māori concerns about public works were, and had practical experience of such consultation already. That prior experience would have helped significantly with any pressing needs for urgency and the Crown was well aware there would be a pause anyway as Te Rohe Pōtai Māori passed their lands through the court.

As the figures presented to this inquiry show, relatively few takings were made prior to 1900, giving some years for the consultation required. That did not happen. Nor were Te Rohe Pōtai Māori consulted over major changes to the regime, such as for scenery preservation and public buildings, developments likely to have major impacts in a district that in government terms had barely started ‘settlement’. It was therefore reasonable to assume that strategically located Māori land was likely to be significantly impacted. As we have noted, even up to the current 1981 Act, Māori have little more than ordinary submitter status when it comes to legislative change and little more than objector status for takings.

Māori landowners faced further difficulty in that the system of land title provided for their land, created further obstacles to effective consultation and provided an easy way out for officials to come to a view that consultation was too difficult. The Crown failed to address the difficulties as they became apparent and provided often numerous scattered owners with interests in land with largely weak and ineffective powers to act collectively, including to participate in consultation over proposed land taking. The often-numerous owners in Māori land had few options for legally recognised collective action or to have representatives act for them. The government response was minimal for many years, providing largely ineffective mechanisms for consultation, through such entities as the Māori councils and land councils, incorporations, agents such as the Māori Trustee, and the system of minimal and outnumbered appointments to national boards. All proved largely ineffective during the period when most Te Rohe Pōtai Māori land was taken in this district and consultation could have mitigated the severe impacts. Even mechanisms, such as the system of meetings of assembled owners introduced for land purchasing from 1909, were not carried into requirements for public works that might have improved opportunities for consultation.

The limited scenery provision amendments from 1910 enabling potential continued access for Māori to their urupā on taken lands and for bird hunting were highly conditional, largely unknown and unpublicised, and entirely dependent on government permission, not genuine consultation. Later improvements potentially enabling more effective consultation through more effective representation of owner views, such as through more effective trusts and incorporations and
better representation for owners from the 1970s, were too little and too late for most compulsory takings for public works in this inquiry district and they remain little more than potentially useful while there are still no clear legal requirements for the required consultation to take place.

Many of the cases we consider for this chapter reveal the significance of failures to consult. At Aotea South (taken for Morrison Road in 1965) and Ōtorohanga (taken for flood protection 1965–74), discussions with some affected owners did not even take place until after the works in question were completed. With more effective requirements for consultation with local Māori prior to carrying out the works, the destruction of significant wāhi tapu such as in these cases, could have been avoided.

Current public works legislation still lacks a specific requirement for more genuine consultation with Māori over either national developments or individual proposals where a work might require Māori land. Once a decision has been made, the formal public works process requires a formal notice of an intention to take, but while that is a notice of an intention already formed, it is not a replacement for consultation. The intention to take notices do not adequately stand in for genuine and meaningful consultation over taking decisions. They come too late in the process and after the important decision making. The objection and inquiry process (when an inquiry is allowed) is also too late and too narrow in scope to be genuine consultation although we acknowledge some inquiries have resulted in at least minimal changes to the original decisions.

We agree with claimants that the process reduces Māori to the status of objector rather than consulting with a Treaty partner. In public works terms, as practical experience in this district has shown, the formal notice also provides a very narrow set of circumstances for revisiting and inquiring further into the proposed decision. The basis for a ‘well-grounded’ objection and subsequent inquiry has always been very narrow. Many kinds of sites of special concern to Māori, including for some kinds of taonga, wāhi tapu, and ancestral links to land, have traditionally gone unrecognised and been relegated to ‘sentimental’ concerns that are outside the public works framework. While such concerns for Māori continue to have no legal recognition or protection, we have serious concerns that situation will continue to be perpetuated.

The Crown acknowledged to us that its own policy provides that Māori may have a well-founded grievance when the Crown did not adequately provide Māori with ‘relevant information’ on the nature, extent, and timing of an acquisition, when it did not give Māori ‘adequate time and opportunity to fully discuss a public work proposal,’ or when it did not ‘genuinely and conscientiously’ consider Māori objections or consider alternatives. We welcome that policy and we hope to see it urgently applied in this district.

We concur with the well-established Tribunal view that the Treaty principle of partnership obliges both parties to the Treaty to act reasonably and in the utmost good faith towards one another. That requires full and genuine consultation with Māori on matters of importance to them. The Crown’s duty to consult is
particularly high when a fundamental Treaty right, such as the undisturbed possession of their lands, resources, and taonga guaranteed Māori under article 2, is involved.

We find that the public works regime was introduced and has been implemented in this inquiry district, without full and genuine consultation with Te Rohe Pōtae Māori, and without their consent. That is a breach of Treaty principles of partnership and active protection. That breach is compounded by failures (until late in the twentieth century) to address difficulties with title and by the contrast in this district with the consultation that had already taken place over a major public work, the main trunk railway and that resulted in the Te Īhākī Tapu agreements.

We also find that the Crown breached Treaty principles of partnership, protection of tino rangatiratanga and active protection if failing to provide a regime that requires consultation over each proposed compulsory taking of Māori land. The Crown's failure to engage in full and genuine consultation with Māori over land required for individual works, extends to all takings in this district regardless of the taking authority involved. That breach is compounded where the Crown fails to properly monitor or hold to account such agencies.

We have considered the public works taking process provided in the general public works regime in some detail in our legislative outline for the regime. We have also selected several cases to discuss to discern better how the process worked given records of takings do not always provide a full outline in each instance. As we have noted, the process did not require prior consultation with Māori for each case. Instead, the first intimation of a taking was often a notice of intention to take, after which formal objection could be made within a set period, and if found well-grounded a further inquiry might be held. Once that was addressed the taking would be proclaimed and application made for a compensation award for the land taken. If the land was no longer required for the work, a further offer-back process might apply a right that fell into abeyance for a large part of the twentieth century, but which was restored in 1981.

In setting out the legislative outline and then considering the cases for this district within it we have noted how every aspect of the taking process could be inequitable or even discriminatory for compulsory takings of Māori land. We follow other Tribunal inquiries in noting that different provisions for Māori land were not in themselves necessarily inequitable or discriminatory. Instead, the taking process needs to provide for equitable outcomes for Māori.

We have noted in some detail how the various processes of the taking regime operated, from the failure to consult and therefore to become fully informed of Māori views and concerns, to failures of protections with notice requirements, the narrow scope of grounds for formal objections that excluded many Māori concerns for their lands, lesser protections for compensation and the weakness of provisions for restoring Māori land when it was no longer required.

We have noted, for example, how the decision to use compulsory provisions were not required to take account of some of the major concerns Māori held for their land, such as their ancestral connections, protection of their sites of significance and taonga and the impact of a taking on the state of remaining holdings of
Māori land. The protections provided were instead focused narrowly on general landowner interests and concerns. The recognised extra protections for land of special concern to owners, for instance, included homes, orchards, burial grounds, and ornamental gardens. When similar protections were extended to areas of concern to Māori, they only extended as far as such concerns of Māori were considered generally equivalent, such as for kāinga, urupā, and cultivations (fixed cropping and for subsistence only) but not to such matters as ancestral connections to the land. Such concerns were instead ignored or dismissed as ‘sentimental’ and outside the scope of public works consideration. The same applied for grounds of objection and any formal inquiry which were narrowly focused on impacts for land and property values.

The difficulties Māori faced with title and officials faced in identifying owners helped encourage an official view that it was always too difficult to contact or notify Māori of takings. In some cases, such as for the Mangapapa Scenic Reserve on the Mōkau River, we acknowledge that government officials went beyond the minimum of what they were legally required to do. They sought out and attempted to notify at least who they thought were the ‘principal’ owners and posted notification signs along the river itself although this was unlikely to satisfy strictly legal requirements. The intention was, presumably, that if at least some ‘principal’ owners were notified that information might well percolate to others. That approach was at least more of an effort than the more usual assumption that it was too difficult to serve notice with Māori land, so no attempt needed to be made. Even when there was only one or a few owners, such as for the Te Kūiti airfield or Waiteti quarry, officials in those cases still failed to contact and discuss matters with those owners.

Each step of the process effectively resulted in lesser protections or provided loopholes for officials. For instance, it became common practice on grounds Māori owners were too numerous and too difficult to contact, that only the ‘public notice’ part of what should have been a two-pronged approach to notify owners was effectively available for Māori land in contrast to general land. The separate provisions for customary Māori land required even lesser notice. We have considered several cases where Māori objections resulted in inquiries and with inquiry recommendations that resulted in minor amendments to the takings. That included the Crown agreement to exclude a small area of cultivations from the Tokanui takings and to delay and eventually abandon a taking for the Puti reserve at Kāwhia Harbour.

In most cases, however, Māori struggled to have their objections and concerns considered seriously. Many of their deepest concerns could be dismissed as ‘sentiment’ and not considered sufficient to satisfy the narrow grounds for objection under public works legislation. Prior to 1973, when the Crown introduced an independent body to hear objections, Māori landowners had no means of independent appeal of official decisions on what was considered a well-grounded objection. In this district that reform was much too late for the majority of compulsory takings of public works. As the lawyer for the Māori owners in Tokanui described, in 1910, with the Government then being both taking authority and ‘sole arbiter’ of objections, the process for Māori risked resembling ‘a mere farce’.
In some cases we consider, such as Tokanui, and Mangaokewa, it is evident that protections were so ineffective that officials developed a view it was easier and more convenient to resort to compulsory takings. Many of our cases further illustrate the ineffectiveness of protections even for urupā and papakāinga let alone such taonga as the meeting house, Miria Te Kakara. To this day, the current Public Works Act still contains no explicit protections for many sites of special significance for Māori.

The compensation provisions were also heavily weighted to financial concerns rather than such matters as land exchange or other forms of redress. In public works terms compensation was intended to return the private owner to a position no worse off financially, and assuming the owner could use the compensation award to purchase equivalent land elsewhere. That assumption did not allow for the special value and important whakapapa connections when Māori land was taken that were not easily valued by monetary compensation. The distribution of compensation awards also resulted in inequitable outcomes. The awards were based on assumptions of largely individual title. Compensating individual owners in Māori land, however, often meant the award was split up into tiny amounts that prevented any owner from buying new property or investing elsewhere.

When most Māori land in this district was taken, the process (prior to 1962) placed responsibility for making compensation applications for taken Māori land with the taking authority, not the owners. The compensation award was also determined by the Native Land Court, rather than the expert Compensation Court as for general land. Claimants in this inquiry allege that compensation awards for their lands were inequitably low. We do not have the detailed evidence to determine that. The cases we discuss do, however, highlight the systematic difficulties faced by owners in Māori land with compensation awards. The cases confirm how narrow the focus on monetary value was for redress for Māori who were often more interested in a land exchange or in leasing even at a pittance if they could retain ties with the land.

The challenges for an inexperienced court in assessing awards and the tendency for assessments to penalise Māori for the difficulties they faced in developing their lands and resources are well illustrated by the Waiteti quarry taking. In several cases discussed, Māori owners indicated a preference to receive other land in redress for Māori land. The decision was also entirely at official discretion and Crown convenience. In the Mangaokewa Scenic Reserve taking, the Crown agreed to an exchange of land with one owner, Hiri Wetere Kareti. The Crown also organised land exchanges as compensation for Māori owners affected by the Ōtorohanga flood protection works, although not always to the satisfaction of claimants. In other cases, however, such as Te Kūti Aerodrome, officials decided to refuse Māori owner requests for other lands and insisted the owner could use his compensation award to buy land instead. Officials were also quick to abandon efforts to exchange lands if the process appeared too complicated or inconvenient such as for the Thom whānau in the Awaroa reserve at Kāwhia.

The loss of strategic and remaining lands that also represented opportunities for development and participation in the modern economy compounded when Te
Rohe Pōtait Māori had been given clear assurances of opportunities to share fairly in expected economic benefit from public works with the railway negotiations. The cases before us indicate a pattern of priority for Crown convenience and costs, at times in direct competition with Māori economic interests, such as with the railway quarries.

As we have discussed, the Crown failed to provide effective mechanisms to overcome the form of multiple title provided for Māori land creating major difficulties when it came to notice, objections, and even pursuing compensation for their land. The mechanisms provided to overcome that, such as the Māori land boards and the Public Trustee were not required to consult direct with owners to ascertain their views over such matters as objections and compensation for land taken. Māori appear to have more commonly preferred to approach Ministers of the Crown or Māori members of Parliament with their concerns over land takings. In this district that could well have reflected their understandings of their Treaty relationship direct with the Crown. However, those preferences also meant they were more likely to miss the formal taking requirements, such as the time allowed for objections.

It took until the 1970s and later before significant improvements were provided for the taking process for Māori land. That has included better notification of owners, an independent body (now the Environment Court) to hear objections, and owners’ direct involvement in making compensation claims. The Public Works Act 1981 offered further improvement including the re-instatement of offer-back, and provide a renewed emphasis on negotiated agreements, with compulsory acquisition for all lands becoming a last resort. The Resource Management Act 1991 has also provided extended notification and objection provisions for some kinds of works. Nevertheless, as discussed, the 1981 Act is now well out of date and still does not contain a Treaty clause or requirements to give concern to the full range of interests of Māori in their land. Additionally, more recent legislation including the RMA provides for more devolution of compulsory taking powers to special purpose authorities.

Overall, the practical experience of the taking process in this inquiry district confirms that the general provisions contained generally lesser standards and protections for Māori land than for other general landowners and that was especially the case for customary land. The discrimination was compounded by the difficulties of dealing in land held under multiple title, a system of title the Crown imposed for Māori land. The confident, cohesive, and effective management of the district by their rangatira, as illustrated in the railway negotiations, was reduced with the aid of the individual title system and the failure to provide adequately for collective management of that title to a shadow of that former authority unable to respond effectively to the challenges presented by compulsory takings of their land.

Shut out of genuine consultation and with very limited scope to have their concerns adequately considered, it is perhaps not surprising that Māori of this district began to frame compulsory takings for public works as similar to the confiscations following the wars, as owners raised with the Government for Tokanui and later
for Raglan Aerodrome. Some communities also felt they were left with little choice other than to physically resist the takings of their lands as happened at Piopio in 1921 and at Morrison Road in the 1960s. Forced into such roles, caused further detriment to relationships with local and central government and with the wider community.

We find that with the public works regime, the compulsory land taking processes provided when applied to Te Rohe Pōtae Māori land have and are producing inequitable outcomes for Māori and continue to be discriminatory where they fail to provide to equitably provide for Māori interests in their land. In this respect in providing this regime, the Crown is in breach of Treaty principles of active protection and the article 3 principle of equity.

We have discussed a number of special regimes applied in Te Rohe Pōtae enabling compulsory takings of Māori land under special circumstances with generally lesser protections and in some cases no compensation payable for the land taken. They include what has become known as the ‘5 per cent rule’, which allowed a certain percentage of land to be taken from a new land title for a limited period for roads and rail without compensation. The rule was applied in this district from when the aukati was lifted until the rule was abolished in 1927, by which time the major period of public works development was ended. A less commonly used provision enabled road routes that were in public use to be declared vested in the Crown also without compensation.

The final set of special provisions provided for lesser protections in special cases where public needs was deemed pressing and of major national importance. That included some special railways and defence provisions applied to Māori land in this district. We have discussed those provisions and cases illustrating them in our legislative outline and consideration of cases where we have sufficient evidence. A difficulty is that cases without compensation often have lesser record keeping requirements for evidence purposes. In theory, all of these provisions were equally applicable to general and Māori land. However, as we have discussed, in the context of this district it seems apparent that the application of the 5 per cent rule and the vesting of public roads at least tended to impact more heavily on Māori land. It was Māori land, for instance, that in this district was most likely to have been used for a road prior to the district being opened and then used by settlers as a public road once settlement began. With widespread Crown purchasing and the roading of blocks before they were on sold it was also more likely that Māori land would be required for roads linking settlements. As we have discussed, much more Māori land was taken under 5 per cent provisions and without compensation than was taken under more general provisions were compensation was paid.

As we have discussed, the assumption for general land titles was that the rule would be applicable to only a relatively few titles and that the lack of compensation was compensated for by generally cheaper titles. The time period for applying the rule was also limited and the application of the rule was meant to die out as settlements grew and outlying areas diminished. The value of gaining a road where none existed was also considered to be a major benefit for owners. The process by which the rule applied to Māori land meant that, in contrast, almost all Māori land
was potentially subject to the rule for a period of years and over time the period for Māori land was greater than for general land. In this district the majority of Māori land also went through the court and gained new title in a relatively short period of time and just as settlement and road building began, meaning the time periods still had years to run. The Crown submitted to us that we could expect such application given the roading development of the district and not all Māori land that was potentially subject to the rule was taken under it.

The cases in this district and the evidence of overall takings confirm that the 5 per cent rule was widely relied on for taking Māori land for road and rail purposes until it was abolished in 1927. In this district, there was also a pattern of using a combination of 5 per cent and general provisions to achieve maximum flexibility and cost savings for taking agencies by which the overall compensation bill for a road taking could be reduced while minimal protections could be strategically applied. The way the rule was applied in this district also indicates that the application in some cases went well beyond the original intention for the rule. It was originally meant to provide for a right to take a road in outlying districts where no roads yet existed. As the Crown submitted to this inquiry, it was meant to be ‘a reasonable means of providing for future legal access to and across the land’.

However, it is apparent that in this district, the provision for road and rail ‘purposes’ could be provided much more broadly. The Waiteti quarry case illustrates not only how an agency could use the rule to significantly cut overall compensation, but to take an existing commercial quarry that was located right beside already built and operational road and rail routes. It is very hard to see how a similar application of the rule to take a commercial quarry on general land without compensation would not have caused outrage in the settler community.

We have also considered the case of the Raglan Aerodrome taking where special defence provisions applied meaning the usual protections for notice and objection were not available and there were harsher provisions for obstructing the work. The lack of protections in the regime enabled officials to apply the provisions, largely to avoid expected Māori resistance to their removal and the destruction of their buildings, cultivations, and homes, but without needing to consider the expressed willingness of the community to agree to the use of the land as a wartime necessity subject to its return as soon as possible after the war requirement ended. The lesser protections could also be applied without corresponding recognition of an obligation to restore the land once the immediate emergency had ended.

As we have determined, the Treaty guarantees for Māori land require that land can only be taken in rare cases and for exceptional national need. It follows that in the rare cases where Māori land must be taken, it is fundamental as part of the care required that compensation or some form of redress is always required and with full consideration of all protections. Any special taking regime that does not provide for such redress or compensation and enables the removal of ordinary protections such as notice and a right to object is fundamentally confiscatory. That

917. Submission 3.4.284, p16.
applies to all the compulsory takings of Māori land in this district under these special provisions.

We find that the Crown breached article 2 and Treaty principles of partnership and active protection in providing special compulsory taking regimes that applied to Māori land that reduced ordinary protections and failed to provide for compensation or redress.

We have discussed the current regime and the issues with the restoration of taken Māori land in our legislative outline and in our discussion of cases and the more recent disposals of railways land. Almost all of our cases illustrate the difficulties faced by communities of this district in having lands restored, not only during the lengthy time periods when offer-back was weakened and then abandoned but even under the current 1981 regime.

The cases in our district, such as for township and railways disposals, indicates continuing weakness with the current land disposal regime. It is ineffective and now outdated and fails to provide sufficiently for ongoing Māori whakapapa and ancestral interests in their land. There are too many legislative exemptions in the current regime for disposals of land enabling authorities to evade restoring taken land and creating barriers for Māori in being able to afford the cost of repurchasing the land. Nor is sufficient care required to balance purchase values for offer-back with the losses Māori suffered from compulsory takings, including the loss of income from lands and resources. The process for land banking is insufficiently clear and lacks urgency in restoring land. The process used for restoring lands appears to lack urgency and to be unnecessarily cumbersome and lengthy. There are also insufficient legal provisions to recognise ongoing Māori interest and rights of management for taken scenic reserve and domain land that contains sites of importance such as pā and urupā.

We find that the Crown failure to upgrade the public works disposal regime to enable the timely restoration to Māori of their land taken under compulsory provisions once it is no longer required for the original work at minimum cost and inconvenience to Māori is in Treaty breach of article 2 and Treaty principles of partnership, active protection, and protection of tino rangatiratanga.

20.7 Prejudice

The impacts of Treaty breach with the general public works regime as it was provided for compulsory takings of Māori land had significant impacts for Te Rohe Pōtae Māori communities. We accept the evidence provided to this inquiry that, overall, less than one per cent of Māori land in this district was taken under compulsory public works provisions. However, for compulsory takings the measure of loss involves considerably more than the land acreage. The application of compulsion after the bitterness and hardship caused by earlier confiscations and in the face of what appeared to have been good faith negotiations has been a bitter blow for communities of this district and been a source of much bitterness and heartache that remains evident to us today. That has caused major frustration
and damaged relationships with central government and local government that endures and requires urgent attention today.

The impacts of the first decades of the application of the regime were immense and took place at a time of great pressure for district communities. They were not only forced to deal with a major complex land taking regime for around three decades of intense infrastructure development but they also had to deal with immense purchase pressure on their lands and they were struggling to use new forms of land title provided by the Crown for new settlement opportunities. In such circumstances such compulsory takings as those at Waiteti, Ōngarue, and elsewhere were significant in undermining opportunities for Māori to participate in economic opportunity and obtain the income required to develop their lands and resources. Compulsory takings undercut economic opportunities in such areas as quarrying, township rentals and entry to family farming, in some cases ending even existing lease and royalty agreements and ending that important source of income. For some whānau, the cumulative impacts of a range of takings over several years caused severe hardship in addition to losses of their ancestral lands. The regime failures in protection also left some individuals and communities losing their last remaining lands and source of livelihood to compulsory taking, contributing to growing poverty, family dislocation and undermining community relationships as families were forced to move away to seek other ways to support themselves.

The impacts have also been severe in other ways, including in some cases causing the loss or limitation of access to resources such as waterways and fisheries and major cultural and spiritual impacts. That has included the heartache of compulsory takings resulting in severance of hapū and iwi connections with their ancestral lands, loss or damage to significant wāhi tapu, urupā, taonga, significant sites, waterways, and customary resources, including food sources. In addition to those losses, the refusal to require such concerns to be taken seriously caused further hurt. Even in a few cases where Māori owners were able to persuade taking authorities to provide protection for important sites on taken lands, such as urupā, such promises were often not properly recorded or honoured. As we have seen, at Raglan in 1941, for example, the Crown agreed that burial sites on the land would not be disturbed but 30 years later, granted permission for a golf course to be built over the site. Similarly, at Tokanui, officials promised to protect two known graves within land taken for hospital grounds. Fifteen years later, neither grave was cared for and only one could even be found.

In the later twentieth century, the amount and area of compulsory land takings declined significantly, but by then of Māori were also left with just a tiny and dwindling remnant of their Māori land. The vastly diminished amount of remaining Māori land has made the retention of what is left even more critical and by the later twentieth century, compulsory public works takings had become the major source of alienation of remaining land. The impacts from continuing to have compulsory provisions applied are all the more significant for remaining ancestral lands and sites of significance and the impacts from continuing loss all the more severe. The long and frustrating efforts to have land restored have been
a further major and growing burden for communities as reflected in a range of cases considered including the long draining struggle for the return of lands taken under compulsory provisions for Raglan Aerodrome.

20.8 Recommendations
We acknowledge that very little Māori land is now subject to compulsory taking for public works purposes and that government policy is to actively seek alternatives. We also know that periodically urgent public needs, such as a housing crisis, create enormous pressure to acquire lands. It is important therefore that the regime is kept updated and includes Treaty-compliant protections that enable careful consideration of all interests in land being considered. We recommend:

- an urgent review and reform of current public works legislation;
- the reform to adopt the recommendations already set out by the Wairarapa ki Tararua Tribunal, including a Treaty clause, requiring direct consultation with Māori over the regime and over each proposal to use compulsory provisions to take Māori land for a public work;
- revised legislation to clearly set out a general guide to what needs to be considered for a last resort in the national interest, including such matters as requiring the consideration of feasible alternatives, the importance of the land to Māori, the impact of the taking on the state of remaining Māori landholding, sites of significance to Māori on the land, whakapapa and ancestral connections to the land, and the impact of any land taking for Treaty development rights for Māori owners;
- revised legislation to clearly require equitable protections for Māori concerns and interests and ancestral links with their land when considering any proposed compulsory taking, and the timely restoration of any taken land with the least cost and inconvenience to the former owners and their whānau;
- the Crown urgently takes responsibility for healing relationships between central and local government and Te Rohe Pōtae Māori communities as a result of compulsory takings of their land and the continuing impacts and grievances held by those communities from those takings;
- the Crown factor in the considerable financial impact of compulsory public works takings for any redress and financial compensation package offered to Māori claimants;
- the Crown, in consultation with claimants, urgently work towards establishing co-governance arrangements for Māori land subject to compulsory takings that is now held as scenic reserves or domains by non-Crown entities and by Crown agencies; and
- the Crown instruct all of its landholding agencies to commence an urgent process, in consultation with claimants, to return taken Māori lands in Crown ownership as quickly as possible to the former owners or their whānau at least cost and inconvenience for them.
20.9 Summary of Findings

Our findings are summarised as follows:

- The general public works regime applied in this inquiry district is in breach of article 2 and Treaty principles of partnership, active protection and protection of tino rangatiratanga, in particular by failing to require compulsory takings of Māori land for public works to be a last resort in the national interest.
- The public works regime was introduced and has been implemented in this inquiry district, without full and genuine consultation with Te Rohe Pōtae Māori, and without their consent. That is a breach of Treaty principles of partnership and active protection. That breach is compounded by failures (until late in the twentieth century) to address difficulties with title and by the contrast in this district with the consultation that had already taken place over a major public work, the main trunk railway and that resulted in the Te Ōhāki Tapu agreements.
- The Crown breached Treaty principles of partnership, protection of tino rangatiratanga and active protection if failing to provide a regime that requires consultation over each proposed compulsory taking of Māori land. The Crown’s failure to engage in full and genuine consultation with Māori over land required for individual works, extends to all takings in this district regardless of the taking authority involved. That breach is compounded where the Crown fails to properly monitor or hold to account such agencies.
- The compulsory land taking processes provided in the public works regime when applied to Te Rohe Pōtae Māori land have and are producing inequitable outcomes for Māori and in some cases are discriminatory. That discrimination continues while the Crown fails to provide processes that provide equitably for Māori interests in their land. This is in breach of Treaty principles of active protection and the article 3 principle of equity.
- The Crown breached article 2 and Treaty principles of partnership and active protection in providing special compulsory taking regimes that applied to Māori land that reduced ordinary protections and failed to provide for compensation or redress.
- The Crown failure to upgrade the public works disposal regime to enable the timely restoration to Māori of their land taken under compulsory provisions once it is no longer required for the original work and at minimum cost and inconvenience to Māori is in Treaty breach of article 2 and Treaty principles of partnership, active protection, and protection of tino rangatiratanga.
CHAPTER 21

TE TAIAO – KO TE WHENUA TE TOTO O TE TANGATA: ENVIRONMENT AND HERITAGE IN TE ROHE PÕTAE

From the day I was born I inherited whakapapa that would connect me to all of our ancestral lands and waterways. Since time immemorial our whānau have controlled and managed our natural environment in accordance with our tikanga and the exercise of kaitiakitanga and manaakitanga.

—Barbara Marsh

The life-giving kahikatea forest of Te Nehenehenui that once covered the whenua is gone. It has been milled and burned to give way to a man made desert of green grass. Here and there are a few small surviving stands of native trees left to take their chances amongst stock and possums. There are no vast forested areas that once offered protection to the land and villages, resources and food stores for a diversity of native animals and people. There are only a few survivors: puukeko, kaahu and at night the ruru, lamenting those now lost.

—Shane Te Ruki

21.1 Introduction

In 1880, the ancestral landscape of Te Rohe Pōtae remained largely intact, as did the practical authority of Māori leaders, who maintained oversight of the tribal economy, and thus the allocation and monitoring of customary resource rights and obligations. Although patterns of authority had begun to change since 1840 to reflect new economic activities and trade with outsiders, these were managed through Māori institutions. Had the Crown provided Te Rohe Pōtae Māori with the mana whakahaere or local self-government in terms of the Treaty, it is probable that this process of managed change would have continued. Instead, by the steps described in previous chapters of this report, the Crown assumed legislative and administrative control itself and subjected the region to its laws and policies in relation to the environment. In the late nineteenth century, both were aimed squarely at promoting European settlement of the region.

1. Transcript 4.1.5, p 57 (Barbara Marsh, Ngā Kōrero Tuku Iho hui. Te Tokanganui-a-Noho Marae, 9–11 June 2010).

315
21.1.1 The purpose of this chapter
In chapter 8, the Tribunal detailed how, during Te Ōhākī Tapu and associated agreements about opening the region to Pākehā settlement, the Crown agreed that Te Rohe Pōtae Māori would retain control over their own affairs, consistent with their right to tino rangatiratanga under the Treaty. As detailed in several of the preceding chapters in this report, the Crown effectively abandoned these agreements soon after the region was opened to it. This chapter considers how the Crown gradually exercised authority over the district and the resulting impact for Māori with respect to the environment and natural resources. Its chief focus is on claim allegations of Treaty breaches stemming from the environmental management regimes provided by the Crown.

To do justice to the number and detail of claims received in this inquiry about environmental issues and issues relating to waterways and water bodies, this report discusses these issues across two separate chapters. These issues are, of course, fundamentally intertwined, and there is inevitable overlap.

21.1.2 How this chapter is structured
This chapter is organised into three main sections. The first looks at what past Tribunals have said about the Crown’s duties to Māori in relation to the environment and environmental management. The section then sets out the claimants’ key arguments and the Crown’s responses.

The second section provides an overview of environmental management in Te Rohe Pōtae. It looks first at the effects of European settlement on the ability of Te Rohe Pōtae Māori to exercise authority over their lands, their customary resources, and other taonga. It then considers how the Crown incrementally assumed management over the environment and the extent to which it provided for Māori in the region to be involved in environmental decision-making, both before and after the reforms of the 1980s.

The final section looks in a more detailed fashion at claims that the Crown failed in its Treaty responsibilities regarding forestry and land use (including development for farmland, land drainage, and mining) in Te Rohe Pōtae.

We conclude with our Treaty analysis, findings, and recommendations.

21.2 Issues
21.2.1 What other Tribunals have said
The Tribunal reported in Ko Aotearoa Tēnei for the flora and fauna (Wai 262) inquiry that after the Polynesians arrived from the Pacific, they adapted their
culture, values, and knowledge in response to their new environmental conditions. Through innovation and new technology, such as tools for carving, new nets and fishing implements, garden tools, the development of waka taua, weaving, and the use of flax fibre, much of what they needed was derived from the forest or the waters of their new land. Their culture and language evolved and became the Māori culture, underpinned by mātauranga Māori with its defining principle of whanaungatanga or kinship. Drawing on evidence before it, the Tribunal referenced the story of Tane-mahuta separating Rangi and Papa, and how he followed this act by clothing his mother with trees and other plants. He then fashioned the first human, with whom he begat the human race. Thus, he became the father of all living things and they in turn were all related to each other through him. Through him and his primal parents they were related to the various deities that begat the many forms of inanimate and animate entities that are to be found on the land and sea, from stones, to shell fish. The idea of whanaungatanga in mātauranga Māori:

categorises and it catalogued ideas themselves, showing relationships between, and seniority among different fields of knowledge. In this sense, whanaungatanga, through the technique of whakapapa, is not just a way of ordering humans and the world; it is an epistemology – a way of ordering knowledge itself.

Other values are also important. The value of tapu underscores the presence of spirit in all things. And the concept of mauri expresses the Māori view that everything, whether animate or inanimate, contains a living essence that cannot be easily destroyed. The idea that all of creation is alive is hardly surprising given the supremacy of the whanaungatanga principle. Another important value in mātauranga Māori is utu. Though often rendered in English as revenge, its true meaning is the use of reciprocity in the pursuit of balance. To put it another way, in the web of kinship every action demands an equal and opposite reaction in order to maintain balance. This idea underpins rules of positive conduct (hospitality, generosity, and so forth) as well as negative conduct (punishment and retribution.)

Finally, and crucially, there are the twin concepts of mana and kaitiakitanga. We would explain these ideas as follows. Mana is authority and standing a person derives from a combination of kin status and personal attributes. Mana gives that person the right to lead and to argue for the loyalty of the community. It also has a spiritual aspect. It can involve the authority to speak to elements of the environment or to those who reside in the spiritual world. Mana also has a communal dimension. A community – a hapū or iwi – is said to have mana. This collective mana reflects the extent to which a community behaves according to the dictates of mātauranga Māori – whether te reo and tikanga are maintained, whether individual members are protected, whether good relationships are maintained with the environment.

5. Waitangi Tribunal, Ko Aotearoa Tēnei: Te Taumata Tuatahi, p 35.
If mana is the authority to do these things, then kaitiakitanga is both the rationale for that authority and the parameter within which it is to be exercised. The root ‘tiaki’ means to nurture or care for, so kaitiakitanga is the responsibility nurture or care for something or someone. It too has a spiritual aspect. Kaitiaki can be spiritual guardians existing in no-human form. They can include particular species that are said to care for a place or community, warn of impeding dangers and so on. Every forest and swamp, every bay and reef, every tribe and village – indeed, everything of any importance at all in te ao Māori – has these spiritual kaitiaki. In the human realm, those who have mana must exercise it in accordance with the values of kaitiakitanga – to act unselfishly, with right mind and heart, and with proper procedure. Mana and kaitiakitanga go together as right and responsibility.

Therefore, the principles of whanaungatanga, tapu, mauri, utu, mana, and kaitiakitanga explained peoples’ relationships with the environment and justified the conditional exploitation of its resources.

By the time then-Lieutenant James Cook arrived in 1769, Māori were responsible for a large-scale change in some parts of the country. A cultural framework had evolved that perceived the use of natural resources as conditional exploitation, dependent on reciprocal whanaungatanga obligations. However, this degree of change pales in comparison to what happened after 1860. In the Ko Aotearoa Tēnei report, the Tribunal noted that from 1860 to 1910, New Zealand underwent possibly the most rapid landscape transformation in the world. Coupled with the introduction of deer, goats, possums, mice, rats, trout, pike, pigs, sheep, and cattle, the effects of environmental change, the Tribunal opined, have been almost incalculable.

In terms of the relevant Treaty principles applicable, the effects of this rapid environmental change on different taonga guaranteed by the Treaty of Waitangi must be considered. This is because the environment as a whole is not a taonga, in the sense used in the Treaty; rather, it is the manifestation of the atua themselves who transcend and have dominion over taonga. Therefore, taonga are the particular mountains or rivers, or specific flora or fauna or other animate or inanimate entities of the environment. As taonga they have mātauranga Māori associated with them, and whakapapa that can be recited by tohunga. Certain iwi or hapū may claim to be the kaitiaki of them and their tohunga can recount the history of the community that led to that status and what obligations this creates for them. These taonga have, in other words, kōrero tuku iho associated with them, the existence and credibility of which can be tested.

The Crown has a treaty obligation to protect the kaitiaki relationship of these iwi and hapū with their taonga and that obligation cannot be devolved or delegated.

---

Its duties remain and must be fulfilled, and it must make its statutory delegates accountable for fulfilling them. For clarity, the Tribunal in its report for the flora and fauna inquiry noted that kaitiakitanga – the obligation of rangatiratanga – is not about ownership, it is about control over taonga. The Tribunal said:

Where, in the balancing process, it is found that kaitiaki should be entitled to priority, the system ought to deliver kaitiaki control over the taonga in question. Where that process finds kaitiaki should have a say in decision-making but more than one voice should be heard, it should deliver partnership for the control of the taonga, whether with the Crown or wider community interests. In all areas of environmental management, the system must provide for kaitiaki to effectively influence decisions that are to be made by others, and for kaitiaki interest to be accorded an appropriate level of priority. And the system must be transparent and fully accountable to kaitiaki and the wider community in delivering these outcomes.

Over the years, the Tribunal has found a wide range of objects, organisms, and phenomena to be taonga protected under the Treaty. Whether something can be considered a taonga turns on the evidence of a particular case, but examples include a wide range of natural resources or features (such as rivers, fishing grounds, or wāhi tapu), species or populations of flora and fauna (such as harakeke, kūmara, and tuatara), intangibles (such as te reo Māori and the intellectual property behind certain waiata or tā moko).

The Crown has a duty to actively protect taonga, but only to the extent that is reasonable in the circumstances. Its duty extends to where it has authorised activities through policy or legislation that have damaged or destroyed customary resources or wāhi tapu, including through pollution and other environmental degradation. As a general principle, the more vulnerable or endangered a taonga is, the greater the duty of protection. The Privy Council has stated that ‘especially vigorous action’ may be required of the Crown where taonga are in a vulnerable state, it also said in the same decision that the Crown ‘is not required to go beyond taking such action as is reasonable in the prevailing circumstances’.

In assessing what is reasonable, the Tribunal has considered a number of issues to be relevant, including the state of environmental knowledge at the time among Crown officials; what complaints were made by Māori about the

---

effects of settlement on their taonga; and what priority the Crown gave to those complaints. The Tribunal has also recognised that rights to taonga are bound by the principle of kaitiakitanga, defined as ‘the obligation to nurture and care for the mauri of a taonga’, the ‘ethic of guardianship’, or more simply, ‘protection’. Thus, instead or in addition to ‘owning’ land and resources, Māori also ‘owed’ their taonga various obligations of protection and stewardship. As that Tribunal also said:

Kaitiaki nurture and care for the environment and its resources – not necessarily by forbidding their use, but by using them in ways that enhance rather than damage kin relationships. The kaitiaki relationship with the environment is not the transactional or proprietary kind of the western market, and does not rest on ‘ownership’. Rather, like a family relationship, it is permanent and mandatory, binding both individuals and communities over generations, and enduring as long as the community endures.

In terms of ownership of resources, the distinction between possession and rangatiratanga becomes vital when we consider what rights over taonga were retained by Māori once land began to be alienated after 1840. Past Tribunals have considered the effects of land alienation on the right of Māori to exercise rangatiratanga over their natural resources and other taonga. In the Central North Island inquiry, the Tribunal found that Māori were entitled to exercise rangatiratanga over their taonga ‘whether owned or not’. Moreover, the Tribunal has found that the Crown’s duty of protection is stronger where it is responsible through past Treaty breaches for Māori inability to access taonga – this may create what they term a ‘Treaty interest’ over public or private land.

The Te Tau Ihu Tribunal went further still, concluding that the indeterminate language of early Crown purchase deeds and the fact that Māori have continued to assert and exercise customary rights since the 1850s supported a finding that Te Tau Ihu Māori have never willingly and knowingly surrendered ownership of their natural resources and wāhi tapu. The Ngāi Tahu and Te Tau Ihu Tribunals also examined whether the Crown, in purchasing Māori land, reserved sufficient areas of mahinga kai. In the Ngāi Tahu case, these were explicitly referred to in purchase documents. Both Tribunals found that the Crown had failed to adequately ensure that Māori retained sufficient access to traditional food sources and other traditional resources, in order to sustain customary lifestyles and relationships. In addition, the Te Tau Ihu Tribunal found that Māori in the Northern South Island

---

were entitled to choose between maintaining a traditional way of life, including by access to mahinga kai, and participating in the new economic opportunities arising from European settlement.\textsuperscript{21}

The Central North Island Tribunal considered that during colonisation the common law ought to have been sufficient to recognise Māori interests in natural resources over and above their rights as landowners. Yet that Tribunal also said that to safeguard Māori rights, ‘some formal legal recognition in legislation was needed to ensure their protection within the introduced legal order’. Such legislation ‘should have acted to protect rather than defeat aboriginal title rights and prevent the application of competing common law rules’, as has often been the case, most recently with the Foreshore and Seabed Act 2004.\textsuperscript{22}

In addition to protecting rights over particular taonga, the Treaty also guaranteed Māori rangatiratanga over their affairs more generally.\textsuperscript{23} Rangatiratanga, as we have found in chapter 3 of this report, can be understood as autonomy, self-government, or self-determination.

Past Tribunal reports have observed the inextricable relationship between the words ‘rangatiratanga’ and ‘mana’. The Motunui–Waitara Tribunal said that ‘[r]angatiratanga denotes the mana not only to possess what is yours, but to control and manage it in accordance with your own preferences.’\textsuperscript{24} In other words, as the Muriwhenua Fishing Tribunal found, the exercise of authority anticipated in the Crown’s guarantee of tino rangatiratanga was ‘not only over property, but of persons within the kinship group and their access to tribal resources’.\textsuperscript{25}

A number of Tribunal inquiries have considered the historic ability of Māori to exercise authority and control in environmental management. In almost all cases, the degree to which the Crown enabled such control has been found lacking. The Tauranga Moana Tribunal found that the Crown ‘did not historically provide for Māori to have adequate powers of management over their taonga’ and the ‘Te Tau Ihu Tribunal found that Māori in the Northern South Island had no meaningful role in environmental decision-making.\textsuperscript{26} In the latter inquiry, the Tribunal also observed that if given the choice, Te Tau Ihu Māori might well have welcomed economic development, even including the modification or destruction of resources and sacred sites, if it was in their interest to do so. However, they had no such choice: ‘their interests were not consulted and they had no say in what

\begin{itemize}
  \item \textsuperscript{21} Waitangi Tribunal, \textit{Te Tau Ihu}, vol 3, p 1038.
  \item \textsuperscript{22} Waitangi Tribunal, \textit{He Maunga Rongo}, vol 3, pp 1267–1268; see also Waitangi Tribunal, \textit{The Foreshore and Seabed Report} (Wellington: Legislation Direct, 2004).
  \item \textsuperscript{23} The Treaty’s preamble speaks of the Crown’s desire to preserve as separate items the rangatiratanga of the chiefs and tribes, and also their land – ‘kia tohungia ki a ratou o ratou rangatiratanga, me to ratou wenua’: Waitangi Tribunal, \textit{Te Whanau o Waipareira Report} (Wellington: GP Publications, 1998), p 26; see also Waitangi Tribunal, \textit{He Maunga Rongo}, vol 1, p 172.
  \item \textsuperscript{26} Waitangi Tribunal, \textit{Tauranga Moana, 1886–2006}, vol 2, pp 614–615; See also Waitangi Tribunal, \textit{Te Tau Ihu}, vol 3, pp 1199–1200.
\end{itemize}
was or was not done. As a result, they were deprived entirely of their tino rangatiratanga and they lost key sites, mahinga kai, and resources without recourse or compensation.  

The Tribunal, through several inquiries, has also examined the Crown’s recognition of Māori interests in environmental management in the late twentieth century in legislation relating to resource management, the conservation estate, local government, and heritage protection. The Te Tau Ihu Tribunal, for example, noted that a stated intention of the Resource Management Act 1991 (‘the RMA’) was to partially incorporate Māori customary law into resource management decision-making. The Tribunal identified a grave responsibility on the part of the Crown to ensure that Māori customary law is preserved and strengthened as a result.

In addition to references to Treaty principles and terms such as kaitiakitanga and wāhi tapu, the RMA provides specific mechanisms for iwi and hapū influence, and in some cases partnership or delegated control. However, although many iwi management plans have been developed, in the flora and fauna inquiry the Tribunal identified serious concerns within Māoridom about the effectiveness of these plans in practice. Moreover, while partnership over the control of taonga is provided for in theory, in practice it has only been attempted in the form of highly specialised Treaty settlements, as with the Waikato River settlement accord, and the Te Arawa (Rotorua) and Taupō lakes agreements.

The flora and fauna Tribunal identified a spectrum of Māori involvement in environmental decision-making, from autonomy and control at one end, partnership and co-management in the middle, and mere influence at the other end. Without specifying which approach would be suitable in each circumstance, the Tribunal found that both the RMA and the Conservation Act 1987 fall short in providing tangata whenua the appropriate level of rangatiratanga over their taonga. Similar findings have been made in relation to the protection in cultural heritage legislation of wāhi tapu, urupā, and other significant Māori sites.

The National Park Tribunal was also critical of the legislation and general policy documents of the Department of Conservation (DOC) used to guide the work of that agency, noting that the 1987 Act lacks specifics as to how Treaty principles

---

27. Waitangi Tribunal, Te Tau Ihu, vol 3, p 1121.
30. Waitangi Tribunal, Ko Aotearoa Tenei: Te Taumata Tuara, vol 1, p 276; see also Waitangi Tribunal, Te Tau Ihu p 1223 and Waitangi Tribunal, Tauranga Moana 1886–2006, p 623.
31. Waitangi Tribunal, Ko Aotearoa Tenei Te Taumata Tuatahi, pp 105–120.
are to be given effect and that the general policy documents were contrary to the principles of the Treaty.\(^{33}\)

In the Ngai Tahu (1991) and Te Whanganui a Tara (2003) reports, the Tribunal considered the question of whether direct correlations could be established between Crown actions or inactions and a particular environmental modification. Both concluded that, although the loss of mahinga kai and other taonga due to the effects of European settlement was seriously detrimental to the claimants, it could not be solely attributed to the Crown, given the multi-causal nature of environmental change.\(^{34}\)

On the other hand, the Mohaka ki Ahuriri (2004), Hauraki (2006), Te Tau Ihu (2008), and Tauranga Moana (2010) reports considered a different and broader question: whether the Crown had recognised and acted on evidence of the need for environmental controls with sufficient priority.\(^{35}\) Reports for these inquiries agreed that the Crown cannot be held solely responsible for the broad sweep of environmental change, they also found that from the early twentieth century the Crown was aware of many of the negative cumulative impacts of settlement on the environment. In Tauranga Moana, for example, the Tribunal identified:

- widespread public and official concerns about the possible effects of deforestation on timber supplies, climate, and soil erosion;
- links between forest clearance and swamp drainage and a decline in fish populations, including advice in the 1930s that inanga spawning grounds should be fenced off; and
- problems with the pollution of Tauranga Harbour and other waterways, especially the effects of sewage disposal, prompting consistent protest by Tauranga Māori from 1928 onwards.\(^{36}\)

Ultimately all four of the latter Tribunals were able to make findings of Treaty breach, concluding, in the words of the Mohaka ki Ahuriri Tribunal, that ‘the Crown was simply late in adopting appropriate controls, rather than totally neglectful of its Treaty responsibility’,\(^{37}\) at least in that district. The Tauranga Tribunal expressed its findings for its district as follows:

> the Crown did not place proper priority on the interests of its Treaty partner. The Crown breached the Treaty principle of reciprocity and its duty of active protection by


failing to safeguard the legitimate Treaty interests of Tauranga Māori. Crown control over natural resources, and the destruction of forests and fisheries permitted by the Crown, left Tauranga Māori unable to sustain their traditional way of life, and unable to utilise natural resources as a base for economic development.\(^{38}\)

21.2.2 Crown concessions

The Crown made no concessions of Treaty breaches or other failings on environmental issues in Te Rohe Pōtae. Crown counsel did, however, make a number of general acknowledgments on environmental issues, including that:

- Te Rohe Pōtae Māori have a special relationship with the environment and environmental resources, which may in some circumstances include relationships of kaitiakitanga.
- In some circumstances, particular species of flora and fauna may be taonga to Te Rohe Pōtae Māori. In those circumstances the Crown may have duties under article 2 of the Treaty.
- Te Rohe Pōtae iwi and hapū had many tikanga relating to the use, possession, and care of the environment and its resources, and they continue to exercise many of those tikanga today.\(^{39}\)

21.2.3 Claimant and Crown arguments

The Tribunal received over 100 claims relating to the environment.\(^{40}\) The claimants’ basic position is that the Crown has failed in its duty to adequately and


\(^{39}\) Crown Statement of Position and Concessions (1.3.1), p 345.

\(^{40}\) Including Wai 440 (submission 3.4.198); Wai 457 (submission 3.4.238); Wai 551, Wai 948 (submission 3.4.250); Wai 784 (3.4.147); Wai 800 (submission 3.4.186); Wai 846 (submission 3.4.251); Wai 972 (submission 3.4.134); Wai 1099, Wai 1100, Wai 1132, Wai 1133, Wai 1136, Wai 1137, Wai 1798 (submission 3.4.189); Wai 1469, Wai 2291 (submission 3.4.228); Wai 1437, Wai 1612 (submission 3.4.140); Wai 1482 (submission 3.4.154(a)); Wai 1599 (submission 3.4.153); Wai 1926 (submission 3.4.242); Wai 1992 (submission 3.4.173); Wai 1944 (submission 3.4.233); Wai 1606 (submission 3.4.169(a)); Wai 556, Wai 616, Wai 1377, Wai 1820 (submission 3.4.279); Wai 586, Wai 753, Wai 1396, Wai 1585, Wai 2020 (submission 3.4.204); Wai 587 (submission 3.4.177); Wai 1500 (submission 3.4.160); Wai 1824 (submission 3.4.181); Wai 399 (submission 3.4.159); Wai 478 (submission 3.4.155(a)); Wai 729 (submission 3.4.240); Wai 762 (submission 3.4.170); Wai 836 (submission 3.4.131); Wai 928 (submission 3.4.175(a)); Wai 1255 (submission 3.4.199); Wai 1455 (submission 3.4.156); Wai 1480 (submission 3.4.176); Wai 1640 (submission 3.4.191); Wai 1704 (submission 3.4.247); Wai 1812 (submission 3.4.184); Wai 48, Wai 81, Wai 146 (submission 3.4.211); Wai 555, Wai 1224 (submission 3.4.163(a)); Wai 987 (submission 3.4.167); Wai 1196, Wai 1203 (submission 3.4.151); Wai 1230 (submission 3.4.168); Wai 1299 (submission 3.4.234); Wai 1447 (submission 3.4.187); Wai 1594 (submission 3.4.164(a)); Wai 1803 (submission 3.4.149); Wai 355 (submission 3.4.243(a)); Wai 691 (submission 3.4.246); Wai 788, Wai 2349 (submission 3.4.246(a)); Wai 849 (submission 3.4.194); Wai 868 (submission 3.4.247); Wai 426 (submission 3.4.146); Wai 614 (submission 3.4.142(a)); Wai 827 (submission 3.4.245); Wai 870 (submission 3.4.202); Wai 112, Wai 1113, Wai 1439, Wai 2351, Wai 2353 (submission 3.4.226); Wai 1410 (submission 3.4.216); Wai 1438 (submission 3.4.183); Wai 1448, Wai 1495, Wai 1501, Wai 1502, Wai 1592, Wai 1804, Wai 1899, Wai 1900, Wai 2125, Wai 2126, Wai 2135, Wai 2137, Wai 2183, Wai 2208 (submission 3.4.237); Wai 1499 (submission 3.4.171(a)); Wai 1533 (submission 3.4.217); Wai 1588, Wai 1589, Wai 1590, Wai 1591 (submission 3.4.143); Wai 1611 (submission 3.4.152); Wai 1908 (submission 3.4.236); Wai 2087 (submission 3.4.218); Wai 2134 (submission 3.4.214); Wai 125 (submission 3.4.210); Wai 775 (submission 3.4.244); Wai 1327 (submission 3.4.249); Wai 2273 (submission 3.4.141).
actively protect Te Rohe Pōtae Māori rights and obligations with respect to the environment and environmental resources. This includes a failure to protect their ability to exercise authority over, and have relationships with, the natural and cultural landscape of Te Rohe Pōtae.

Counsel for the claimants argued that under the Treaty, the Crown has a duty to recognise and protect the cultural and spiritual relationship between Māori and the natural world, including both Te Taiao (the environment broadly) and Te Moana (the ocean and other waterways):

The Crown did not comprehend, care, or protect Te Taiao and Te Moana as taonga. The principles of partnership and good faith were not respected, with the Crown instead running roughshod over the tino rangatiratanga of Rohe Pōtae Māori, usurping their role as kaitiaki and causing significant environmental damage. This was done without proper regard for consultation, the status of Te Taiao and Te Moana as taonga and the essential role Te Taiao and Te Moana played in sustaining the traditional way of life for Rohe Pōte Māori. 41

Counsel for the claimants argued that before 1840, Te Rohe Pōtae Māori relied on the region’s flora and fauna for survival. They maintained that through rights of rangatiratanga and duties of kaitiakitanga, iwi, and hapū ‘balanced the sustenance of their people with the preservation and enhancement of their resources’. 42 However the opening of the region to large-scale land purchasing and agriculture from the 1880s had the effect of alienating Māori from the vast majority of their customary resources and wāhi tapu. The claimants argued that the Crown’s introduction of the Native Land Court and its land title system to facilitate Pākehā settlement in Te Rohe Pōtae undermined Māori relationships with their land, wetlands, waters, and harbours.

The claimants argued that the primary cause of Te Rohe Pōtae Māori losing rangatiratanga over their customary resources and wāhi tapu was land loss, arising from the Crown’s opening of the region to European settlement. By the 1930s, economic decision-making over the land and its associated natural resources had largely passed into the hands of Pākehā, who now possessed exclusive rights under English common law to use the land as they saw fit. Claimants acknowledged that in some cases, hapū continued to access food and other resources after land was alienated. However, they said once a site passed out of Māori ownership, their power was lost, leaving them effectively reliant on the goodwill of Pākehā. Eventually, settlement and economic development created barriers to ongoing access, causing Māori to become disconnected from their customary activities. 43

The claimants argued that the Crown has failed to preserve the rangatiratanga of Māori over the land and waterways of our inquiry district and has usurped their

---

41. Submission 3.4.115, pp 8–9.
42. Submission 3.4.115, p 5.
43. Submission 3.4.115(a), p 6; doc A76 (Michael Belgrave et al), pp 26–27; doc A148 (David Alexander), p 267.
rightful role as kaitiaki. Claimants said that iwi and hapū of Te Rohe Pōtæ actively sought involvement in the Crown’s management of the environment, through demands for mana whakahaere during the Te Ōhākī Tapu discussions, and by expressing concerns about their taonga to Crown agents on a range of occasions. But, they said, the Crown did not take Māori or their concerns seriously. Instead, from the 1880s to the late twentieth century, the Crown delegated the bulk of its environmental powers to local and regional authorities, and in doing so promoted an ‘institutional and settler-focused culture that placed no value on consultation with Māoridom.’ As a result, claimants stated, the Crown has allowed natural resources within the territory, such as clean water and uncontaminated land, to be exhausted, ‘without Rohe Potae Māori obtaining the use of their share of those resources implicit in the Ohaaki Tapu.’

In addition, the claimants said the Crown’s implementation of laws, policies, and practices in relation to the environment usurped the rightful role of Te Rohe Pōtæ Māori as rangatira and kaitiaki. Māori had no official input into environmental management regimes until the late twentieth century and although the latter-day incorporation of Māori customary concepts into legislation raised expectations of greater involvement in environmental policy and day-to-day management, the claimants do not believe these expectations have been met.

For many claimants, a central issue in this inquiry is the loss of their traditional resources and sacred places and the Crown’s alleged culpability. Claimant witnesses spoke at length of how taonga were once the lifeblood of Māori communities, and remain central to their identity today, even in their reduced state. Tuna, or long-finned eel, were especially prominent in claimant kōrero, as was Te Nehenehenui, the great lowland forest that once covered the central and eastern part of the inquiry district.

However, the Tribunal heard evidence about many other species and their habitats considered taonga to Māori, including numerous birds; kiore and kuri; sharks, whitebait, shellfish, and other aquatic creatures; and wetlands, lakes, rivers, and harbours. It heard, too, about the places and things that had become taonga for their part in the human history of Te Rohe Pōtæ – wāhi tapu of great cultural and spiritual importance; places of learning and high ritual; places of conflict and peace-making; and urupā and other burial places.

The claimants further stated that the Crown failed to prevent the pollution and degradation of the land and waterways of Te Rohe Pōtæ, despite being aware from an early stage of the environmental risks posed by settlement. It knew, for example, that the removal of forests would harm soil and water quality, yet allowed this to go ahead without taking into account the environmental interests of tangata whenua. Māori also raised concerns about the state of their taonga on a range of occasions.

---

44. Submission 3.4.115(a), pp 10–11.
45. Submission 3.4.130, p 15.
46. Submission 3.4.115, pp 8–9.
47. Submission 3.4.115(a), p 16.
occasions and the Crown did not take Māori or their concerns seriously. Although the Crown took some steps to mitigate the negative environmental effects of settlement and economic development, claimants argued that these were belated and inadequate.

Claimants told us that the Crown’s policy reforms of the 1980s and 1990s raised hopes that Māori would become more involved in day-to-day resource management. However, from their perspective, proper weight was not given to Māori interests in the design of the RMA and other key pieces of legislation. As a result, claimants feel that the views and concerns of tangata whenua have been inevitably and repeatedly forced to cede to other interests. In their view, a genuine Treaty partner would consult Te Rohe Pōtae Māori on all major environmental decisions, rather than the piecemeal and irregular approach taken to date. Likewise, iwi and hapū attempting to design management plans under the RMA described serious resourcing and capacity barriers and a lack of support from councils. Where such plans exist, claimants feel that the views and concerns of tangata whenua have been inevitably and repeatedly forced to cede to other interests. In their view, a genuine Treaty partner would consult Te Rohe Pōtae Māori on all major environmental decisions, rather than the piecemeal and irregular approach taken to date.

In terms of forestry issues, the Crown’s role in deforestation and its impact on forest resources and waterways were common concerns among claimants to this inquiry. In particular, the Te Ihingārangi claimants (Wai 762), together with Maniapoto ki te rohe o Tūhua (Whanganui Northern cluster), commissioned Dr Garth Cant to undertake specific research on Crown knowledge of the impacts of deforestation in Te Rohe Pōtae. Dr Cant’s findings were widely adopted in closings.

In addition, claimants raised numerous related issues regarding habitat loss, pollution arising from timber mills, and the role of Māori in modern forest conservation. The claimants argued that the Crown allowed widespread deforestation in Te Rohe Pōtae even though it knew from before 1880 that this would increase flooding and harm soil and water quality. While Māori in the region participated in forest clearance by selling cutting rights, claimants argued that Crown regulation of the timber industry was weighted against the interests of Māori landowners, and in favour of Pākehā commercial enterprise, encouraging even greater levels of deforestation. The overall result, claimants alleged, was increased erosion, the devastation of indigenous wildlife, and adverse effects of sedimentation on waterways and marine life. Although they noted that the Crown took some steps to mitigate the worst effects, claimants argued that these measures were inadequate.

Claimants also pointed to a lack of Māori involvement in Crown indigenous forest management. The Crown, they said, delegated the management of indigenous forests to various agencies, each of which paid minimal, if any, attention to the interests of Te Rohe Pōtae Māori. While claimants acknowledged recent steps

---

49. Submission 3.4.115, pp 20–23.
50. Submission 3.4.115, pp 20–22.
51. Document A154(a) (Garth Cant). See for example submission 3.4.170, pp 20–33; submission 3.4.173, pp 3–15; submission 3.4.176, pp 7–19; submission 3.4.211, p 37.
52. Submission 3.4.115(a), pp 17–18.
53. Submission 3.4.115, pp 9–10; submission 3.4.170, pp 20–33.
by DOC to involve tangata whenua, they maintained that so far this has resulted in very little meaningful change, with the exception of specific regimes established as part of the Treaty settlement process.\textsuperscript{54}

In permitting forest removal to such an extent and by failing to adequately engage with tangata whenua over the management of their forest lands, claimants argued that the Crown abrogated its Treaty duty to preserve the interests of Te Rohe Pōtae Māori in their taonga. The end result of these actions and omissions, claimants said, is that they are no longer able to exercise rangatiratanga and kaitiakitanga over the forest and its resources.\textsuperscript{55}

The claimants also expressed concern regarding the modification of the environment with respect to drainage schemes.\textsuperscript{56} Various submissions referred to case-studies involving the draining of wetlands such as the Ngārohira Lake wetland after 1901, and the draining of the Paretao wetland eel fishery at Kāwhia.\textsuperscript{57} The claimants challenged the land drainage legislation in its various forms since 1876. They focused on enactments which deemed natural watercourses to be drains and which are still in force today due to the effect of the Land Drainage Act 1908. The claimants maintain that the Crown mismanaged swamps within Te Rohe Pōtae, which resulted in the loss of the wetlands and a loss of their traditional food sources. They concluded that a holistic Māori approach to land use conflicted with the Crown’s economic imperatives and this is particularly evident in swamps being considered wasteland.\textsuperscript{58}

In response to the claimants’ contentions, the Crown’s overall position is that it is under no general Treaty obligation to protect relationships between Māori and the environment.

The Crown replied that Te Rohe Pōtae Māori have no general property or tino rangatiratanga rights or interests in the environment over and above ordinary legal interests such as those of land ownership.\textsuperscript{59} Further, the Crown has no general responsibility for preserving Māori practises of kaitiakitanga and other environmental tikanga. The Crown submitted it cannot be expected to maintain the lore, cultural preferences and customs of Māori groups and individuals as these are personal values and are primarily the responsibility of particular iwi and hapū.\textsuperscript{60}

Crown counsel acknowledged that certain aspects of the environment may constitute taonga to which article 2 duties attach. However, the Crown did not accept that its Treaty guarantee of rangatiratanga in respect of taonga was an absolute one. Rather the Crown submitted it needed to balance this duty against its kāwanatanga responsibilities:

\begin{itemize}
  \item [54.] Submission 3.4.115(a), pp 20–24; submission 3.4.115, pp 11–13.
  \item [55.] Document Q6 (Michael Burgess), p 8.
  \item [56.] Submission 3.4.130(b), p 88.
  \item [57.] Submission 3.4.130(b), p 89; submission 3.4.167, p 39; submission 3.4.226, pp 114–117.
  \item [58.] Submission 3.4.115, p 14, para 8.6.
  \item [59.] Submission 3.4.283, p 112.
  \item [60.] Submission 3.4.283, p 23.
\end{itemize}
There are multiple interests in the environment and the natural resources of the Rohe Pōtae and any management regime must necessarily carefully weigh all of those interests. Further, it is not possible to state generally what ‘priority’ Māori interests might take. This will depend on a range of factors such as the relative importance of the taonga to Māori, any environmental threat to the taonga, available research, other extant interests in respect of it, and the human and monetary resources required for effecting Māori interests.

The Crown also placed significant emphasis on its article 3 obligation to ensure that its environmental policies and practices are applied equally to Māori and non-Māori.

Although the Crown acknowledged that its past actions ‘may have’ affected the practice and extent of some customary activities of Te Rohe Pōtae Māori, it did not consider this to be, in and of itself, a breach of the Treaty. Rather, the Crown argued that such regulation may, in the circumstances, be seen as a proper exercise of kāwanatanga and that each issue must therefore be considered on a case-by-case basis.

In addition, the Crown argued that there is no general obligation under the Treaty (or from any other source) to prevent all environmental degradation. In this regard, it stated ‘adverse environmental impacts are an inevitable consequence of human progress, and some degree of environmental degradation will always occur’. Moreover, the Crown submitted that degradation is a subjective concept and views differ, even within Māoridom, as to what constitutes harm and even where it does take steps to prevent or mitigate damage, it cannot guarantee outcomes as environmental change is complex and multi-faceted.

The Crown accepted that the introduction of common and statute law had implications for the ability of Māori to exercise kaitiakitanga in respect of their environmental taonga. The Crown, too, noted evidence showing that in some cases Māori retained the ability to follow their customary practises even after land title was alienated. It also said that, on a national scale, claims to native title were sometimes upheld in the Courts.

Furthermore, although the Crown accepted that ‘there was no doubt pre-RMA environmental management regimes did not generally recognise or take into account Māori values and interests in a way now considered necessary’, it argued that any assessment of the Crown’s environmental practices and policies must be considered on a case-by-case basis and in light of the prevailing circumstances.

The Crown, for its part, did not accept that Te Ōhākī Tapu had any augmented effect on its duty to protect taonga under the Treaty. In the Crown’s view, these
obligations stand on their own; the Treaty provides the same protections to all Māori regardless of circumstance.  

The Crown admitted the possibility that some of its environmental measures ‘may not have reflected the views of all Rohe Pōtae Māori’; ‘may have conflicted with customary law and tikanga’; and ‘may have affected Rohe Pōtae Māori interaction with the environment’. It did not deny, therefore, that Māori values were adversely affected in ‘some cases’. However, the Crown maintained that any alleged Treaty breaches must still be proven on a case-by-case basis, and judged according to the standards of the day rather than by modern notions of Treaty-compliance. Moreover, the Crown said, the Treaty’s guarantee of rangatiratanga is not unconditional; rather, it is limited by the Crown’s responsible exercise of kāwanatanga. Hence a compromise to rangatiratanga may be justified if the Crown, in balancing the interests of Māori against its own kāwanatanga obligations, determines such a compromise to be sufficiently important in light of other national, commercial, and recreational interests, including those of the environment itself.

In relation to local body delegation, Crown counsel acknowledged the significant degree of Crown devolution of environmental decision-making to local authorities over time. This reflected, counsel said, the Crown’s philosophy of local government: that it is preferable for decisions affecting local communities to be made by those communities, with the Crown setting the broad parameters, including attending to Treaty obligations. The Crown restated its position that local authorities are separate authorities, and therefore not part of the Crown-Māori relationship. Having said this, the Crown admitted poor historic Māori participation in local government, although it noted significant efforts to improve this since the 1980s. In the modern period, the Crown argued that the RMA, the Local Government Act 2002 and the Conservation Act 1987 include sufficient provision for Māori views to be taken into account and for Māori to participate in local authority decision-making processes.

The Crown argued that the current legislative framework provides appropriate recognition of Māori interests, and adequate provision for Māori to express their views and concerns. Section 6(e) of the RMA, for example, confirms that Māori relationships with the environment are a matter of national importance that those exercising the Act’s powers must ‘recognise and provide for’. In the Crown’s view, the RMA strikes an appropriate balance between the Crown’s regulatory role and its obligation to recognise and take account of the interests of Māori. Ultimately, the Crown considers the current legislative framework to provide appropriate recognition of Māori interests and provision for Māori to express their views and concerns. In particular, the Crown believes the RMA strikes an appropriate balance between the Crown’s regulatory role and its obligation to recognise and take account of the interests of Māori.

68. Submission 3.4.283, pp 21–22.
69. Submission 3.4.283, pp 8–9.
70. Submission 3.4.283, pp 34–38.
71. Submission 3.4.283, pp 22–23.

330
role between the Crown’s regulatory role and its obligation to recognise and take account of the interests of Māori.\(^{72}\)

In terms of drainage schemes, the Crown submits that there are legitimate public interest considerations that may favour drainage schemes, such as flood protection. The Crown acknowledges that drainage may have caused damage to swamps, but the circumstances of any particular scheme must be considered on a case-by-case basis. Although the Crown acknowledged that drainage schemes caused damage to wetlands, which in some cases was significant, it submitted that it does not have a general obligation to protect all wetlands. Rather, it is only obligated to take reasonable steps to protect those waterways which are taonga to Māori and to ensure that its policies are applied equitably between Māori and others. The Crown stated that consideration of the following circumstances are important when assessing its actions regarding wetlands, the significance of the swamp to Māori; the substance of any concerns raised by Māori, and if the Crown was aware of them; the response of the Crown to any concerns (including any steps taken to mitigate the impact of the scheme or provide for Māori interests) including whether there are:

- any competing views amongst Māori;
- any part Māori played in the scheme;
- any benefits Māori might have derived from the scheme; and
- any competing public interest considerations that needed to be balanced (such as flood protection).\(^{73}\)

21.2.4 Issues for discussion

Based on the arguments advanced by claimants and the Crown, the findings of previous Tribunals and the Tribunal’s Statement of Issues, we focus on the following questions in this chapter:

- How did the Crown’s actions in promoting European settlement in Te Rohe Pōtae impact on the ability of Māori to exercise rangatiratanga and customary rights over their natural resources and other taonga?
- What was the role of Te Rohe Pōtae Māori in environmental management before and after the legislative reforms of the 1990s?
- Is the Crown’s management of the environment through its policies and legislation consistent with the principles of the Treaty of Waitangi?

21.3 Environmental Management

As discussed in chapter 2, the landscape and waterways of Te Rohe Pōtae were and are of great importance to the region’s iwi and hapū. The district includes a number of significant maunga (the most prominent of which are Pirongia and Pureora); the west coast harbours (Whāingaroa, Aotea, and Kāwhia); numerous rivers (Waipā, Mōkau, Awakino, Marakopa, and Pūniu); wetlands and estuarine

\(^{72}\) Submission 3.4.283, pp 22–23, 34–38.

\(^{73}\) Submission 3.4.283, pp 57–59.
areas. It also includes large areas of coastline, and part of the inner ocean to the westward.

Arriving from Eastern Polynesia around **AD** 1200 on the *Tainui* waka, the ancestors of present-day Te Rohe Pōtae Māori shared with other Pacific peoples a belief system in which the natural world was indivisible and inseparable from their own whakapapa. These early peoples settled the west coast and then gradually moved inland. Unlike elsewhere in New Zealand, the early generations of Polynesian migrants had only a limited impact on the landscape, and over time, they formed close relationships with the flora and fauna of their rohe, developing various customary laws for managing use and interaction with natural resources. As in other parts of New Zealand, competition for small birds, fish, and shellfish was an issue, as was the need to control eel weirs, kūmara plantations and fern beds. This led in turn to an increased sense of territoriality and a closer association between descent groups and particular rohe. Trade routes were established, but as tribal society came under resource pressure, tenets of customary law emerged that placed a high importance on sustainability. As Belgrave et al wrote:

> The complex systems of regional trade developed by pre-European Māori required a detailed knowledge of the life-cycle and seasonal patterns of fish, birds and plants ([SR], paras 29–33). This combined with understanding of geographic, climatic and astronomical patterns which, in turn, was bound in religious beliefs that featured in customary law. Knowledge of the environment was grounded in traditional Māori beliefs and values. This cosmology acknowledged interconnectedness in ecological, human and spiritual elements which gave a priority to environmental sustainability. Protection of resources could be done by placing rahui on a resource which would restrict access. The rahui could then be lifted once the protection was no longer required.

A legal emphasis on sustainability was crucial to maintaining the various food, timber and mineral resources necessary for economic survival. Depleting a resource could be dangerous as it could have a detrimental effort on other resources. Conscious attempts were made to adjust the environment to improve resources. Māori customary law placed an importance on sustainability due to an understanding of the fragility of these resources and the economic disaster that would occur if they failed.

Sustainability was not only important for survival, it was also important for maintaining property rights. By utilising and sustaining natural resources, Māori maintained their economy and use rights under customary law. Distribution of rights to resources under customary law depended not on individual property rights, but on communal rights, which sprang from the continued utilisation of resources. Individual property rights for resources did exist, such as to a particular garden, berry-tree or a small fishing spot, but these were always subject to community

---

recognition: they extended from the community. An individual’s right to use a given resource came from relational ties to various whanau and hapu, which could become complex. This complexity is shared in the way customary law established protection of rights to resources such as water, which was related to the right to occupy land. These rights were communal, although those communal rights could be used by hapu members living in other areas. Customary law supported a complex system of environmental management which directly related to rights of occupation. The system of property rights would lose its impact on sustainability as European migrants gained access to resources independent of tikanga.

Collective management of resources was not only a reflection of cultural identity and interrelationship, it also made economic sense. Different resources and different methods of hunting and harvesting required different amounts of labour. Large-scale use of pā tuna and shark fishing could involve substantial numbers of people, bringing whanau together at a hapū or iwi level for specific periods of time to harvest and distribute the catch. Working collectively and being bound together by whakapapa (even as a distance) allowed for the efficient harvesting of large quantities of fish, in ways that reduced the possibility of conflict and provided a rationale for how both labour and resources should be shared. Other forms of resource use required less labour and could be undertaken at a whānau level. Conflict did occur and appeared to be intensifying in the early decades of the nineteenth century, but the peaceful and cooperative management of resources should be regarded as far more important.

The resulting system of environmental management thus involved the allocation of resource rights and responsibilities to specific hapū and whānau, as well as the implementation of protocols such as rāhui and tapu to restrict access to resources for set periods of time. Boundary pou whenua and metaphysical beings such as taniwha were employed to define the metes and bounds of tribal or hapū rohe and aid the regulation of human conduct towards the environment.

Te Rohe Pōtae was still rich in natural resources by the 1840s, despite the environmental changes that had occurred in the first phase of human settlement. David Alexander summarised the picture in 1840 as ‘one of forest clothing the land, a pattern broken only where there were sand dunes or wetland swamps’. Belgrave et al estimated that two to three thousand species of plants and animals were used by Māori in Te Rohe Pōtae to create food and goods in the pre-Treaty period.

Traditional resource rights within the inquiry district were strictly allocated and jealously guarded. One relevant example concerns the importance of and control over eel weirs. It was not unheard of for fighting to occur over access to these prized taonga. For example, fighting took place between Ngāti Apakura and Ngāti Puhiawe on Lake Ngāroto, north of Te Awamutu, over access to a prized eel weir and is discussed in more detail in chapter 22 on Waterways.

78. Document A110 (Paul Meredith et al), p 305.
However, at a more fundamental level, the skills of hunting, gardening, and providing for one’s own was considered a core aspect of Te Rohe Pōtae Māori society. Pei Te Hurinui Jones records an occasion on which the hapū of Ngāti Maniapoto vied with one another to provide various forms of kai in tribute to the Waikato ariki Te Wherowhero:

Rereahu hapū from Maraeroa and Te Tiroa at the headwaters of the Waipā and Waimiha rivers, brought the tender fronds of mamaku (an edible tree fern), and in the season kaka (native parrot) and kererū (wood-pigeon). Ngāti Paemate from Aorangi and Kahuwera on the Mōkau river, brought berry-fattened tūī (parson-bird). Ngāti Te Kanawa, Kaputuki and other tribes, from the Mangatā a tributary of the Waipā brought piharau (lamprey), Ngāti Rungaterangi and Ngāti Waiora and other Mōkau tribes brought from Awakino and Waikawau wheke (octopus), kōura (crayfish), inanga (whitebait), and all manner of shellfish. Succulent eels of all varieties were brought from every quarter. And there was no need for the Waikato ariki to pine for the silver-bellied eels of his lake country, for these were caught in thousands by the Ngāti Matakore and other hapū in the waterways of the great Te Kaawa swamps at the foot of the hill Kakepuku. From the Hurakia ranges at the headwaters of the Ōngārue river, Ngāti Te Ihingārangi, Ngāti Raerae, Ngāti Hinemihi (all expert fowlers) brought miro-fattened kererū either freshly snarled or in calabashes as huahua (preserved in their own fat).

The forests of this district, including Te Nehenehenui, were of great spiritual importance to Ngāti Maniapoto and other iwi and hapū of the district, a significance that only grew after the turmoil of the 1860s.

Their ancient history records:

the ancestor Kahukeke (known as Kahuere to others), daughter of Hoturoa, the Captain of the Tainui waka, and her tohunga husband, the high priest Rakatāura, also of the Tainui Waka, . . . travelled along the south eastern extremities to the Hurakia. It was her name that was bestowed upon certain Tainui landmarks such as Pirongia-te-araro-o-Kahu, Kakepuku-te-araro-o-Kahu, Rangitoto-o-Kahu, Wharepūhunga-o-Kahu and Pureora-o-Kahu (The Health-restoring Purification-of-Kahu). As for the Hurakia, the full name is Hurakia o Kahu (The discovery of Kahu). Her naming of places was all part of an epic journey which extended over a number of years.

In parts of these forest there were hapū who were adherents of Pao Mīere, an Io religion that acknowledged the role of the Patupaiarehe or fairy people. Claimant Thomas Tūwhangai, citing James Cowan, Pei Te Hurinui Jones, and the surveyor Cussen, recounted the nature of its adherents as follows:

Ngāti Huru were adherents of the Pao-miere and on our lands stood a very special post or pou; it was situated on the high hill called Pakihi near the Ngāti Huru kāinga Pukanohi on the Hurakia. The name of this post was ‘Te Pou o Rakeiora.’ This Pou was later taken to Te Koura Putaroa Marae, near the Ongaruhe river.

It has been recorded that:

The development of the political and agrarian phase gave pioneer surveyors some trouble in the South Taupo Country in 1882–83. There was a poetic survival of the belief in the existence of the Patupaiarehe or fairy people associated with the Paomiere chants. This was an appeal to the Patupaiarehe tribe of the Rangitoto Ranges to cause them to remain in their ancient haunts as guardians of Ngati-Maniapoto, and so preserve the Māori land for the Māori people.

Te Ra Karepe and Rangawhenua were priests of the Io cult. The name Pao-miere (to refuse honey) was given to the adherents of the cult. The Native Land Court had commenced its sittings at Otorohanga some two years before and the adherents had decided that they would have nothing to do with land court proceedings.

A feature of the early days of the investigation of title were the Crown purchases that quickly followed the court sittings. Large areas of land were sold to the Crown as soon as the titles were settled by the court, and the sellers were able to purchase many of the good things of life.

The adherents of Pao-miere kept away from these processes and as a result they did not participate in the early land sales. They were in many cases left out of titles to tribal lands or had small nominal shares awarded to them. It was because of all these things that the name Pao-miere was given to the cult by other members of the Ngāti Maniapoto tribe.

Pao Miere adherents confronted and thwarted William Cussen and his surveying party in 1888 as they started work especially around Oruaiwi near Tuhua:

On reaching the Tuhua district we were met with a more serious and troublesome opposition. The Natives said they were told Government would take large areas of land from them to pay for the trig survey; that the maps would be used to investigate the titles to the land; taxation would follow, and Government would ‘lock up’ their lands until they could secure it all for themselves; that the big chiefs were managing everything.

A Committee was formed in Tuhua to manage local matters. They decided to prevent us from putting any more stations on their land; they would allow none of their people to accompany me or assist in any way, and no information such as names of rivers, hills, &c was to be afforded us. Kingi te Herekeikei [sic] of the Ngatituwharetoas [sic], was with the Tuhua Natives, and advised this course.

Cussen’s survey was delayed three weeks, but on 25 January 1888 he reported that the survey was nearly complete from Ruapehu to the Taringamotu river. On 6 February Cussen reported ‘that another stoppage has been made by the natives to the
survey of the Rohepotae near Petania’ and Cuss named those who ‘obstructed the survey to Oruaui.’

Even today, before Ngāti Huru followers of this faith go hunting they offer kara-kia and gifts to the Patupaiarehe for a safe journey within their domain. Ngāti Uekaha also talked about the Patupaiarehe people who inhabited Matakana at Waitomo. What is important, the Tribunal was told, is that Matakana holds the sacredness of the relationship Ngāti Uekaha hapū had with this area, ‘given this was the home of our Patupaiarehe.’ ‘The practices of our people were [that] every night a plate of food was left outside the wharenui for the Patupaiarehe and the kaumātua said each morning the plate would be empty. The hapū saw this as an important tikanga for Pohatuiri.’

In the north, their forest was the home of the Patupaiarehe people as well. They inhabited Pirongia, covering the ranges and ravines, between the Waipā River and the inner part of the Kāwhia Harbour, Rangitoto, Whare-puhunga, and Maunga-tautari. The site of the cruciform house at Te Miringa Te Kākara, long an important wānanga of Waikato, was said to be chosen because of its inaccessibility and its location beneath Pureroa maunga, ‘the last refuge of the Patupaiarehe.’ This house burnt down in 1982.

Aside from the spiritual aspects to the forests, Paul Meredith et al explained their historical importance, noting that when Tāwhiao’s father, Pōtatau, was near death he said to his son, ‘E muri ara mau ki te Nehenehenui’ (Afterwards hold fast to te Nehenehenui).

Here, Pōtatau was saying that Tāwhiao could count on Ngāti Maniapoto, not only as supporters of the Kingitanga but as close relatives. Tāwhiao and his Waikato followers would retreat across the Pūniu River into the refuge of Te Nehenehenui, along with many others displaced by war and confiscation following the unjustified invasion of the Waikato by the Crown, as discussed in chapter 6 of this report.

Claimant Piripi Crown recounted kōrero of how the waters of Te Nehenehenui bubbled up from the ground and were inundated with fish, whitebait, crayfish, native trout, and tuna. Belgrave et al also noted that, ‘in these ancestral landscapes, physical features are much more than simply waterfalls or caves; they

---

84. Document S20, p 3.
87. Transcript 4.1.11 (Rangiāniwaniwa Pehikino, hearing week 5, Te Ihingārangi Marae, 5–10 May 2013), pp 130–131.
89. Transcript 4.1.11 (Piripi Crown, hearing week 5, Te Ihingārangi Marae, 5–10 May 2013), p 41. Waterways and fisheries are discussed in more detail in chapter 22.
carry histories of past events, stories which not only give a cultural meaning to the places, but link them to whakapapa of those in the present.\(^{90}\)

### 21.3.1 The impact of the land alienation and Pākehā settlement in Te Rohe Pōtāe

As we saw in the chapter on pre-Treaty purchasing, a few small coastal land transactions took place with early Pākehā residents before the Treaty, and with the Crown thereafter. Trade in timber also occurred on a small scale, beginning in Kāwhia in the 1840s. Yet, as Alexander explained, although there were some changes to secondary forest at this time, this was ‘unlikely to have been at the expense of the swamp vegetation and the open water wetlands, which remained of particular importance to Māori’.\(^{91}\)

This is not to say that Te Rohe Pōtāe remained unchanged before 1880 and the railway. In the period 1840–80, Māori increased the size of their gardens in order to meet both the demands of the expanding market outside the aukati, and those

---

\(^{90}\) Document A176, p 20.

\(^{91}\) Document A148, p 11.
of the refugees inside. The district had revitalized its agricultural production and economic output during the two decades following the wars of the 1860s. While crop production increased, it is highly doubtful that output reached anywhere close to pre-war levels. The recovery was also unsustainable long-term as external pressures (including increased number of wheat growers, expanded market options, steamer transportation and the growth in agriculture in other districts) began to take their toll.

The main thrust of organised European settlement of Te Rohe Pōtae began in the 1880s with the lifting of the aukati, and the coming of the main trunk railway, the introduction of the Native Land Court and the advent of large-scale Crown purchasing. With the Rohe Pōtae block moving through the Native Land Court system in 1886, the Crown purchasing one third of the land within the inquiry district within a 15-year period, the impacts of settlement multiplied by the turn of the century.

The Kingitanga and the aukati were, among other things, Māori responses to the Government’s land policies and to broader changes within Māoridom. A practical effect of tribal autonomy was to allow Māori in at least parts of the Waikato to avoid many of the environmental impacts of settlement, alongside the political impacts, for much longer than in other parts of the colony. This meant that negotiations in the 1880s over the main trunk railway, Te Ōhākī Tapu, and associated agreements and native land legislation also carried major implications for the rangatiratanga of Te Rohe Pōtae Māori with respect to their customary resources and other sacred places. Te Rohe Pōtae leaders of the 1880s were well aware that both the Crown and incoming Pākehā not only sought land, but also to profit from the region’s natural and mineral wealth. They were not necessarily opposed to such changes; rather, as with other aspects of Te Ōhākī Tapu, Māori wanted resource exploitation to proceed in a way they could control, and thus for changes to take place on terms that benefitted their communities.

As noted by Dr Hearn:

For Te Rohe Pōtae Māori, having generally accepted that their rohe would be drawn into the colonial space-economy and keen to exploit the new commercial opportunities opening up, and anxious to improve their material living standards, the key question was how that integration and development would be controlled, managed, and directed. The steadfast refusal of successive governments to contemplate any constitutional changes, such as the formation of a new province, and its reluctance to grant Te Rohe Pōtae Māori any substantial or enduring measure of political control over the management of their natural resource endowment, encouraged them to demand the right, consistent with the Treaty of Waitangi and consistent with the rights of private property owners under English law, to insist upon the unfettered right to manage, use, and alienate that endowment as they deemed fit.

94. Document A146 (Terry Hearn), p 96.
Previous chapters in this report outline how, during their discussions with the Crown over the opening up of the region, Te Rohe Pōtae leaders were focused on issues of self-government and land retention in the face of the changes that European settlement would inevitably bring. Māori were also concerned to retain control over resources other than land, as attested to by the fact that the tribes’ petition to Parliament of June 1883 described a boundary 20 miles out to sea. Instead, as elsewhere, the Crown assumed powers of management over the fore-shore and seabed as is discussed in chapter 22 on waterways and water bodies.

Māori leaders also voiced concerns about how the environmental effects of settlement would be managed. The subject of environmental impacts arose on several occasions in discussions with Crown officials in the mid-1880s over the path of the railway. Importantly, these concerns did not mean that rangatira could not also see the potential benefits of settlement. Rather, they established the principle that if customary resources were to be affected by Pākehā activity, Māori wanted a say in how this was done in order to minimise the damage. Furthermore, if their taonga were destroyed, then compensation was due. Hence at a meeting to discuss the railway in Kihikihi in February 1885, the preservation of valued forest and mahinga kai areas was raised. However, the reply of Native Minister Balance demonstrated the clash between Māori and Pākehā views of the natural world. Balance would reply in such a way as to dismiss the value of such forests and mahinga kai areas, given the monetary benefits Māori would receive from the railway. This exchange is discussed in detail later in this chapter.

Attempts to manage gold prospecting also arose as an early challenge. In December 1885, the Kawhia Committee raised objections about Pākehā gold-seekers operating illegitimately within the aukati. As banning prospecting altogether would be impractical, especially once the land was opened up, the Committee approved a plan for Te Rohe Pōtae Māori to themselves search for gold, assisted by certain Pākehā selected by the colonial government. The plan failed, largely because no gold was in fact found. However, prospectors continued to seek permission from the Committee to search for gold in the area. The point is, Te Rohe Pōtae Māori wanted a say in how their resources were to be exploited.

The railway and its operation led to unforeseen consequences for Te Rohe Pōtae Māori. The railway promoted the burgeoning timber industry, swamp drainage, land sales and conversion to pastoralism, opening up what became known as the King Country. The rapid expansion of Pākehā settlement followed by the agricultural development of the land came at the expense of much of the forest and wetland and swamp ecosystems Te Rohe Pōtae Māori so highly valued. In many cases, these changes were irreversible: by felling and burning bush and draining swamps, for example, birding areas on which many Māori livelihoods depended were lost. These activities also had major implications for the health of the region’s waterways, and thus the habitat of tuna and other customary fisheries.

In chapter 9, we considered the impact of the North Island main trunk railway. During its construction, Te Rohe Pōtae Māori leaders raised a series of objections about the potential environmental effects. Although the Crown did make some minor concessions in railway design, its main response to such concerns was to tout the economic benefits to Māori of the railway. Although, the Kāwhia Committee was granted a monopoly over the supply of rail sleepers for the main trunk line in Te Rohe Pōtae during the first two years of its construction, by the early twentieth century this trade had mostly passed into Pākehā hands.

Land alienations also resulted in the loss of access to prized taonga, and the loss of wāhi tapu once Crown purchasing, the operation of the Native Land Court, and the Land Boards took hold. There was a corresponding loss in tikanga and mātā-ranga Māori relating to the forests. As Wayne Anthony Houpirapa stated: ‘When the Crown came in and the land was lost a lot of our people left those places and never went back. Because of this I believe we lost a part of our culture and tikanga that we had been carrying out for centuries.’

Some Te Rohe Pōtae Māori lost reserves that featured as components of these transactions. Ngāti Maniapoto chiefs were assured by officials that sufficient reserves would be made for them when land was purchased. As early as 1851, for example, the Te Uku reserve was set aside from the Whāingaroa purchase, partly, it seems, due to its utility as a landing area for access to the Waitetuna River. However, in the early 1890s the reserved area was sold against the wishes of the Ngāti Mahanga owners, who also argued that the original reserve was far larger than the 20–25 acres mentioned in the purchase deed. It is historically well known that these reserves became contentious in this district. Professor Alan Ward for example wrote:

Deeds of sale in the Rohe Pōtae commonly included a provision for a 10-per-cent reserve for the sellers. Government officials appear to have been motivated by the hope that this would encourage owners to sell rather than a concern for Māori wellbeing, and as a result, policy discussions concerning reserves appear to have had very little consideration for Māori interests. Wilkinson later made attempts to buy up reserves, and survey liens were imposed on reserves, forcing further sales (as was the case with reserves just north of the Mōkau River).

### 21.3.2 Impact of early Crown regulation of the environment on Māori, 1880–1900

In most cases, where the Crown believed an activity worthy of regulation, it chose to delegate the power to grant and enforce resource controls to local bodies. For example, the Municipal Corporations Act 1867 allowed borough councils to enact by-laws for water management. As with the creation of drainage boards and
river boards in the early twentieth century, the intention was to empower special purpose authorities to deal with particular problems. Such local delegation, however, almost never involved Māori and it represented an approach that privileged Pākehā and their desire for local self-government rather than addressing the Crown’s obligations under the Treaty of Waitangi or Te Ōhākī Tapu. In the face of limited legal protections and lack of local political representation at local government level, the ability of Te Rohe Pōtae Māori to exercise mana whakahaere and customary rights and obligations over alienated or otherwise inaccessible taonga depended on the strength of their relationships with Pākehā. Belgrave et al identify several instances where Te Rohe Pōtae Māori were able to maintain good terms with their Pākehā neighbours and in doing so, continued to follow their customary practices for many years after title changed hands. Examples include providing ongoing access on private land to places where paru, a naturally occurring type of soil used to dye flax the colour black, could be found; and of access across farmlands to large river holes where eels were plentiful. Farmers also assisted to resolve problems with Māori-owned land-locked blocks by allowing free access across their lands. In one case, a wāhi tapu marked by a concrete monument on a section at Kāwhia has been preserved for over half a century by the family of the original purchaser. These examples were exceptional.

21.3.3 Provision for Māori in environmental decision making, 1900–91
As detailed in the other chapters in this report, the main consequence of Crown actions and policies during this period was the separation of iwi and hapū from their land, kāinga, customary resources, mahinga kai, and wāhi tapu. It also reduced their ability to exercise their rangatiratanga or mana whakahaere over their lands.

The Crown gradually assumed responsibility over the environment and resource management through statutory regulation. It rarely provided for Te Rohe Pōtae mana whakahaere over their environment and natural resources, let alone access to important sites. In most cases, Māori Treaty rights were reduced to those of the of the general public. Further, the Crown did not provide for recognition of their values, tikanga, and customary use in any significant way until well into the late twentieth century.

21.3.3.1 Regulation of forestry
The Crown encouraged indigenous forestry to pursue its policy of clearing land in favour of Pākehā settlement and an agriculturally based economy. The rate of environmental change through deforestation was unprecedented, leading to natural resource destruction or loss. Deforestation largely remained unregulated until the formation of the Forest Service in 1922.

In the 1970s, a King Country Land Use Study commissioned by the Crown identified that a large area of State forest lands had high wild-life, biodiversity, and recreational value. As a result, the Crown adopted an Indigenous Forests Policy for Crown-owned native forests in 1975. From 1978, State forests in Te Rohe Pōtae, other than those to be forest parks, were declared to be open indigenous forests by the Forest Service. This was authorized by section 630 of the Forest Act 1949 and it resulted in free access by the public. The areas opened include Kakara, Kara, Panirau, Waitewhena, Whitecliffs, Mount Roa, Wharepuhunga, Hauturu, Waitomo, Huikomako, Raepahu, Taumatatoa, Mahoe, and Moeatoa State Forests. An ecological reserve was also set apart at Taumatatawhero in Tawarau State Forest. For State forests with indigenous vegetation, the Forest Service developed the King Country Regional Management Plan, 1980–1990. It largely focused upon areas still available for indigenous logging. It did not refer to Māori issues other than indirectly by referencing archaeological site protection. This plan was superseded by the environmental reforms of the 1980s and the establishment of DOC.

What effort was made to preserve the remnant forests in the district resulted in the establishment of Pureora and Pirongia State Forest Parks under the State Forests Act 1949. This was done, however, with limited consultation with Te Rohe Pōtae iwi or hapū, and certain affected land-owners, and with no consideration of Treaty of Waitangi principles or Māori values. The portion of the forest planted in exotic pines was subsequently transferred to the Forestry Corporation State-owned enterprise in 1987, and the rest was transferred to DOC for administration after the enactment of the Conservation Act 1987. This is discussed in detail below at section 21.3.4.2.

Prior to the Conservation Act 1987 and the Conservation Law Reform Act 1990, management of these stands of indigenous forests were split between the Environmental Division of the Forests Service, the Department of Lands and Survey, and the Wildlife Service of the Department of Internal Affairs (for wildlife refuges and wildlife sanctuaries). There was no significant provision made for Te Rohe Pōtae Māori involvement sought or provided for in terms of the management of these forests.

21.3.3.2 Regulation of drainage schemes

The Crown actively encouraged the loss of wetlands and the resources associated with them in Te Rohe Pōtae in the drive to pursue Pākehā settlement and

---

agricultural production. As Professor Michael Belgrave notes, the Crown had ‘primary responsibility for resource loss due to its sponsorship of drainage under the Land Drainage Act 1904.’¹¹² This responsibility is discussed in more detail below at section 21.3.3.2.

Te Rohe Pōtae Māori did resist and challenge such changes. The case of Te Kawa swamp is a salutary example.¹¹³ In 1910, the Māori landowners of Kakepuku 8c were so concerned by the potentially damaging effects of swamp drainage on their supply of tunā and pā tunā (eel weirs), that they sought to injunct the works in the Supreme Court. The Court, however, dismissed these proceedings.¹¹⁴ Failing to prevent the scheme from going forward, the Māori owners sought a payment of £1,500 in recompense for the loss of the tuna resource and of their pā tunā. The Compensation Court, set up to provide compensation to Māori whose lands had been confiscated by the Crown, awarded them £150 ‘in full settlement of the claim’.¹¹⁵

While the Compensation Court recognised Māori property rights to the bed of the Mangawhero stream and the physical property of their eel weirs, it had no way of valuing the spiritual and practical importance of the tuna resource itself, or of the Te Kawa swamp more generally because the Crown’s legislation provided no guidance. Therefore, the compensation Māori received was heavily discounted due to the ostensibly ‘increased worth’ of the land after the swamp had been drained. The Court was constrained by the legislation and thus required to place a far higher value on land conversion, in this case for dairy farming, than on Māori customary resources.¹¹⁶

The Crown’s actions in providing for this legislative regime and then failing to amend it once the issues were known is examined later in this chapter and in chapter 22. What is notable at this stage is that drainage of wetlands in this district was comprehensive, both in ‘the sheer number of swamps drained’ and the impact on Te Rohe Pōtae Māori relationships with their wetlands and associated indigenous flora and fauna.¹¹⁷ All this was done without consulting Te Rohe Pōtae Māori or making any provision for their rangatiratanga, kaitiakitanga, and tikanga. Indeed, even their rights as landowners were undermined.

21.3.3.3 Regulation of waterways and fisheries
The common law and statutes affecting waterways and bodies including harbours during the period 1900 to 1967 are discussed in detail in chapter 22. This was an area of the law where the Crown took some regulatory action reasonably early

¹¹². Document A76(c), p 11.
¹¹⁴. ‘Kawa Swamp Drainage’, King Country Chronicle, 14 March 1914, p 5; Hone te Anga and Others v Kawa Drainage Board [1914] 33 NZLR 1139 (SC).
¹¹⁵. ‘Destroyed Eel Weirs’, King Country Chronicle, 17 June 1914, p 5.
in the twentieth century. While the legislation up to and including the Water and Soil Conservation Act 1967 (with the exception of the Mōkau River Trust Act 1903) provided no express recognition of Māori cultural and spiritual values, these were subsequently imported into the 1967 Act by the High Court in *Huakina Development Trust v Waikato Valley Authority* [1987] 2 NZLR 188, the impact of which only lasted until the enactment of the RMA 1991.

In the mid-twentieth century, the public became increasingly aware of the interconnections between land and water, while concerns about water pollution grew. The Soil Conservation and Rivers Control Act 1941 established both a central soil and river council and regional catchment boards, in an attempt to moderate the impacts of farming and other intensive land uses on soil quality and waterways. Yet these bodies proved reluctant to interfere with the choices of private property holders, instead concentrating on educating farmers in conservation techniques. Throughout this period, catchment boards were arguably mostly concerned with stabilising the land for increased agricultural production.

Chapter 22 considers the resulting ecological effects on fisheries, particularly tuna. Māori were not involved in the management of these fisheries until the decision of the High Court and Court of Appeal in the series of fishing cases of the 1980s, also discussed in chapter 22. This litigation resulted in the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992. While the commercial aspects of their fisheries rights have been settled, their customary interests in the resource have been preserved under sections 10 and 11 of the 1992 legislation. In chapter 22, we considered the effects of the current DOC and Ministry of Primary Industries management of their customary fisheries and found that, in several important respects, the Treaty rights of Te Rohe Pōtae Māori have been abrogated (see chapter 22, section 22.6).

21.3.3.4 Regulation of land use

As discussed in chapter 19 on Local Government, Crown policy was to develop forms of local government that addressed Pākehā demands for some degree of control over their local affairs, as opposed to providing for a mutually beneficial system of local government for both Pākehā and Māori. That system rarely interfered with the manner in which private land-owners utilised their lands. Rather, Crown policy in relation to the environment emerged in an ad hoc manner in response to particular problems.

As shown in chapters 19 and 20 on Local Government and Public Works respectively, the Crown and local authorities also sponsored massive numbers of public works to aid settlement and economic development, including the construction of ports, railways, and roads. In respect of land subdivision plan approval (in addition to zoning control), the Municipal Corporations Act 1954 and the Counties Act 1956 (as amended by the Counties Amendment Act 1971) empowered territorial authorities to deal with such planning issues. The separate powers were amalgamated into the Local Government Act 1974 (LGA) by the Local Government Amendment Act (No 3) 1977. The subdivision powers in the LGA continued until superseded by the Resource Management Act 1991 (RMA).
The first Town Planning Act 1926 focused upon the development of urban areas. The Town and Country Planning Act 1953 evolved from the 1926 legislation. Under the 1953 legislation, no specific procedural provisions existed to protect Māori interests, nor were Māori interests specifically identified as relevant to the content of planning schemes. In addition, the legislation was weighted towards urban environments, leaving rural areas such as Te Rohe Pōtae largely unregulated so there was only a limited impact on agricultural development. The Ministry of Works and Development took the lead in promoting model schemes across the country. It then coordinated all responses of all government departments to district planning schemes.

In 1973, matters of national importance were added to the Town and Country legislation. These matters were to be provided for in District Schemes. The problem with the legislation was that its controls were only activated when land use changed. During this time the Te Rohe Pōtae district was ‘undergoing economic and social decline with depopulation of the rural areas and no development of new land uses (other than Tahāroa iron sand mining).’ There were also small pockets of exotic forestry.

The Town and Country Planning Act 1977 introduced even more detailed matters of national importance when it provided in section 3 for matters of national importance, in the preparation, implementation, and administration of regional, district, and maritime schemes, and in administering the provisions of Part II of the Act, had to be recognised and provided for. These matters were:

(a) The conservation, protection, and enhancement of the physical, cultural, and social environment:

(b) The wise use and management of New Zealand’s resources:

(c) The preservation of the natural character of the coastal environment and the margins of lakes and rivers and the protection of them from unnecessary subdivision and development:

(d) The avoidance of encroachment of urban development on, and the protection of, land having a high actual or potential value for the production of food:

(e) The prevention of sporadic subdivision and urban development in rural areas:

(f) The avoidance of unnecessary expansion of urban areas into rural areas in or adjoining cities: and

(g) The relationship of the Māori people and their culture and traditions with their ancestral land.

The Ministry of Works and Development during this time coordinated the Crown’s response to planning schemes to ensure consistency by local authorities, and to promote common standard. In the districts the Ministry had staff engaged

118. Document A148, p 94.
120. Document A148, p 328.
121. Document A148(b) p 8.
in fulltime monitoring and compliance work around district planning schemes.\textsuperscript{122} In responding to such schemes, the Crown did not promote Treaty or Māori issues.\textsuperscript{123}

The meaning of section 3(1)(g) of the Town and Country Planning Act 1977 was interpreted by the High Court in \textit{Royal Forest and Bird Society Inc v W A Habgood Ltd} (1987), to extend to land formerly in Māori ownership but still regarded as ancestral.\textsuperscript{124} While a break-through, such matters were still to be weighed against competing values listed in section 3. The Town and County Planning Act 1977, second schedule, also provided that district plans should make ‘provision for social, economic, spiritual, and recreational opportunities and for amenities appropriate to the needs of the present and future inhabitants of the district, including the interests of children and minority groups’. Māori land was subject to the control and compliance provisions of the Town and County Planning Acts. If not permitted by zoning, a consent had to be sought to enable partition or subdivision for residential or commercial purposes. Local authorities were, however, required to serve a copy of their proposed and final regional schemes and district schemes on \textit{inter-alia} District Māori Councils.\textsuperscript{125} The only protection of Māori interests would be through filing objections as owners or through submissions made by the District Māori Council.

The impact of these procedures is discussed in detail in section 21.5. It should be noted at this point, however, that Te Rohe Pōtae Māori had no substantive input into the development of the planning schemes, or in the manner in which decisions were made by local and regional authorities. Their ability to have their concerns regarding their relationship with their traditional lands, along those lands still in their ownership, remained very much matters under the control of those authorities or the Planning Tribunal. The Crown was responsible for this legislative scheme.

\textbf{21.3.3.5 Regulation of wāhi tapu, important sites, and taonga tūturu}

An important consequence of the Crown’s actions and legislation was the loss of mana whakahaere and access to, and in some cases the destruction of, important customary resource sites and other places of cultural significance, including wāhi tapu. Examples cited by the claimants included:

- The loss of access by Ngāti Hari to prized bird snaring areas in Rangitoto Tuhua 2 (Pukuweka) after the land court awarded ownership to another hapū without acknowledging their interests.\textsuperscript{126}
- The loss of access to, and control by, Ngāti Maniapoto over three significant wāhi tapu sites: Rangitaea Pā, Marae-o-Hine Pā, and Orongokoekoea Pā.\textsuperscript{127}

\textsuperscript{122} Document A148, p. 328.
\textsuperscript{123} Document A148, p. 329.
\textsuperscript{124} Royal Forest and Bird Society Inc v W A Habgood Ltd (1987) 12 NZTPA 76.
\textsuperscript{125} Town and Country Planning Regulations 1978, s 24.
\textsuperscript{126} Document R20 (Tūwhangai), p. 12.
\textsuperscript{127} Document P3 (John Roa).
The alienation and subsequent drainage of the wetland of the Paretao eel reserve in the Kāwhia block.¹²⁸

The loss of wāhi tapu at Parawai / Te Maika (on the southern point of the Kāwhia Harbour) which was taken for a quarry in the 1940s. This was an important ancient pā, encompassing a tuahu that had been built there to mark the nearby anchoring of the Tainui waka.¹²⁹

During the conversion of Te Rohe Pōtae from a forest to pastoral economy, many important wāhi tapu sites, mahinga kai, ceremonial sites, urupā, and burial caves associated with pā and papakāinga were destroyed or disturbed. This occurred, for example, throughout the course of the Arapae Land Development scheme.¹³⁰ The Crown was reluctant to intervene to protect Māori taonga sites and heritage where doing so could interfere with private property rights.¹³¹ Where the land was Māori land or where it was land returned to Māori owners, the main way of preserving these sites, if they were preserved at all, was through the Māori land legislation.¹³²

There was no way of protecting such sites on Crown or general land until 1954. In that year, the Historic Places Act 1954 was enacted. It was superseded by the Historic Places Act 1980 and 1993 and now the Heritage New Zealand Pouhere Taonga Act 2014.¹³³

The Historic Places Act 1954 authorised the establishment of the New Zealand Historic Places Trust to undertake a number of functions, including to maintain and preserve, or to assist to maintain and preserve, places and things of national or local historic significance in the public interest.¹³⁴ Such sites included lands ‘associated with the early inhabitants of New Zealand, the Māoris, early European visitors, or early European settlers.’¹³⁵ Membership of the Trust included one Māori to represent the Māori race.¹³⁶ After the Historic Places Amendment Act 1975, section 9F made it unlawful ‘for any person to destroy or damage or modify, or cause such thing to be done to the whole or any part of any archaeological site, even in cases where the site was not registered under the legislation.’¹³⁷ Offenders could be fined up to $5000.¹³⁸ Under section 9G the Trust had to set up a register of archaeological sites.¹³⁹

The Historic Places Act 1980 continued the above scheme with some tweaks. This legislation provided for a Māori to be appointed to the Trust on the

¹²⁹. Document J29(a) (John Sydney Uerata), p 10; doc A76, p 117.
¹³⁰. Document Q11 (Makareta Wirepa-Davis).
¹³². Native Land Act 1909, s 232; Native Land Act 1931, s 298; Native Purposes Act 1931, s 5; Māori Affairs Act 1953, s 439.
¹³⁷. Historic Places Amendment Act 1975 s 9F.
¹³⁸. Historic Places Amendment Act 1975 s 9N.
nomination of the New Zealand Māori Council. Section 3 of the legislation provided for the appointment of three people with cultural knowledge. They formed the Māori Heritage Committee – later to become the Māori Heritage Council, with a larger number of members.\(^{140}\)

The 1980 legislation also included a new heritage site classification – the traditional site.\(^{141}\) Under section 50, an application could be made to the Trust to have a place or site declared to be a traditional site. If the Trust was satisfied that the place or site is or may be a traditional site, it had to consider the importance of the place or site and the action (if any) that should be taken to protect it. The Trust could refer the application to their Minister, who had to refer the matter to the Minister of Māori Affairs with the recommendation that the application be considered pursuant to section 439A of the Māori Affairs Act 1953. The Minister of Māori Affairs had the decision on whether to make application to the Māori Land Court for an order. Alternatively, the matter could be referred to a Māori association established under the Māori Community Development Act 1962 (part of the New Zealand Māori Council hierarchy) or to a Māori Land Advisory Committee established under part v of the Māori Affairs Amendment Act 1974 or to a Māori tribal authority or to any other appropriate Māori authority. These bodies were required to consider the importance of the place or site and what action, if any, should be taken in regard to the place or site.

Under section 20, the Trust could make bylaws for the land or site under its control for:

(a) prescribing rules to be observed by any person entering upon the land or place;
(b) prohibiting or controlling the lighting of fires on the land or in that place;
(c) prohibiting or controlling the taking of any animal or vehicle upon the land, and prescribing rules to be observed by any person taking any animal or vehicle upon the land; and
(d) providing generally for control of the use, management, and better preservation of the land or historic place, and the erection or thing on the land.

In Te Rohe Pōtēa, lists were prepared for each local authority of sites in their districts. For Otorohanga County, there were 338 sites in 1983 listed although not registered. By 1989, the number had dropped to 366. For the Waitomo District there were 171 sites. By 1989, the number had increased to 423 sites.\(^{142}\) Each local authority inventory included a map showing the location of these sites.\(^{143}\) Descriptions of the sites included identification of early areas of Māori occupation near the harbours, waterways, lakes, and former swamp lands, and on forest lands.

\(^{140}\) Historic Places Act 1993, s 84; doc A148, p 278.
\(^{141}\) Historic Places Act 1980, s 2.
\(^{142}\) Document A148, p 273.
\(^{143}\) Document A148, p 274.
of the district.\textsuperscript{144} However, these sites have not made registration on the Historic Places Trust register. Only four sites in Te Rohe Pōtae were fully registered on the national register under the Historic Place Act 1980, and these were the Uekaha, Ruakuri, and Te Anaureure (Maniapoto’s cave) sites in the Waitomo District and the Tokanui Pā site in the Ōtorohanga district.\textsuperscript{145} This was obviously unsatisfactory as it meant that a large number of sites were not under any form of protection.

The Historic Places Act 1993 was the relevant legislation until 2014. Under this legislation, the purpose of the register was changed.\textsuperscript{146} It included five categories of historic sites with some focus on cultural heritage and wāhi tapu and wāhi tapu areas.\textsuperscript{147} Registration of the historic places and historic areas was the responsibility of the Historic Places Trust. The registration of the wāhi tapu and wāhi tapu sites became the responsibility of the Māori Heritage Council.\textsuperscript{148}

Recommendations were made to the territorial authority and regional council in which a site was located regarding the appropriate measures that the authority or council should take to assist in the conservation and protection of the site or area.\textsuperscript{149} Where this occurred, territorial authorities or a regional council were to have particular regard to the recommendation.\textsuperscript{150}

There are 5,675 sites registered on the register. From Te Rohe Pōtae, there are only 41 sites registered. Of those, only 18 were Māori sites.\textsuperscript{151}

Ngāti Hikairo initiated having three of the sites registered, namely Motutara, Rangihua, and Te Papa o Karewa. In its \textit{Te Tahuauui: Ngāti Hikairo Heritage Management Plan} (2010), the Runanga noted the time and effort involved in having these sites listed.\textsuperscript{152} They sought registration because they thought having these sites registered was a means of ensuring some protection and consultation by territorial authorities. Their view has changed, primarily because the process, in their view, is not ‘a process that can be utilised in response to immediate land use issues and resource consents’.\textsuperscript{153} This was their experience while attempting to protect Motutara on appeal before the Environment Court.\textsuperscript{154}

The failure to receive protection has much to do with the categorisation of sites. Archaeological sites have high priority, including Māori archaeological sites. Other places that are special to Māori do not generally enjoy the same level of protection. This hierarchy is reflected in planning at the regional and district
<table>
<thead>
<tr>
<th>Site</th>
<th>Category</th>
<th>HPT no</th>
<th>NZAA no</th>
<th>Local authority</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Midden</td>
<td>Historic place 2</td>
<td>6109</td>
<td>R15/210</td>
<td>Ōtorohanga</td>
<td>In Tainui–Kāwhia block</td>
</tr>
<tr>
<td>Midden</td>
<td>Historic place 2</td>
<td>6110</td>
<td>R15/217</td>
<td>Ōtorohanga</td>
<td>In Tainui–Kāwhia block</td>
</tr>
<tr>
<td>Midden</td>
<td>Historic place 2</td>
<td>6111</td>
<td>R15/219</td>
<td>Ōtorohanga</td>
<td>In Tainui–Kāwhia block</td>
</tr>
<tr>
<td>Midden</td>
<td>Historic place 2</td>
<td>6112</td>
<td>R15/242</td>
<td>Ōtorohanga</td>
<td>In Tainui–Kāwhia block</td>
</tr>
<tr>
<td>Pā</td>
<td>Historic place 2</td>
<td>6113</td>
<td>R16/211</td>
<td>Waitomo</td>
<td>Puketutu Pā, in Tawarau State Forest</td>
</tr>
<tr>
<td>Pā</td>
<td>Historic place</td>
<td>6210</td>
<td>S16/263</td>
<td>Ōtorohanga</td>
<td>In Tawarau State Forest</td>
</tr>
<tr>
<td>Uekaha</td>
<td>Historic place 2</td>
<td>6713</td>
<td></td>
<td>Waitomo</td>
<td>Of spiritual significance to Ngāti Uekaha Māori reservation*</td>
</tr>
<tr>
<td>Ruakuri</td>
<td>Wāhi tapu</td>
<td>6721</td>
<td>S16/280</td>
<td>Waitomo</td>
<td>Burial cave at Waitomo Caves</td>
</tr>
<tr>
<td>Te Anaureure</td>
<td>Historic place 1</td>
<td>6722</td>
<td>S16/220</td>
<td>Waitomo</td>
<td>Cave dwelling of the eponymous ancestor Maniapoto Māori Reservation †</td>
</tr>
<tr>
<td>Tokanui</td>
<td>Historic area</td>
<td>6723</td>
<td>S15/217</td>
<td>Ōtorohanga</td>
<td>Covers three pā sites (Tokanui, Whitite Marama, and Pukerimu)</td>
</tr>
<tr>
<td>Pehitawa</td>
<td>Wāhi tapu</td>
<td>7332</td>
<td>S15/319</td>
<td>Waitomo</td>
<td>Burial cave</td>
</tr>
<tr>
<td>Site Name</td>
<td>Category</td>
<td>Reference</td>
<td>Description</td>
<td></td>
<td></td>
</tr>
<tr>
<td>---------------------------</td>
<td>----------</td>
<td>-----------</td>
<td>-----------------------------------------------------------------------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Huiputea</td>
<td>Wāhi tapu</td>
<td>7558</td>
<td>Ōtorohanga Tapu kahikatea tree in Ōtorohanga town</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Te Waiohoanga</td>
<td>Wāhi tapu</td>
<td>7606</td>
<td>Waitomo Puna wai on Mangaokewa Stream</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Motutara</td>
<td>Wāhi tapu area</td>
<td>7721</td>
<td>Ōtorohanga Peninsula on north-west shore of Kāwhia Harbour</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Te Papa o Karewa</td>
<td>Wāhi tapu area</td>
<td>9425 R15/415 R15/467</td>
<td>Ōtorohanga Two pohutakawa groves in Kāwhia town</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rangiatea</td>
<td>Wāhi tapu</td>
<td>9586</td>
<td>Ōtorohanga Pā in Ngahape / Korakonui district</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Table 21.1: Registered sites of Māori heritage interest in Te Rohe Pōtae as at August 2013
Source: Document A148, pp 280–281
level. Despite part 2 of the RMA and the reference to Māori issues, there is limited reference to sites of significance to Māori (whether registered or not) identified by hapū and iwi in the Waikato Regional Policy and Plan.\footnote{The Waikato Regional Policy Statement (Hamilton: Waikato Regional Council, May 2016), https://www.waikatoregion.govt.nz/assets/wrc/Council/Policy-and-Plans/rps-Regional-Policy-Statement/rpsv2018.pdf. See section 10 (Heritage): policy 10.1 on managing historic and cultural heritage; policy 10.2 on relationship of Māori to taonga; and policy 10.3 on effects of development on historic and cultural heritage.} There are more fulsome references in the Waitomo and Ōtorohanga district plans.\footnote{Document A148, p 283; Operative Waitomo District Plan (Waitomo District Council, March 2009), http://www.waitomo.govt.nz/publications/district-plan/. See Heritage: 1 site of national significance; 15 sites of district significance; 100s of sites of archaeological significance, pp 98–114; Otorohanga District Plan (Otorohanga District Council, October 2014), https://www.otodc.govt.nz/documents-and-publications/district-plan/, p 194. Sites of significance identified by Iwi Management Plans, app 8A, pp 168–169; 92 from Te Runanganui o Ngāti Hikairo.} An analysis of these last two documents indicates that there are many Māori sites not listed. Therefore, there is ample opportunity for many Māori sites to be overlooked.\footnote{Document A148, p 283.}

In terms of the practice of local authorities, where there is no registration under the Historic Place Act 1993, the Waitomo District Council only has a system of consulting the Maniapoto Māori Trust Board and its regional management committees over resource consents to identify whether they may impact on important sites. The Ōtorohanga District Council has a similar approach but at least it has used Ngāti Hikairo’s Te Tahanui: Ngāti Hikairo Heritage Management Plan (2010) list by integrating their list of sites into the Otorohanga District Plan March 2012.\footnote{Document A148, p 283.} They were the only iwi with their important sites listed at hearing.\footnote{Document A148, p 285.}

In the last year of hearings, the Heritage New Zealand Pouhere Taonga Act 2014 had been enacted. This legislation reforms the Historic Places system. The purpose of this Act is to promote ‘the identification, protection, preservation, and conservation of the historical and cultural heritage of New Zealand.’\footnote{Heritage New Zealand Pouhere Taonga Act 2014, s 3.} Under section 4, all persons performing functions and exercising powers under this Act must recognise:

(a) the principle that historic places have lasting value in their own right and provide evidence of the origins of New Zealand’s distinct society; and

(b) the principle that the identification, protection, preservation, and conservation of New Zealand’s historical and cultural heritage should—

(i) take account of all relevant cultural values, knowledge, and disciplines; and

(ii) take account of material of cultural heritage value and involve the least possible alteration or loss of it; and

(iii) safeguard the options of present and future generations; and
(iv) be fully researched, documented, and recorded, where culturally appropriate; and
(c) the principle that there is value in central government agencies, local authorities, corporations, societies, tangata whenua, and individuals working collaboratively in respect of New Zealand’s historical and cultural heritage; and
(d) the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tūpuna, wāhi tapu, and other taonga.

Under section 7 and in order to recognise and respect the Crown’s responsibility to give effect to the Treaty of Waitangi (Te Tiriti o Waitangi), the Act provides:

(a) in section 10, for the appointment, in consultation with the Minister of Māori Affairs, of at least 3 members of the Board of Heritage New Zealand Pouhere Taonga who are qualified for appointment having regard to their knowledge of te ao Māori and tikanga Māori; and
(b) in sections 13 and 14, that Heritage New Zealand Pouhere Taonga—
(i) has functions that relate to wāhi tūpuna, wāhi tapu, and wāhi tapu areas; and
(ii) has the powers to carry out those functions, including the power to be a heritage protection authority under Part 8 of the Resource Management Act 1991; and
(c) in section 22, that Heritage New Zealand Pouhere Taonga has the power to delegate functions and powers to the Māori Heritage Council continued by section 26; and
(d) in sections 27 and 28, for the functions and powers of that Council to ensure the appropriate protection of wāhi tūpuna, wāhi tapu, wāhi tapu areas, historic places, and historic areas of interest to Māori; and
(e) in section 39, for the power of Heritage New Zealand Pouhere Taonga to enter into heritage covenants over wāhi tūpuna, wāhi tapu, and wāhi tapu areas; and
(f) in sections 46, 49, 51, 56, 57, 62, 64, and 67, for the measures that are appropriate to support processes and decisions relating to sites that are of interest to Māori or to places on Māori land; and
(g) in sections 66, 68, 69, 70, 72, and 78, for a power for the Council to enter, or to determine applications to enter, wāhi tūpuna, wāhi tapu, and wāhi tapu areas on the New Zealand Heritage List/Rārangi Kōrero, and to review or remove such entries; and
(h) in section 74, a power for the Council to make recommendations to relevant local authorities in respect of wāhi tapu areas entered on the New Zealand Heritage List/Rārangi Kōrero under Part 4 and a duty on local authorities to have particular regard to such recommendations; and
(i) in sections 75 and 82, requirements that the Council (and in section 82, the Minister of Māori Affairs) be consulted in certain circumstances relating to the New Zealand Heritage List/Rārangi Kōrero and the Landmarks list respectively.
As there is no reference to the principles of the Treaty of Waitangi in this section, the Crown's responsibilities under the Treaty remain unclear.

Part 2 of the Act continued to provide for the Heritage New Zealand Board along with the Māori Heritage Council. The Board is a Crown entity and comprises eight persons who are appointed by the Minister for Arts, Culture, and Heritage. At least three persons must be appointed who, in the opinion of the Minister (after consulting the Minister of Māori Affairs), are qualified in terms of their knowledge of te ao Māori and tikanga Māori. The Māori Heritage Council (the Council) is a specialist body which provides advice and assistance to the Board on issues concerning Māori heritage and assists Heritage New Zealand and develops programmes and consultative processes relating to Māori heritage, and for assessing proposals to enter wāhi tūpuna, wāhi tapu and wāhi tapu areas on the New Zealand Heritage List/Rārangi Kōrero.\(^{161}\) The Council's functions are set out in section 27 of the Heritage New Zealand Act. The categories administered by the Māori Heritage Council are:

- wāhi tapu means a place sacred to Māori in the traditional, spiritual, religious, ritual, or mythological sense
- wāhi tapu area means land that contains one or more wāhi tapu
- wāhi tūpuna means a place important to Māori for its ancestral significance and associated cultural and traditional values, and a reference to wāhi tūpuna includes a reference, as the context requires, to (a) wāhi tipuna; (b) wāhi tūpuna; (c) wāhi tipuna.\(^{162}\)

The rationale for the inclusion of wāhi tūpuna was there was no category under the 1993 Act for places of significance to Māori for which the primary characteristic is ancestral connection. An entry on the New Zealand Heritage List – Rārangi Kōrero indicates that a site has heritage value. The effect of entering on this list is the RMA continues to require a territorial authority to have regard to any relevant entry on the New Zealand Heritage List – Rārangi Kōrero when preparing or changing its district plan. The Board can negotiate covenants under section 39 of the Heritage New Zealand Act with the owner of any historic place (including archaeological sites), historic area, wāhi tupuna, wāhi tapu or wāhi tapu area, to provide for the protection, conservation, and maintenance of the place or area.\(^{163}\)

It was and remains unlawful to destroy an archaeological site, whether or not it is recorded, unless that person has an authority to do so. That authority can be issued to any person authorised. The onus is on applicants to undertake consultation with affected iwi or hapū under section 46. The Māori Heritage team (the Tira) check that the appropriate iwi and hapū have been consulted. It is also mandatory for an assessment of the Māori values of the archaeological resource and the effects of the proposal on those values to be provided by the applicants. Tira staff then provide a summary of the information to be incorporated into an

---

archaeologist’s report to the Māori Heritage Council, which makes a decision on whether to grant or decline an authority application.\textsuperscript{164}

Waikeria, Whatiwhatihoe, Matakaitaki, Ngaraho, Hingakaka, Te Ahurei, Turangarere, Pukeroa, Pakiraurangi, Paratui, Waiari, Maukutea, Nga Puna o Kāwhia, and Te Naunau are just a few nominations originating from the inquiry area.\textsuperscript{165} The Tribunal was told that several other places of interest to Maniapoto have been registered as historic places, rather than as wāhi tapu.\textsuperscript{166}

21.3.3.5.1 REWI’S RESERVE

Sitting just outside the district but nonetheless relevant is the case of Rewi’s Reserve. To appreciate its importance as a taonga site and as wāhi tapu requires an understanding of the history of the site:

For political reasons the Crown desired to entice Manga to settle back in Kihikihi, an area firmly under its control and authority, so, Grey went and met with Manga in Waitara to seek his return to Kihikihi, as a mantle of peace between the Pakeha and Māori people. Here a sacred ‘compact of Peace’ was made between them (Grey and Manga). Grey and the Crown representing the Pakeha people and Manga the Māori people. This compact was to be known and referred to as the ‘Tree of Peace’. It was a ‘Covenant for Peace’ or better described as ‘He Ohāki Maunga-rongo’.

So it was arranged that in March 1881 a Crown grant for Allotment 112 of the Township of Kihikihi be issued to Rewi Maniapoto. The area included in the grant was approximately 1 acre 0 roods 28 perches.

Today, the only land held by any Ngāti Paretekawa persons north of the Puniu Awa from the confiscation lands of 1864 is the 1 acre of land on which Rewi’s Reserve sits. . . .

In accordance with the arrangements entered into between Governor Grey and Rewi at Waitara in 1878–79, it was decided to plant the tree of lasting peace, as between the two races, at Kihikihi, so that both races might equally eat of its fruits. To cement that decision a Kihikihi town acre was given to Rewi and a House of Assembly, denominated the central pillar, was built thereon, for the chiefs of both races. All of which resulted in the hands of the Pākehā being withdrawn from the head of the Māori; and the hand of the Māori being withdrawn from the head of the Pākehā.\textsuperscript{167}

Thus, the Crown gifted the reserve in recognition of Rewi’s role in sustaining the peace after the conclusion of the Waikato Wars.\textsuperscript{168} The Crown also constructed

\textsuperscript{164} Document T10(c) (Robson), p 4.
\textsuperscript{165} Document T10 (Robson), p 15.
\textsuperscript{166} Document T10, pp 15–16.
\textsuperscript{167} Document K28 (Ingley and Maniapoto), pp 5–7.
a house on the reserve at Rewi’s request. Preparations for the house commenced in November 1879 and the sum of £1,000 was set aside to meet the cost. In June 1880, the house was completed. The Crown also provided furnishings.169

A Crown grant for Allotment 112 of the Township of Kihikihi was issued to Rewi (Manga) Maniapoto in March 1881. The area included in the grant was approximately 1 acre 0 roods 28 perches.170

While Rewi was alive, the land was transferred to three trustees: Rangituatea, Tukorehu, and Hitiri Te Paerata. They held the land on trust for Rewi during his lifetime and for his daughter Nia Te Kare and her descendants after his death. If she had no descendants, then the land was to be held on trust for such chief of Ngāti Maniapoto as the Native Land Court determined.171 The Crown knew that as the land was subject to trust, it was unlikely to be registered in the district land register, but issued the grant in the form above anyway.172 The choice of enacting special legislation to validate the grant was not taken.173

Nia predeceded Rewi and left no surviving children.174 She passed away in 1891 and was unmarried at her death. Rewi wrote to the Native Minister in 1891 asking whether the Crown grant could be amended in light of the above. He also asked that Rangituatea, Tukorehu, and Hitiri Te Paerata no longer be trustees.175 The Crown view of it was that the Crown grant could not be amended without special legislation and advised him accordingly.176 He then petitioned Parliament wanting his wife (Te Rohu Manga) to inherit the property for passing on to her children.177 Confidential reports from the District Native Officer and the local judge recommended that the Crown grant not be amended. Two years later Rewi wrote again noting that after his death there will be ‘no rangatira’ of the iwi.178 This view was shared by the Government’s Native Agent who reported in May 1894 after visiting Rewi:

there is no chief of his tribe at the present time that is worthy either by rank, station, mana, influence or any other standard by which Māori chiefs of the olden time were tested, that is fit to be his representative. Between the date of the grant (1881) and now the march of civilisation and the action of the Native Land Court has completely changed the position of the Māori chiefs with regard to their people. They no longer have the power and influence that they once had over them and this, coupled with the fact that Rewi Maniapoto has outlived all his compeers, makes it impossible

177. Document A76, pp 243–244.
178. Document A76, p 244.
now that there can be any one who can take his place, or upon whom his 'mantle can
descend'.

By 1894, Rewi wanted to give up his Crown grant subject to the Government
conveying to him only a small part of the land. He wanted to give the land back
on 'account of the trouble likely to arise on his death. The Crown proceeded
to draw up legislation to give Rewi a life interest with reversion to the Crown
upon his death. This was not what Rewi sought. Before this legislation could be
enacted, on 23 June 1894 Rewi passed away. By the time of his death two trustees
had also died and the trustee still living was elderly and unable to discharge the
duties of a trustee.

The claimants record his passing this way:

During this period Grey had agreed to construct a memorial for Manga, a replica
to the one that he would have on his death. He duly commissioned a stonemason
from Auckland, before he returned to England, to construct a monument next to
Rewi's house 'Hui Te Rangiora'. Under the watchful eye of Manga and his whanau the
memorial was duly completed just prior to his death.

The Crown had not resolved the grant problem by the time of Rewi Maniapoto's
death in 1884. Following his death Rewi Maniapoto was buried on the site under the
memorial placed there by Grey. The burial was not an easy matter for our people to
finalise. Our traditions recall that the Crown initially would not allow us to bury our
chief at the memorial constructed for that purpose by Grey some years earlier, or for
that matter anywhere on the reserve, telling us instead to bury him in a local cemetery
down the road. We think the Crown had forgotten the great importance of this chief
in the settlement and development of the region during his lifetime. The Government
however, after a flurry of telegrams to and fro from Wellington and some hurried dis-
cussions in Parliament, finally relented, but on the condition that we buried him 8
feet deep instead of the normal six feet. (No doubt I suppose to make sure he didn't
get out) We didn't understand why the Crown was so difficult, but we did what was
required of us and buried him at eight feet.

Manga's internment here the urupa has always held the status of wāhi tapu for all
our peoples both Pakeha and Māori. Today the reserve and Kōhatu represented legacy
and 'Icon of Peace', sealed by a sacred compact between two Rangatira on behalf of
each of their nations of people.

179. Document A76, p 245.
180. Document A76, p 244.
Our wish is that all that piece be held absolutely sacred because our elder Rewi Maniapoto is buried there leaving it to us to care for and the Crown grant allowed to remain intact and to give effect to what was the intention of the Government at the time that piece of land was set up apart as a site for a house for Rewi Maniapoto while he was alive.

That person Ngamotu Pateriki in whom it is proposed to vest that land is not a member of the Ngāti Maniapoto tribe but of the Ngāti Kahungunu of Taupo, his only connection to our elder Rewi Maniapoto is through the marriage of his mother Te Rohu to our elder. Now we do not like the thought that a person who is the member of tribe that is quite distinct from ours should have the care of the place where our principal elder lies buried for such an arrangement as to have it for the member of another distinct tribe to have the care of the place where our principal elder is buried would be likely to cause serious trouble and it is also contrary to Māori custom for the member of one tribe to have the care of the spot where the body of a chief of another tribe is buried.

Well then our elder Rewi Maniapoto showed a great love for that person Ngamotu Pateriki and his children and his mother also Te Rohu the widow of our elder for all the land the property of our elder were left by will to them to people who were not of kin to him, while we his near relatives and the members of his own tribe were not remembered in the will. Therefore we appeal to you to leave this small piece, only one acre in extent to us, and do not you turn and so cause us to be completely passed by but leave this small piece to us the people and the near relatives of this deceased person our elder Rewi Maniapoto. Leave them this small piece and we will care for it and deal with it under the terms of the Crown grant.”

1. Tupotahi, Tukorehu, Te Hui Raureti, Tāpata Titipa, Te Rangitiratia, Te Kawa, Topriki, Tumoata, Taiwhana, Kohuka, Heparea, Te Aue, Te Ranginiania, Paraone, Te Rangiamiai, Hikihiki, Mate Haika, Ngaparaki, Hepi, Te Murahi, Te Kore, Reikaona, Nga Tawa, Te Riaki, Hapomania, Te Whiwhi, Te Ata, and Makereti Hinewai to Native Minister, 3 July 1894 (Doc A76, p 247).
In July 1894, Ngāti Maniapoto signed a letter opposing the planned Bill to return the land to the Crown. The letter stated that Rewi was buried on the site.  

About this time, the Kihikihi Town Board were keen to take over the land for the purposes of a police station and municipal office, passing a resolution at a meeting in August 1894 to ask the Government to hand over the property to them. However, nothing was done to alter the status of the land although the same Board sought to know who the owners were for rating purposes. In 1901, the chairman of the Kihikihi Town Board complained about the nature of the people staying at the house and the activities of the occupants. Rewi’s widow was in occupation. The police were advised to occupy the building and it was resolved to give Rewi’s widow a pension. His grave and memorial would stay and be fenced. Rewi’s widow left the property on 8 October 1901.

For a number of years Te Heuheu Tukino occupied the house with the permission of the Crown. In 1904, Rewi’s widow objected to Captain Gilbert Mair about being forced out of her home and noted that the fence around Rewi’s grave had been removed. Te Heuheu was still resident and the fence had not been removed. During this time, the Crown, through the Native Minister, was determining occupancy and making all decisions about management of the site. The Town Board continued to have the property vested in them as ‘the house is now a nuisance to the community.’ The chairman wrote:

The whole place is an eyesore and gives Kihikihi a bad name. Even when the Māoris are in occupation the place is a nuisance, being in the centre of the town, and land set apart for the natives should be on the outskirts. The house is on about the best business site in the township and yet the Board gets no benefit from it, either by rates or any other way and its present state actually helps to lower the value of the rest of the township land. We trust you will push this matter more urgently.

The local constable reported in 1909 that Te Heuheu was no longer residing at the house and that the new occupant was causing difficulties. There were further complaints from the good citizens of Kihikihi. Waikato, Ngāti Maniapoto, and Ngāti Raukawa then submitted a petition for the site to be vested in trustees so they could repair and improve the land.

Meanwhile, the Crown was drafting legislation to vest the property in the Māori Land Board and it would then be leased. Revenue from the lease would be used to maintain the monument. Section 15 of the Native Land Claims Adjustment

193. T H Chapman, attached to Greenslade to Carroll, 23 August 1908 (doc A76, p 252).
1912 on behalf of the three tribes seeking to have the title issued, so that they could manage the land.\textsuperscript{196}

Predictably, the possibility of this resulted in a complaint from the town clerk.\textsuperscript{197} The town board was concerned about risks to public health, and drunkenness, were Māori allowed to occupy the site. In its view, ‘it would be far better for the natives generally that some site further away from the hotels and the centre of town should be provided for them.’ The board subsequently wrote to the Crown seeking to have the building removed and Rewi’s remains exhumed so it could use the land for a car park.\textsuperscript{198} The board continued its relentless campaign into the year 1913.

In 1915, Raureti Te Huia petitioned the Native Minister and the House of Representatives to have the administration of the site modified in favour of Ngāti Maniapoto and Waikato. The Crown refused again to deal with this request.\textsuperscript{199} However, then the town clerk advised the Land Board in September 1917 that the District Health Officer had issued instructions for the house to be demolished, forcing the Land Board to consider action. It was agreed between the Land Board and the Crown that a committee of management promoted by Te Heuheu Tukino, Raureti Te Huia, and Te Roha Manga be appointed.\textsuperscript{200} Raureti Te Huia was on the committee.

In or around 1920, James Cowen got involved noting the importance of the property as a historical site in the following manner:

\begin{quote}
The house has some historic associations. I remember as a boy in Kihikihi at the time, seeing King Tawhiao, with six hundred armed Kingites, march in from the Mori country take up his quarters in the house; his men encamped around it. This was just after Tawhiao had finally made peace with the Government (1881); the Kingites made a procession through their old homes on the frontier. Since then the house has been the scene of some memorable meetings between the native chiefs and Ministers of the Crown. It certainly is a broken-down looking place today, and it does not seem to be anybody's business to repair it. Rewi himself, except on the occasion of native gatherings or meetings with important visitors, seldom lived in the house. He preferred his home at Wai-aruhe on the Puniu; the house which his widow occupies there now was also a gift from the Government.\textsuperscript{201}
\end{quote}

Still the Crown refused to provide resourcing for the maintenance of the site. Then an attempt to survey off the monument and grave were resisted by protest
action on the land. It seems that the remains of the house were still on the site when the Kihikihi Town Board asked for it to be removed again in 1922. It seems by this stage the management committee was not functioning. The judge of the Land Board met with John Ormsby at Kihikihi in September 1922. Not long after, the house was sold.

Sir Āpirana Ngata was made Native Minister in 1928. His Under Secretary of Māori Affairs suggested that the Land Board be relieved of the trust:

- The original intention seems to have been to make a free gift to Rewi in recognition of his services as peace maker, the question of what should happen in case of his death was no doubt suggested to him, but even in this the desire to keep it within his own tribe is very apparent. I would suggest that this desire be carried out by repealing Section 15/1911 and vesting the land in a Board to be called the Rewi Manga Maniapoto Memorial Board, with members of the Ngāti Maniapoto tribe for its management with power of lease but not of sale. I think this would satisfy the aspiration of the tribe and it may be time.

Pei Te Hurinui Jones supported this recommendation. This led to the enactment of section 53 of the Native Land Amendment and Native Land Claims Adjustment Act 1929, which established a body corporate, the Rewi Maniapoto Memorial Committee, to administer the land as provided for in part xvii of the Native Land Act 1909. The Native Land Court was charged with appointing the committee of management. This provision was repeated as section 50 of the Native Purposes Act 1931. In the 1960s, the Kihikihi Town Council unsuccessfully sought to have the area set aside as a park. The remaining aspects of this story are best recounted in the evidence of claimants Valerie Ingley and Harold Maniapoto:

Since 1986, that committee (and its subsequent members) have taken it upon themselves, using their own money, time and resources to maintain and uphold the mana of the monument to our rangatira, but also the significance of the land as a wāhi tapu for the hapū of Ngāti Paretekawa and our Ngāti Maniapoto people.

In 1990 when Harold [Maniapoto] returned home, having spent the majority of his working life following employment success in other parts of the country, he project managed the beautification project for the reserve under the guidance of the Chairman of the Reserve committee, my father, Mr Reuben Te Huia and Dave Maraku, and the help of members of the 'Kihikihi beautifying society'. [Valerie Ingley] was administrator for that project. The customary adornment and structures are still there to be seen to this day.

204. Document A76, pp 262–263.
205. Document A76, p 263.
However, when the Waipa District Council, in 2007 installed a new wastewater reticulation system in the township of Kihikihi it commissioned an archaeologist . . . to monitor the excavations around the town and report to the Council.

[He] duly submitted his report to Council around October 2007, in which he reported that he had registered the reserve in the Archaeological Societies register of Archaeological sites.

However, [the Waipā District Council commissioned archaeologist] did so without consideration or discussion of any nature whatsoever with the Māori owners, interest parties or Rangatira and Kaumātua (tribal elders) responsible for the reserve.

The Rangatira and Kaumātua of the kaitiaki tribes in the area took great offence at the action and more so at the arrogant manner in which the Archaeologist went about his registration.

They objected to the arrogance of what was nothing more than a private Pakeha oriented hobbyist group, taking the power, control, and authority over a tribal taonga away from Māori and placing it under their sole non-Māori authority, without consent or consideration of the Māori owners’ customary rights or principles.

On 17 October 2007, Harold despatched a letter to him on behalf of the reserve committee and ourselves, raising the concerns and objections by Rangatira, Kaumatua (elders) of Ngāti Paretewa, Ngāti Ngutu, Ngāti Te Rahurahu, Ngāti Ngāwaero and Ngāti Raukawa, and pointing out the breaches that he had committed, and in doing so, listed them as follows

1) You had no authority to register this reserve as an Archaeological site, and
2) You had no authority to change the status of the customary title of the land without the express consent of the owners, and
3) You failed to consult with the customary owners regarding this matter, and
4) You failed to consult with the Kaitiaki of the land and the reserve, and
5) You failed to consult with tribal Rangatira and elders of the region, and
6) You failed to gain consent of the owners of the reserve before registering the land, and
7) You wrongfully registered the owners of the land as the Waipa District Council, and
8) You have caused very serious breach to the Treaty of Waitangi and caused prejudice to the tribal guardians and the owners of the reserve, and
9) You have caused serious grievance to the tribal owners of the reserve by disregarding their customary interests and blatantly taking this action without consideration for their customary or property rights.

The letter goes on to advise and instruct . . . that the land and reserve was situated in the Ngāti Paretekawa tribal domain, and is the property of the tribal owners listed as trustee to the land under the Rewi Maniapoto Reserve. A trust set up to administer and protect the property. As a consequence the owners of the reserve thereby direct him to;

1) Deregister the reserve as an archaeological site immediately and revert the status of the land back to its prior status, and
2) In future, to not do anything whatsoever within, on, under, or over the land without the express consent of the tribal owners of the land.

[The Waipā District Council commissioned archaeologist] refused to withdraw the registration for the site nor to deregister the site unless the owners went through their process of deregistration. Nothing further was forthcoming or done to deregister the site and the taonga still sits under the alien non-Māori authority and power of the Act that empowers the Archaeological Society.\(^{208}\)

The site is now registered as a reserve in the Waipā district plan and rating notices show that the land is not rated.\(^{209}\)

The point of this evidence is that for many years the committee tried to manage the site without any support from the Crown and that is to be compared to sites protected under its heritage legislation. They also object to the manner in which their taonga site has been listed as an archaeological site by a person with no authority from them. The view of the claimants is that this single acre of land that remains in the hapū’s hands north of the Pūniu Awa, has been difficult to retain due to the Crown continuous efforts in the late nineteenth century and early twentieth century to have the land revested in it. They say that the Crown’s failure to properly support Ngāti Paretekawa and Ngāti Maniapoto in the management and protection of Rewi’s Reserve is a grievance that they have endured and been faced with since the late 1800s. This occurred despite their repeated requests from for assistance.

**21.3.3.5.2 NGĀTI MANIAPOTO TRUST BOARD LIST**

Ngāti Maniapoto have listed the sites in the district that they consider have been destroyed, despite the Crown’s heritage legislation and registration system. These sites include:

- Tumutumu – the chief Maniapoto pā site and trenches 400 years of age – bulldozed and destroyed.
- Te Waiwhakaata – a stone altar and natural spring – said to be the wash bowl of the Patupaiarehe – bulldozed for farming.
- Pukerimui, Whiti Te Marama, Tokanui Pā – damaged by excavations caused through quarrying.
- Kakamutu Pā and Otawhao Pā – both destroyed for housing development.
- Te Ana o Maniapoto or Maniapoto’s cave – excavated for quarrying;
- Orongokoekoea Pā – birthplace of King Tāwhiao – bulldozed.\(^{210}\)

It was acknowledged by witnesses for the Crown that there had been site damage in Te Rohe Pōtae. A number of examples were given, including damage occurring

---

\(^{208}\) Document k28, pp 12–15.


to Pukeroa pā at the Hangatiki cross-roads during hearings. The landowner, who did not know that it was an archaeological site, brought in machinery to clear scrub and gorse from the pā site. Heritage New Zealand archaeologists visited the site with kuia, kaumātua, and the landowners to discuss the damage.\textsuperscript{211}

The protection of taonga tuturu

For the protection of taonga, the Māori Antiquities Act 1901 and the Antiquities Act 1975 (now the Protected Objects Act 1975) were enacted to monitor the trade in artefacts. One of the worst examples of desecration of taonga in Te Rohe Pōtae took place on the eve of the region’s opening to Pākehā settlement in 1882, when the Austrian taxidermist Andreas Reischek took the preserved bodies of a Māori man and child from limestone burial caves near Kāwhia. At a time when very few Pākehā were permitted inside the aukati, Reischek secured a letter of endorsement from King Tāwhiao, and thus the confidence of Māori communities in the region. In addition to removing the tūpāpaku, he was gifted over a hundred other physical taonga, including a taiaha of Rewi Maniapoto, weapons, and a jewel box belonging to Tāwhiao and his family, and several highly valued huia tail feathers, all of which he exported for display at the Imperial Natural History Museum in Vienna. The numerous failed attempts to subsequently retrieve these illegally exported taonga under the Māori Antiquities Act 1901 and its successors demonstrate the historic inability of this legislation to aid in the retrieval of these sacred taonga.\textsuperscript{212}

This is still the case. Section 5 of the Protected Objects Act 1975 makes it clear that no protected New Zealand object, including taonga tūturu, may be exported from New Zealand without permission:

In the case of taonga that can be ‘provenanced’ to a particular people, or other objects which may be of significance to Māori (for instance a Goldie painting), the relevant iwi, hapū, or whānau are consulted.

The 2006 Amendment Act enabled New Zealand to accede to the UNESCO Convention on the Means of Prohibiting the Illicit Import and Export and Transfer of Ownership of Cultural Heritage (1970) (the UNESCO Convention), and the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (1995) (the UNIDROIT Convention).\textsuperscript{213}

Again, these measures have come too late to retrieve many historic relics.

For newly found taonga tūturu, the Crown now has an accord with the Maniapoto Māori Trust Board, signed on 15 December 2011. The accord was entered into pursuant to the Crown and the Maniapoto Māori Trust Board deed implementing the co-governance and co-management of the Waipā River regime, signed on 27 September 2010.\textsuperscript{214} Clause 4.3.1(d) provides the chief executive will

\textsuperscript{211} Document T10, pp 8–11.
\textsuperscript{212} Document A64, pp 316–328.
\textsuperscript{213} Document T8(b), pp 3–4.
\textsuperscript{214} Document T8(b), p 9.
allow for Maniapoto kaitiakitanga as temporary custodians of any taonga tūturu found within the Accord Area or identified as being of Maniapoto origin found elsewhere in New Zealand, until ownership is determined, on such conditions agreed between the Board and the Chief Executive as to the care of the taonga tūturu.

Since the accord’s completion, Ministry staff, the Tribunal was told, ‘have had regular engagement with representatives of the Maniapoto Māori Trust Board.’215 This has included meetings of senior managers from the Ministry, and meetings between key contact personnel regarding implementation of the accord.216 No accord exists with respect to the remaining parts of Te Rohe Pōtae for either Maniapoto or any other tribe.

21.3.3.6 The regulation of reserves
Scenery preservation of conservation areas valued by Pākehā settlers became an influential movement in the early years of the twentieth century. The Scenery Preservation Act 1903 was one of the first statutes used to take these lands for scenic reserves. The legislation established a Scenery Preservation Commission (later board) to determine what lands would be taken for this purpose. As discussed in chapter 20 on Public Works, the list of areas selected for discussion and taken for scenery preservation in Te Rohe Pōtae include the following areas:

- The Mōkau River scenic reserves takings in 1912, comprising the Mangoira block of 2,950 acres (the Crown concedes a Treaty breach for excessive taking with respect to this reserve), Awakino 1 section at 94 acres, and Awakino 1 section 12 (also known as Tauwhare, Tawiri, or Te Mahoe) at 76 acres.
- The Mōkau River scenic reserve takings in 1920, comprising Mōkau–Mohakatino 1c2 at 178 acres and Mangapapa B2 at 856 acres.
- The Mangaokewa Gorge scenic reserve (near Te Kūiti), taken in 1912 at 514 acres.
- The Kāwhia Harbour scenic reserves taken from 1913 to 1924, comprising the Awaroa, Puti, Te Umuroa, and Oteke scenic reserves at 178 acres.

Some Crown owned lands not used for settlement became reserves, usually for purposes associated with Pākehā settlement.217 The first general legislation providing for the establishment and administration of public reserves was the Public Reserves Act 1854, then the Municipal Reserves Act 1874, which authorised the setting aside of municipal reserves and endowments. The Public Reserves Act 1877 followed, which allowed for Crown grants or vestings of land for reserves and provided for recreation reserves to be brought under the Public Domains Act 1860. Vesting provisions continued to be provided for in the Public Reserves Act 1881, the Public Reserves and Domains Act 1908, and the Public Reserves, Domains, and National Parks Act 1928. The latter Act was the first to introduce the concept

of a vesting of control as an alternative to a vesting of land. The Reserves and Domains Act 1953 replaced the 1928 Act.

The Reserves and Domains Act 1908 covered all public reserves, no matter what legislation was used to set them aside. That scheme continued up to the enactment of the Reserves Act 1977. The 1977 legislation provides for the classification of reserves. A reserve may be classified as a national, historic, scenic, nature, scientific, government, or local-government reserve. 218 Under section 2, an administering body is defined as:

the board, trustees, local authority, society, association, voluntary organisation, or person or body of persons, whether incorporated or not, appointed under this Act or any corresponding former Act to control and manage that reserve or in which or in whom that reserve is vested under this Act or under any other Act or any corresponding former Act; and includes any Minister of the Crown (other than the Minister of Conservation) so appointed. 219

There was and is no express requirement to consult with affected Māori over how these reserves are to be classified. 220 However, some provision has been made for Māori. Under section 46 of the Reserves Act 1977, the Minister can by notice in the Gazette, grant to Māori the right to take or kill birds within any scenic reserve. Such a reserve must have been Māori land before the taking of the land or reservation of it. This can only be authorised where the catching or killing of the birds is not in contravention of the Wildlife Act 1953 or any regulations, proclamation or notification under that Act. In addition, the Minister may by notice in the Gazette in relation to any scenic or historic reserve that includes any ancestral burial grounds of Māori, grant the right to bury or inter the remains of deceased Māori in a specified place.

The Minister or an administering body of a reserve with the consent of the Minister, may also control and manage any land that is not a reserve (including any Māori reservation) for any of the purposes specified in sections 17 to 23 of the Act. 221 These are the sections that set out the classification for reserves as historic, scenic, nature, scientific, government or local-government reserves. However this can only be done with the agreement of the owner, trustee, or controlling authority of the land and subject to such terms and conditions as to the use of the land as are approved by the Minister and the owner, trustee, or controlling authority of the land. 222

For the better carrying out of the purposes of the Act, the Minister can also, by notice in the Gazette, appoint persons or bodies to be an administering body to control and manage any land which is not a reserve (including any Māori

221. Reserves Act 1977, s 38.
222. Reserves Act 1977, s 38.
reservation) for any of the purposes specified in sections 17 to 23 of the Act with the consent of the owner, trustee, or controlling authority of the land. Appointments can be persons, trustees (including trustees appointed under section 438 of the Māori Affairs Act 1953), a trust, a voluntary organization, a Māori Trust Board, or Māori incorporation. Such arrangements can also be subject to such terms and conditions as to the use of the land as are approved by the Minister and the owner, trustee, or controlling authority of the land.223

Along with reserves specifically set aside as such, previous Acts also provided areas for public purposes on the subdivision of Crown or private land. These have become ‘reserves’ under the Reserves Act 1977. The process of requiring contributions on subdivision commenced with the Plans of Towns Regulations Act 1875, the Land Acts 1885, 1892, 1908, 1924, the Land Laws Amendment Act 1920, the Land Subdivision in Counties Act 1946, the Municipal Corporations Act 1954 (made the first provision for vesting reserves in local authorities on deposit of a plan of subdivision) and the Counties Amendment Act 1961 (included provision for vesting reserves in local authorities on deposit of a subdivision plan) and the Local Government Act 1974 (provision now replaced by part X of the Resource Management Act 1991).

For reserves of national importance and after an amendment to the National Parks Act 1980, each region had to have a National Parks and Reserves Board.224 In Te Rohe Pōtae that was the Waikato/Rotorua National Parks and Reserves Board. In this district there were no national parks but there were reserves. None of the board members of this body were ever identifiably Māori.225 At its initial meeting only three reserves were classified of national interest. Of those, only the Aotea Head Scientific Reserve is in Te Rohe Pōtae. The Board later did undertake a survey of scenic reserves, finding that 12 scenic reserves in the Waitomo Caves locality and six scenic reserves in the Piopio locality warranted status as reserves of national significance. With the establishment of DOC in 1987, the enactment of the Conservation Act 1987 and the Conservation Law Reform Act 1990, the Board was abolished and responsibility for these nationally significant reserves passed to DOC.

Aotea Head Scientific Reserve, known to Māori as Oiōroa, is a 500-hectare block of Crown land constituting most of the north head of the Aotea Harbour.226 The block is of cultural importance to several claimants, including Ngāti Te Wehi and Ngāti Whakamarurangi, and Ngāti Tuirirangi. The block is close to where the Tainui and Aotea waka landed. This land includes Koreromaiwaho and various other pā, kōiwi, evidence of ancient occupation including middens, ditches, and ovens from the time of the arrival of the canoes, as well as areas where the first kumara gardens were planted.227

223. Reserves Act 1977, s 38.
This is an important site and taonga for local Māori. Claimant Diane Bradshaw explained that ‘[t]he area is significant as an ancient waka landing place, in particular the Aotea waka to which we, the tangata whenua – Ngāti Te Wehi – whakapapa, and which is said to be buried under the sand of Oiōroa. She added: ‘The relationship of the tangata whenua to Oiōroa is also marked by the numerous burial sites of Ngāti Te Wehi’s forebears, many of which pre-date the arrival of the drifting sand.’

For many local Māori, the history of this block has been a confusing one. In particular, little was known of how the Crown acquired title to this land. It has only been due to the evidence produced for this inquiry that some clarity has been achieved. The Tribunal in chapter 5 of this report found that the Crown acquired Oiōroa on the basis of an initial advance paid to a handful of rangatira for a much larger area of land, the Aotea block, in 1854. Many of the signatories to the Aotea deed were of Ngāti Naho descent, Ngāti Whakamarurangi, and Ngāti Tūirirangi. These arrangements were established without the consent of all who claimed interests in the land, particularly Ngāti Te Wehi. It also appears that the Crown did not ensure that all those who were a party to the arrangement understood that the transaction represented the full and final alienation of their rights.

The Tribunal pointed out:

Heather Taruke Thomson of Ngāti Whakamarurangi acknowledged that her tūpuna, Te Aho Moana and Te Haho Kewene, had entered the transaction with the Crown. She explained, however, that Te Haho Kewene continued to live at Oiōroa and the adjoining Rauiri block following the sale of the land.

The Tribunal found that, while her evidence did not conclusively prove that the transaction was conducted in a Māori customary framework, it did indicate that the Crown’s land-purchase agents failed to clearly explain to Māori sellers the nature and extent of the transaction. As a result, Māori continued to live on the land in accordance with their customs. The Tribunal ultimately concluded that such Crown purchasing practices were conducted in bad faith and were contrary to the principles of the Treaty of Waitangi.

The block was left unmanaged for decades. The Department of Lands and Survey only started to take an interest in the block from the 1950s. During this early phase of its management, the Department’s intention was to turn the land into pasture for agriculture. This proved uneconomic and attention was refocused...
on managing pests and preventing sand drift.\textsuperscript{235} During the second half of the 1960s, the Department allowed the New Zealand Army to use the land for live firing of small arms and medium mortars.\textsuperscript{236} A short time later, a part of the block was leased for grazing, but the problem of sand encroachment and pest control continued.\textsuperscript{237}

In parallel developments, in the early 1970s a coastal land survey was completed to assess what land was suitable to set aside as reserves. The West Coast Coastal Survey included Oiōroa.\textsuperscript{238} The Commissioner of Crown Lands sought an on-the-ground report on this possibility in 1975.\textsuperscript{239} After a visit from biological and earth science experts, accompanied by a Lands and Survey Reserve Ranger in January 1976, it was recommended to the Commissioner of Crown Lands that the Crown ‘pursue with all vigour the reservation of the Oioroa Block as a scientific reserve’ and ‘that discussion be held with the adjoining Māori owners regarding the possibility of inclusion of their areas within the reserve’.\textsuperscript{240}

In March 1976, Richard Cassels, a senior lecturer at the University of Auckland wrote to the Commissioner of Crown Lands expressing his opinion based upon his experience on archaeological digs at Oiōroa, that the area contained 50 archaeological sites, the effects of Polynesian habitation, and several ancient ash showers sites.\textsuperscript{241} He considered that forestry or agricultural development would destroy the archaeological evidence in the area.\textsuperscript{242} A further report on wildlife values considered the site to have had limited value, but the author supported the proposal.\textsuperscript{243} In December 1976, a further list of 34 ‘prehistoric’ archaeological importance at Aotea Northern Head was received by Lands and Survey from S. Edson of the Waikato Museum of Art and History. The list includes several pā, middens, tracks, terraces, cultivation sites and pits.\textsuperscript{244} Then the Department’s Land Use Committee (comprised of a majority of Crown officials) visited the site in December 1976. No Māori representatives were present. They unanimously agreed that the area should become a scientific and historical reserve.\textsuperscript{245}

A report for the Minister of Lands Venn Young was presented on 27 July 1977, recommending he approve the creation of the scientific reserve. The report detailed the ‘geographic, archaeological and historical features (including traditional oral history), and mentioned the wildlife values’.\textsuperscript{246} Minister Young

\begin{itemize}
  \item \textsuperscript{235} Document A76, p143.
  \item \textsuperscript{236} Document A76, pp143, 147–157.
  \item \textsuperscript{237} Document A76, p158.
  \item \textsuperscript{238} Document A76, p157.
  \item \textsuperscript{239} Document A76, p158.
  \item \textsuperscript{240} Greenwood to Turley, 28 January 1976 (doc A76, p160).
  \item \textsuperscript{241} Document A76, pp161–162.
  \item \textsuperscript{242} Document A76, p162.
  \item \textsuperscript{243} Document A76, pp162–163.
  \item \textsuperscript{244} Document A76, pp164–165.
  \item \textsuperscript{245} Document A76, pp165–166.
  \item \textsuperscript{246} Document A76, p168.
\end{itemize}
approved the recommendation even though no actual local consultation with iwi or hapū from the area had taken place.

After being advised by a constituent that the block was in Crown hands, Koro Wētere, member of Parliament for Western Māori, wrote to the Commissioner of Crown Lands at Hamilton and expressed concern as to how the Crown acquired title. The response he received indicated that the block had been acquired as part of the Aotea purchase.

Then the owners of Raoraokauere, located immediately on the northern boundary of Oiōroa, sought to create a development corporation. The Raoraokauere landowners sought to amalgamate various blocks in the area in order to utilise all of the area’s resources, including seafood farming and forestry. These owners requested to include the Oiōroa block in their development proposal, suggesting that afforestation would meet their scheme’s objectives, as well as dealing with the issue of the encroaching sand.

A letter dated 20 February 1978 from the Director-General of the Department of Lands and Survey to the Minister of Lands captured the views of the Commissioner of Crown land and the Department when he advised against the proposal of the Raoraokauere Scheme, stating:

I have subsequently obtained the Commissioner of Crown Lands, Hamilton, views and he is strongly against the alienation of any of the Oioroa Block to the Raoraokauere Development Scheme, for to contemplate such a move would be to seriously threaten the possibility of establishing the scientific reserve. I endorse his views.

Furthermore the geological and historic features of the north Aotea Heads are not confined entirely to the Oioroa Block, but do extend beyond to include Māori land to the northeast. This land includes forest, swamp land, mudflats and an off-shore islet. If the entire geological feature of the Aotea Heads is to be preserved then this area also should, in the course of time, be acquired to complete the preservation of ocean beach, active dune, coastal forest and mudflat, an entire ecological cross section that for wilderness, scenic, historic and Geological reasons should be reserved and added to. To reduce the area proposed for reserve would be to threaten the entire concept of preserving in a natural form, a little modified area of dune land, perhaps the last such area available on the west coast of the central North Island. Rather than releasing part of the Oioroa Block to the Incorporation we should be considering the acquisition of the adjacent Māori land itself to enlarge the reserve and to complete the protection of a very unusual and unique area.

249. Document N21(c) (Bradshaw), p 5.
251. Velvin to Director-General of Lands, 22 December 1977 (doc A76, pp170–171).
A letter dated 28 February 1978 was sent to the representative of the development scheme informing her of the Minister’s decision not to provide the land and notifying the Crown’s interest to acquire more Māori land to add to the reserve. An exchange took place as to which lands and she was advised that the Department wanted to acquire Raoraokauere A5A, A, and B blocks and the Rauiri block. Magnanimously, she was advised that the urupā would not be acquired. It is no surprise to the Tribunal that the Department received no response.

On 31 October 1977, the Historic Places Trust wrote to the Director-General of Lands to give its approval for reserving the land, but they believed that it should have a historical reserve classification. The Crown ignored this advice. Without any open and transparent consultation with local Māori, and without any proper survey, the Government gazetted the reserve on 23 January 1979. It was not until 28 June 1984 that the reserve was classified as a scientific reserve. While this was all done lawfully, it was carried out without regard to Treaty principles.

In 1987, DOC took over the administration and management of the reserve. In the 1990s, relationships between local Māori and DOC appeared to improve. However, after becoming increasingly concerned about the theft of artefacts and wandering stock, Māori again moved to have the reserve revested in them. Alternatively, they wanted the name of the reserve changed and its status reclassified. Neither of these proposals were accepted by the Crown.

The Oiōroa block is still registered as the Aotea Scientific Reserve. The statutory status of the scientific reserve is very specific in its objectives for management and use. Section 21 of the Reserves Act 1977 provides that such areas are set aside for the ‘purpose of protecting and preserving in perpetuity for scientific study, research, education, and the benefit of the country, ecological associations, plant or animal communities, types of soil, geomorphological phenomena, and like matters of special interest’. The areas are to be administered in light of that general purpose. The indigenous flora and fauna of such reserves must as far as possible be preserved and the exotic flora and fauna exterminated. For the adequate protection and management of the reserve, the Minister can prohibit access to the whole or any specified part of the reserve. Where scenic, historic, archaeological, biological, or natural features are present on the reserve, those features must be managed and protected to the extent compatible with the principal or primary purpose of the reserve. However, this management regime cannot impact on the archaeological features in any reserve that would contravene any provision of the now operative Heritage New Zealand Pouhere Taonga Act 2014.

The evidence DOC gave regarding this reserve was that the department acknowledges this site is of special significance to whānau, hapū, and iwi, particularly as

---

it contains evidence of midden and pā sites. DOC, the Tribunal was told, had a Co-Management Plan and Memorandum of Understanding with Ngāti Te Wehi for protection of the Aotea Scientific Reserve and its staff are ‘currently working with iwi representatives who wish to collaborate in a predator trapping programme currently in existence at Aotea Scientific Reserve.’259 In fact, all that exists is the Memorandum of Understanding with the Trustees of Raoraokauere A3 block as representatives of Ngāti Te Wehi.260 That memorandum merely sets out a guiding set of principles for the relationship between DOC and the trustees, and provides a formula for consultation and information sharing. In terms of the status of this document, it was clear that the claimants considered it was of negligible effect, with one (Mrs Bradshaw) claiming it had expired.261

Ngāti Te Wehi and other claimants have no control over the administration and management of the reserve. The management plan referred to was simply a draft and under cross-examination Ms Hardy-Birch of DOC acknowledged that this lack of control suggested Ngāti Te Wehi were not fully participating in the management of the reserve.262 This point is made by one of their technical witnesses, Dr Desmond Kahotea, who recorded:

Conservation and science of the sand dunes were the objectives of the original impetus to create a scientific reserve of Crown land at Oioroa. Archaeology is included as science.

Within the limited resourcing for this report, it has been shown that there is a clear link between the Tainui tradition of kumara cultivation with the wider cultural landscape and distribution of the Kaihu group of geological sands along the coast of the Aotea harbour. Oioroa is now a significant heritage resource for tangata whenua but the status of the scientific reserve does not make any provision or allowance for a role for them in the management and control of their heritage resource.263

These examples of why reserves were set aside demonstrate that this process had no regard for either the history of the land nor the views or cultural and customary values of affected hapū or iwi. The Tribunal is not surprised at the perception of the claimants that many reserves were set aside for purposes that benefited everyone else but Māori, and that in the case of Oiōroa, reserve classification was deliberately chosen to limit Māori participation in its management and that its targeted beneficiaries were scientists, archaeologists, and the general public.

260. Document N21(d) (Bradshaw), exhibit K.
261. Document N21(e) (Bradshaw), pp 7–8.
262. Transcript 4.1.20, p 1449 (Meirene Hardy-Birch, hearing week 14, Waitomo Cultural and Arts Centre, 7–11 July 2014).
21.3.3.7 Regulatory control of protected wildlife

There are a number of taonga species of particular importance for Te Rohe Pōtae Māori. In the forests, the Tribunal heard evidence regarding pīwaiwaka, tūi, kākā, kiwi, kōkako, weka, ruru, and kererū. The only notable statutes that proceeded the current legislation dealing with wildlife were the Injurious Birds Act 1908 and the Animals Protection and Game Act 1921–22. Responsibility for wildlife now falls under the Wildlife Act 1953. Under section 3, all wildlife are protected unless listed in the schedules to the legislation. Under sections 9, 14, and 14A, wildlife sanctuaries, refuges or reserves can be set aside for managing different species. The rest of the legislation deals with management, the regulation of hunting and fishing, and other activities.

Prior to the Conservation Act 1987 and the Conservation Law Reform Act 1990, the administration of the Wildlife Act 1953 in Te Rohe Pōtae was the responsibility of regional offices of the Wildlife Service of the Department of Internal Affairs, through their offices in Hamilton and New Plymouth. The Tribunal heard evidence about two initiatives to create or enhance wildlife areas that arose in the period 1970–80 within Te Rohe Pōtae. The results of these initiatives for Māori reflect similar outcomes to those experienced at Oiōroa.

The first initiative of the Wildlife Service was to lobby the Minister to declare Kārewa Island a wildlife sanctuary. This island was Māori freehold land. By 1971, there were 25 owners of this land, one of whom was Dame Te Atairangikau – the Māori Queen.

The Wildlife Service promoted the idea of a sanctuary after an approach by the Chief Surveyor in the Hamilton Office of the Department of Lands and Survey, after being approached by a ‘private citizen who had recently visited the island, observed many gannets and counted 48 seals there.’ It asked the Department of Lands and Survey to negotiate with the owners for either the ‘gifting of the island to the Crown, or consent to the island being declared a wildlife sanctuary.’ The Commissioner of Crown Lands in Hamilton, working with the Board of Māori Affairs, was able to collect 15 owner consents to a wildlife reserve, representing only 1.2334 of the total share-holding of three shares) or less than half of the shares in the land. Upon analysis of those consents, one woman claimed she could speak for nine other owners. Thus, in reality there was only consent from six owners and six consent forms, one of whom was signed by the Māori Queen. Furthermore, some of those consents were obtained at informal meetings of family groups. None of the consents authorised the transfer of the land.

264. Transcript 4.1.5, pp 170, 225 (Tohe Rauputu, Tame Tūwhangai, Ngā Kōrero Tuku Iho hui, Maniara Marae, 17–18 May 2010).
The Director-General of Lands advised the Wildlife Service to seek a meeting of owners. The Tribunal notes that a ‘considerable amount of time and travelling’ was expended to obtain the consents.\textsuperscript{272} The Secretary of Internal Affairs wrote to the District Officer of the Department of Māori Affairs in Hamilton asking him to arrange a meeting of owners so that the wildlife protection proposals could be explained to them.\textsuperscript{273} The Deputy Registrar of the Māori Land Court replied to the Secretary for Internal Affairs on 31 January 1974 stating that it appeared the Secretary had ‘sufficient consents to have the Island set aside as a Bird Sanctuary’.\textsuperscript{274} No meeting ever took place and the advice was that it was not necessary in terms of the part XXIII of the Māori Affairs Act 1953.

In December 1979, the Minister was told that ‘all necessary discussions have been held and consent to proclaim the sanctuary has been obtained from all the parties involved’.\textsuperscript{275} The Minister then authorised the drawing up of the proclamation.\textsuperscript{276} Clearly what the Minister was told was inaccurate and misleading and a file note addressed to the Director of the Wildlife Service records as much:

The submission [to the Minister] makes no mention of the Māori ownership of the land, and does not inform the Minister of the nature of the consents obtained (which is a minority shareholding). One of the owners is the Māori Queen – she has consented. These consents were obtained in 1972 and early 1973.

Since that time there has been a rather radical change in Māori attitudes to Crown involvement in their lands, particularly in the Raglan area in which Gannet Island lies.

This matter is drawn to your attention, as you may wish to remedy the oversight of the submission and inform the Minister of these circumstances, or adopt other measures to ratify the consents obtained.\textsuperscript{277}

However, the director decided to proceed and the Wildlife Sanctuary (Gannet Island) Order 1980 was drawn and proclaimed by the Governor-General in April 1980.\textsuperscript{278} Section 9 of the Wildlife Act authorises the Governor-General to make such orders. Further orders in council can be made restricting activities and access to a sanctuary.\textsuperscript{279} Subject to any condition in section 9, in a wildlife sanctuary all wildlife, while within the sanctuary are deemed to be absolutely protected, notwithstanding that the wildlife or any species was partially protected anywhere else.\textsuperscript{280} The land is still Māori freehold land, comprising 1.99 hectares.
This initiative to take control of Kārewa Island ran parallel to a program recommended by the Wildlife Service to extend a wildlife management reserve on Crown land by acquiring adjacent Māori land. During the King Country Regional Land Use Study, it was discovered that a larger-than-expected population of kōkakō were resident in a State Forest block on South Māpara Road and adjacent blocks.  

This reserve is about 35 kilometres southeast from Te Kūiti and in the Waitomo district. The Wildlife Service recommended that the area be set aside as an ecological or wildlife reserve. A case was put to the Minister in 1978 to expand the State Forest by purchasing adjacent properties, three of which were Māori land blocks. One of those Māori land blocks was already subject to a lease to New Zealand Forest Products. Only one block of the four blocks was general land. The Minister approved the scheme. Part Rangitoto Tuhua 6812B2B of 549 hectares was purchased by the Crown in February 1981, with the sale confirmed by the Māori Land Court on 10 April 1981. Part Rangitoto Tuhua 6812A2B4 and part lot 2 DP 7844 (now lot DP 15015) of 367 hectares were purchased by the Crown in 1983. The Tribunal notes that the reserve is approximately 14,000 hectares in size. That means that former Māori land comprises more than half of the area proclaimed for reserve.

As noted in chapter 13, the Crown started purchasing interests in the initial Rangitoto Tuhua block prior to 1907. Then large areas of the block were vested (63,048 acres) along with Wharepuhunga (59,472 acres) in the local Land Board under the compulsory vesting provisions of the Native Settlement Act 1907. We note the irony that remnants of this block became the focus of protecting kōkakō at a time when the Māori Affairs Act 1953 still facilitated the sale of Māori land as discussed in chapter 16 of this report. Whether the land itself should be protected and maintained in Māori ownership was never addressed by the Crown during negotiations for this block despite it being a remnant of what was once in Māori ownership. Nor was this programme of active buying of Māori land and the management of either the kōkakō or the reserve discussed with the local hapū.

DOC now administers this wildlife management reserve. In their evidence DOC did not specifically address the ecological value of this reserve. However, the Tribunal notes that others have described it as follows:

The Mapara Wildlife Management Reserve is in steep hill country covered in a lowland forest of mixed broadleaf and scattered podocarp, 260600 m above sea level. It is isolated from other forests by surrounding pasture and young plantation forests. Extensive control of introduced mammalian browsers and predators was undertaken between 1989 and 1997. This greatly increased kokako breeding success and allowed

---

new pairs to establish (Innes et al 1999). The vegetation and topography are described in detail by Leathwick et al (1983), though the vegetation composition, structure, and density, has changed considerably since then with the control of goats and possums (Corson 1997). 285

The Wildlife Act 1953 is one of the statutes administered by DOC and the overarching legislation is the Conservation Act 1987, which includes section 4. Section 4, with its reference to interpreting and administering the 1987 Act, should impact on how all statutes administered by DOC are interpreted. However, that has not been the case. This interpretation of the legislative scheme for which it is responsible has impacted upon the way DOC has administered wildlife reserves such as Māpara and Kārewa island leading to it engaging in actions that abrogate the claimants’ rights. For example, they will not seek changes to the proclamations and orders relevant to these lands so as to actively involve local Māori in their management, as a result there has been no access to Kārewa since 1980 for example.

There is no recognition in the statute that Māori have anything to contribute to the management of taonga species under this legislation. Rather, responsibility for wildlife was and continues to be managed by the Crown, and initially acclimatisation societies (abolished in 1990) and now replaced by the New Zealand Fish and Game Council and local Fish and Game Councils. 286 However, there is provision made in section 53 of the 1953 Act for the Director-General to authorise the killing, catching alive or taking of any absolutely protected or partially protected wildlife or any game or any other species or the eggs of such. In making a decision, DOC advised the threat status of the species is considered, as well as the effects of the take, killing, and trap methods proposed. This has enabled the customary take of dead birds and feathers, and tītī harvest. Take of young albatross has also occurred in special circumstances. 287 Again this is not a provision that specifically addresses the Treaty rights of Māori.

21.3.4 Overview of regulatory reforms, 1980–91
By the mid-twentieth century, the lack of an overarching regime to manage the physical environment was problematic. Following the introduction of new regimes for water and soil conservation, wildlife control, and town and country planning, the system for environmental management created discrete management regimes that lacked coherence. 288 As legislation responding to particular issues often over-

286. Conservation Act 1987, s 26P.
287. Document T3 (Jeff Flavell), p 19.
lapped with others, a number of authorities, permits, or licences could be required for any given activity. For water and land use alike, but for a few specified exceptions, the pre-1991 environmental legislative regime was generally permissive, and focused on activities rather than effects. In other words, unless a certain activity required a permit, it was permitted or unregulated. Moreover, responses tended to address symptoms rather than causes.

Reforming this environmental regime was signalled in the 1980s, during the state and local government sector reforms of that era. We reviewed the local government restructuring and its impact on Te Rohe Pōtae Māori in chapter 19, and found that, overall, the reforms do not properly provide for the tino rangatiratanga of Te Rohe Pōtae Māori, nor do they adequately ensure that local authorities reflect Treaty obligations.

21.3.4.1 The Environment Act 1986

The first major environmental statute enacted was the Environment Act 1986 itself. The statute’s preamble states that the Act performs several functions, including ensuring that, in the management of natural and physical resources, full and balanced account is taken of:

i. the intrinsic values of ecosystems; and

ii. all values which are placed by individuals and groups on the quality of the environment; and

iii. the principles of the Treaty of Waitangi; and

iv. the sustainability of natural and physical resources; and

v. the needs of future generations.

The Act established the Office of the Parliamentary Commissioner for the Environment and the Ministry for the Environment. The Ministry is the lead agency for the Crown on issues concerning the environment and it is responsible for administering the RMA 1991.

Under section 31 of the Environment Act 1986, the Ministry has a number of policy and practice functions, none of which impose a requirement to work consistently with Treaty principles. Section 32 requires that the Ministry have regard to matters under section 17 and these include any land, water, sites, fishing grounds, or physical or cultural resources, or interests associated with such areas, which are part of the heritage of the tangata whenua and which contribute to their well-being. This legislation while referencing the Treaty of Waitangi provides no guidance on how the Ministry should ensure it is taking a full and balanced account of the principles of the Treaty of Waitangi.

21.3.4.2 The Conservation Act 1987

Within a year of the passing of the Environment Act 1986, the Crown enacted the Conservation Act 1987. This legislation abolished the functions of:
the Department of Lands and Survey (responsible for public and unallocated Crown Land and marginal strips; 
the New Zealand Forest Service (responsible for State Forest Parks and State Forests with indigenous cover); and 
the Wildlife Service of Department of Internal Affairs (responsible for wildlife refuges and wildlife management reserves).

DOC also took over responsibility for the administration of a number of statutes including the Wildlife Act 1953, the Reserves Act 1977, the Marine Mammals Protection Act 1978 and the National Parks Act 1980. The conservation legislation was amended in 2013. This amendment provided for access arrangements for minerals, and the creation of new protected areas and for the reclassification of land administered by DOC.

The Conservation Act 1987 provides for the establishment of the Department of Conservation (DOC), the New Zealand Conservation Authority, conservation boards, the setting aside of conservation areas, and the management of special protected areas and stewardship areas. It also provides for the management of freshwater game fisheries under the management of DOC and it continues the Fish and Game Council.

DOC’s National Office focuses on policy, strategic directions, advice, and servicing the Minister of Conservation and is responsible for the Conservation General Policy. 289 It also services or liaises with national level statutory bodies, including Ngā Whenua Rahui, the New Zealand Conservation Authority, the Nature Heritage Fund, the Game Animal Council and the New Zealand Fish and Game Council. 290

DOC runs a decentralised agency but there is ‘a clear, single, accountable line of management to deliver conservation work runs from the Director-General to General Managers in Services and Partnerships, then to . . . field staff’. 291 The regional staff in these line roles are the decision-makers with delegated authority from the Minister or Director-General for authorisations permits or concessions under legislation administered by DOC. 292 They are also responsible for the engagements with Te Rohe Pōtae Māori.

There was a network of district partnership offices that cover all of New Zealand and outlying islands. The operational offices are grouped into regions, each with a director, with support staff. The offices are headed by Conservation Managers. 293

The Tumuaki (Deputy Director-General), Kāhui Kaupapa Atawhai, provides advice and support to the Director-General and other Deputy Directors-General on Māori issues. The Kāhui Kaupapa Atawhai monitors and advises on engagement with Māori. The group works with Māori funding mechanisms (for example Ngā Whenua Rāhui). It administers the Tauira Kaitiaki Taiao cadetship, for

290. Document t3, pp 8–9, app 1.
example. Through a mix of work experience and formal training, the cadets work to achieve Level 3 National Certificates in Conservation and Tikanga Māori. The vision of this group is for Mātauranga Māori (including the Māori culture and way of seeing the world) to be acknowledged as essential and integrated into the work of DOC. The Tribunal was told that engagement with Māori at a regional or district level about the management of public conservation lands, waters, protected species, and access to indigenous flora and fauna for traditional and customary use, occurs at the regional and district level.

The New Zealand Conservation Authority and conservation boards have key roles in the development and monitoring of DOC’s general policies and conservation management strategies (CMSs), conservation management plans (CMPS), and national park management plans. There are Māori members on the New Zealand Conservation Authority and the conservation boards. At the time of hearing, three out of 10 members on the Waikato Conservation Board identified themselves as Māori on the nomination forms. The Waikato Conservation Board covers most of Te Rohe Pōtae. For the Taranaki/Whanganui Board covering below Mōkau, six out of nine identified as Māori. The Tribunal was told that DOC recognises the role of ‘tangata whenua as kaitiaki’ and ‘acknowledges their mana whenua, the special relationship they have with the land and its resources’. It also recognises that some of the most important wāhi tapu sites and places of ancestral significance are on public conservation land. DOC recognises that, as a Crown agency, it has a role as a partner ‘with all whanau, hapu and Iwi’, a partnership that ‘is crucial to more conservation outcomes being achieved’.

Conservation is defined under section 2 of the Conservation Act 1987 (the Act), as the ‘preservation and protection of natural and historic resources for the purpose of maintaining their intrinsic values, providing for their appreciation and recreational enjoyment by the public, and safeguarding the options of future generations’. Section 4 of the Act provides that the Act must be interpreted and administered so as to give effect to the principles of the Treaty of Waitangi. DOC’s specific functions are listed in section 6 of the legislation which are primarily about the promotion of conservation. To give effect to these provisions DOC has different levels of planning documents required by part 3 of the statute designed to assist manage its statutory responsibilities. The most relevant at the time of hearing were the DOC Statement of Intent, the Conservation General Policy, and the Conservation Management Strategy for the Waikato Conservancy 2014.

The Conservation General Policy (approved by the Minister of Conservation, May 2005 and amended in 2007) contained the overarching policies for DOC.

300. Document T1, p.7.
301. Document T3, p.3.

The policy contained chapter 2 on Treaty responsibilities. It is clear from the introduction to this chapter of the policy, DOC understood that section 4 of the Conservation Act 1987 applies to interpreting and administering the legislation listed in schedule 1 to the 1987 Act, but only to the extent that section 4 is not inconsistent with those statutes. DOC relies on the decision in Ngāi Tahu v Director-General (1995) to justify this interpretation of its responsibilities in treaty terms.

Furthermore, the approach to the interpretation of section 4 in the Conservation General Policy rests upon an outdated statement of Treaty principles which are derived from an Office of Treaty Settlement publication from 1989. There is no mention of the principles worked out by the Courts and the Waitangi Tribunal since 1989, including the formulation of the principles of reciprocity and mutual benefit, the duty of active protection and the right to development. Nor does it reference the reports of the Wai 262 or the National Park Tribunals. The chapter then refers to Treaty of Waitangi responsibilities. This section refers to relationships with Māori being based upon mutual cooperation and good faith. Partnerships to enhance conservation and to recognise mana are encouraged, as is consultation regarding statutory planning documents, with information sharing.

Māori participation and involvement is encouraged in conservation management but customary use and gathering is ‘only permitted’ on a case-by-case basis. DOC must also seek to avoid breaches of the Treaty of Waitangi and participate in and implement relevant Treaty settlements consistent with its statutory functions. All of this looks promising until one reads chapter 3 which is all about public participation in conservation management, the terms of which are similar to chapter 2. Māori are thereby treated the same as any other sector of the public. Chapter 5 deals with Historical and Cultural Heritage of sites and artefacts located or found within conservation areas. Sites are listed as primarily DOC’s responsibility to manage with tangata whenua being encouraged to participate but

---

306. Waitangi Tribunal, Te Kāhui Maunga, p 892.
DOC may keep artefacts found where it is important to preserve their association with place or in keeping with the requirements of the Antiquities legislation.  

A Conservation Management Strategy for the Waikato Conservancy was developed and approved in 1996. National criteria determined the priorities for DOC in terms of this strategy. The strategy did commit DOC to work with tangata whenua ‘to achieve mutually beneficial management of the [Pureora] Park’ and to work with Rereahu Regional Management Committee (one of the seven regional environmental committees of Ngāti Maniapoto) to allow the taking of cultural materials. However, co-management arrangements for major conservation areas such as the Pīrongia Conservation Park or the Pureora Conservation Park were not achieved except in relation to lands subject to Treaty settlements. Furthermore, no stand-alone management plans were prepared for either park. At the time of this inquiry’s hearings, the 1996 strategy was in the process of being replaced by the Conservation Management Strategy for the Waikato Conservancy 2014 (CMS), and its purpose in accordance with section 17D of the 1987 Act:

is to implement general policies (including the Conservation General Policy 2005), and to establish objectives for the integrated management of natural and historic resources, including species managed by the Department of Conservation (the Department), and for recreation, tourism and other conservation purposes.

Only three submissions were received from identifiably Māori organisations when this strategy was in draft form and open for public submissions. Ngāti Hikairo submitted a submission, but were only told after two years waiting, that their submission would not be accepted. This led Dr Alexander to wonder whether DOC had done enough to engage Māori.

Tangata whenua are referred to in the strategy, akin to references to public participation, in conservation management. Alternatively, there is reference to tangata whenua, having settled historical Treaty claims, becoming active partners in managing natural, historic, and cultural heritage on public conservation land. Thus, in terms of implementing Treaty issues, the policies indicate that nothing more than participation as opposed to co-management is an option for Māori without a treaty settlement. Chapter 4 of the CMS refers to Treaty of Waitangi obligations by acknowledging the existence of section 4. It then pronounces that DOC recognises the role of tangata whenua as kaitiaki and acknowledges their mana.

311. Document A148, p 188.  
whenua, the special relationship they have with the land and its resources. The term mana whenua denotes the opportunity for co-management but that is not stated explicitly. The strategy then opines:

Conservation and respect for the whenua was an integral facet of traditional Māori life and is still practised today. Māori are kaitiaki (guardians) of the whenua and have an inherent responsibility to ensure that the whenua and its resources are managed in a sustainable manner for the benefit of future generations.  

However, it then does not mention the principle of partnership and rangatiratanga which is an obvious next step that follows recognising kaitiakitanga.

Then DOC claims that its relationships with tangata whenua vary and take a unique form with different iwi or hapū, or with respect to individual places, species or resources. This is consistent with the evidence DOC witnesses provided to the Tribunal. However, other than where there has been a statutory settlement, no real and meaningful sharing of power has occurred. The references to the Crown’s Treaty of Waitangi settlement process enhancing relationships with Māori indicates that without such a settlement whether Te Rohe Pōtae Māori work with DOC in a co-management regime depends on their treaty settlement status and those with such arrangements are specifically mentioned as Waikato-Tainui, Ngāti Maniapoto, Ruapuha Uekaha Hapu Trust (Ngāti Maniapoto), Te Maru o Rereahu Trust (Ngāti Maniapoto), Raukawa, Ngāti Korokī Kahukura, Pouakani, Hauraki Whānui, and Tūwharetoa Iwi. Alternatively, it depends on whether they are land-owners.

The stated objectives of the strategy are almost the same as the Conservation General Policy. It then details a series of places or corridors of conservation importance in the district, namely Karioi to Whareorino Place, Waitomo Place, and Pureora Place. Then it identifies corresponding set of outputs and policies with respect to certain conservation lands and sites that it has identified as priority ecosystem management units within the corridors or places.

In terms of Ngāti Maniapoto the strategy notes that it occupies the southern region of the territory of the Tainui tribes: Pirongia, Mōkau, Ōngarue, Benneydale, and Ōtorohanga. It further notes that Ngāti Maniapoto are tangata whenua of the Maniapoto area. Te Maru o Rereahu, Te Ihingārangi, is also recognised as tangata whenua within the rohe of Maniapoto. The strategy recognises that Ngāti Maniapoto are kaitiaki (guardians) of their rohe and it notes that Karst, Pureora Forest, freshwater fisheries, flora and fauna, and the Waipā and Mōkau Rivers are features of particular importance to Ngāti Maniapoto within its rohe. It also recognises the Ruapuha Uekaha Hapu Trust (the Waitomo Caves settlement entity)

and the Te Maru o Rereahu Trust (another settlement entity) as affiliates to Ngāti Maniapoto. It acknowledges Ngāti Raukawa and Pouakani and their settlements and it refers to Ngāti Tūwharetoa.\textsuperscript{323} Important to note are the iwi such as Ngāti Apakura and Ngāti Hikairo are not mentioned.

\textbf{21.3.4.3 The Resource Management Act 1991}

The reform programme of the late 1980s would lead to the enactment of the Resource Management Act 1991 (\textit{RMA}). This statute is an attempt to provide a more coherent approach to regulating environmental effects by providing for consenting processes and defined planning procedures.\textsuperscript{324} The \textit{RMA} also deals with Māori issues. Part 2 of the Resource Management Act 1991 requires that during the processing of new applications for resource consents and for planning purposes regional councils and other consent authorities must \textit{recognise and provide} for matters of national importance including the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga (section 6(e)). They must also have \textit{particular regard} to the exercise of kaitiakitanga (section 7(a)); and they must \textit{take into account} the principles of the Treaty of Waitangi (section 8).\textsuperscript{325} There is provision made to enable the transfer of powers from local authorities to iwi authorities under section 33, or the local authorities can negotiate joint management agreements under section 36A. Since 2014, and the close of hearings, the \textit{RMA} has been amended to include the possibility of Rohe Mana Whakahono agreements. The purpose of such agreements as set out in section 58M are to provide a ‘mechanism for iwi authorities and local authorities to discuss, agree, and record ways in which tangata whenua may, through their iwi authorities, participate in resource management and decision-making processes’ under the \textit{RMA}. The other purpose is to ‘assist local authorities to comply with their statutory duties under this Act, including through the implementation of sections 6(e), 7(a), and 8’. The Tribunal received no evidence that Te Rohe Pōtae Māori had successfully negotiated a transfer of powers agreement under the \textit{RMA}. What they do have at the iwi level are memorandums of understanding, and a number of limited joint management agreements, including through the Ngā Wai o Maniapoto (Waipā River) Act 2012.\textsuperscript{326}

The \textit{RMA} provides a hierarchy of what must be considered depending upon which provision is invoked. All of part 2 is subject to section 5 of the \textit{RMA} which declares that the purpose of the legislation is to promote the sustainable management of natural and physical resources. ‘Sustainable management’ is defined as:

\begin{itemize}
\item \textsuperscript{323} Conservation Management Strategy Waikato 2014–2024, Volume 1 (Draft) (doc T14, p 105).
\item \textsuperscript{324} Document A148, pp 21–22.
\item \textsuperscript{325} Submission 3.4.115(a), pp 31–32.
\item \textsuperscript{326} Document A148, p 308. Regarding joint management agreements, see: submission 3.4.115, p 6; submission 3.4.115, p 13; transcript 4.1.14, p 1266 (George Searancke, hearing week 9, Parawera Marae, 8–13 December 2013); transcript 4.1.20, p 1334 (Meirene Hardy-Birch, hearing week 14, Waitomo Cultural and Arts Centre, 7–11 July 2014).
\end{itemize}
managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while—

(a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and

(b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and

(c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.

Therefore, none of the matters in part 2 can defeat the purpose of RMA as declared in section 5. In addition, the RMA is not retrospective in the sense that historical effects cannot be remedied by the use of its provisions, a matter that is problematic for Māori concerned about the historic effects of pollution and increased sedimentation caused by land erosion as a result of forest clearance. These issues are discussed in chapter 22 on Waterways.

The RMA does in part 2 at least reference Māori associational, customary and tradition values with respect to ancestral lands, along with kaitiakitanga and the protection of wāhi tapu. The RMA provides procedures for resource consents and proposals of national importance. It also lays out hierarchy of planning documents and these are:

- national policy statements;
- national environmental standards;
- iwi management plans; \(^{328}\)
- regional policy statements;
- regional plans; and
- district plans. \(^{329}\)

The Minister and Ministry for the Environment has responsibility for preparing and recommending National Policy Statements and National Environmental Standards. \(^{330}\) With respect to the New Zealand Coastal Policy Statement, the Minister of Conservation has responsibility for that. \(^{331}\) Iwi management plans must be taken into account in the preparation of regional policy statement. \(^{332}\) Regional policy statements and plans are the responsibility of regional councils and unitary authorities. \(^{333}\) The district plans (dealing with among other matters land use) are the responsibility of territorial authorities. \(^{334}\) In preparing regional policy state-

---

327. RMA 1991, pts 6, 6AA.
328. RMA 1991, s 61(2A).
330. RMA 1991, ss 24, 46A.
331. RMA 1991, ss 56–58A.
332. RMA 1991, s 61(2A). Also note iwi management plans can only be taken into account where completed by and iwi authority. In section 2 an iwi authority is defined as ‘the authority which represents an iwi and which is recognised by that iwi as having authority to do so’.
333. RMA 1991, ss 30, 63.
ments, regional plans and district plans have to consult with affected tangata whenua but this has to be done through iwi authorities.\textsuperscript{335} This is important to ensure that they address matters in part 2 of the \textit{RMA}.

The Regional Policy Statement for the Waikato Region became operative in 2000 but lacked integration of Māori issues, preferring a stand-alone section dealing with Māori issues. Its review and public consultation round in 2010 resulted in 268 submissions being filed. Of those, five were from Te Rohe Pōtae Māori and these were from Te Tokanganui-a-noho Regional Management Committee, Te Whakaoranga o Karioi Incorporated Society, the Maniapoto Māori Trust Board, and the Raukawa Charitable Trust.\textsuperscript{336}

The final version of this statement was subject to 37 appeals at the time of hearing and did not become operative until 2016. The Waikato Regional Plan was publicly notified in 1998 and only three submissions came from organisations in Te Rohe Pōtae.\textsuperscript{337} The plan became operative in 2007.\textsuperscript{338} Alexander’s assessment is that these first-generation regional planning documents ’made little effort to integrate the Māori perspective (or even place it side-by-side) with other perspectives on aspects of the environment.’\textsuperscript{339}

This lack of effort may have been because of the low Māori participation rate during the submissions on these first-generation planning documents. This low participation rate is to be compared to the number of submissions from Māori received by the Waikato Regional Council on resource consents. This was identified by the Māori and Psychological Research Unit at the University of Waikato, who were commissioned by the Waikato Regional Council to research Māori perspectives on the Waikato regional environment.\textsuperscript{340} Their study found that there were over 300 instances where Māori organisations had made submissions on resource consents.\textsuperscript{341} It is assumed that at least five of these submissions were from Te Rohe Pōtae.

The recurring complaints identified about the consent process included: (1) that there was insufficient consultation with hapū before an application for consent was lodged; (2) the lack of a relationship between the Council and hapū; (3) limited resources and time constraints for Māori; (4) the Council only consulting on matters it prioritised; and (5) no targeted information specifically for tangata whenua.\textsuperscript{342} Because this study was limited to reviewing submissions, it is not known how many of these submitters achieved the outcomes they sought.

Turning to the district plans of the Waitomo District Council (plan operative in March 2009) and the Otorohanga District Council (plan operative in March 2012). The Waitomo district plan explains the consultation process the Council adopts

\textsuperscript{335} \textit{RMA} 1991, sch 1, cl 3(1)(d).
\textsuperscript{336} Document A148, pp 149–150.
\textsuperscript{337} Document A148, p 304.
\textsuperscript{338} Document A148, p 151.
\textsuperscript{339} Document A148, p 305.
\textsuperscript{340} Document A148, p 306.
\textsuperscript{341} Document A148, p 306.
\textsuperscript{342} Document A148, pp 307–308.
with the Maniapoto Māori Trust Board at the iwi level, and then its Regional Management Committees and hapū.\textsuperscript{343} It then refers broadly to the matters listed in part 2 of the RMA.\textsuperscript{344} The Otorohanga District Council district plan recognises tangata whenua as kaitiaki, and then it explains that it is committed to building relationships with iwi authorities mandated to represent them. It also lists those principles of the Treaty that it must take into account and these are: the principles of partnership, active protection and tribal rangatiratanga. It also provides guidance on how to consult with iwi authorities.\textsuperscript{345}

Alexander noted that the expectation of the RMA was that it would lead to greater Māori participation in resource management. This has obviously happened. They now participate (if they do not have a Treaty settlement) as consultees, submitters, or applicants. This is a long way from being in actual partnership as envisaged by the Treaty. Alexander concludes:

> Because the 1991 Act incorporates references to kaitiakitanga, Māori ancestral land, wahi tapu and other taonga, and iwi management plans (where they exist), together with an obligation to make decisions in a manner that takes into account the principles of the Treaty of Waitangi, there is an implicit expectation that Māori will become more involved in resource management matters than they were previously. That has happened, though not to the fullest extent that the legislation allows.\textsuperscript{346}

\subsection*{21.3.5 The impact of the current environmental management regulatory regime on Māori}

In considering whether Māori are more involved, have made gains or had their perspectives recognised under the current management regime, the Tribunal notes that for most iwi in the district, particularly Ngāti Maniapoto, their relationship to Te Taiao is fundamental to their identity as iwi.\textsuperscript{347} They also consider that they are kaitiaki of Te Taiao. Ngāti Maniapoto, for example, consider themselves kaitiaki of the environment as a whole, rather than only kaitiaki of bits and pieces of it. Kaitiakitanga is given effect at many levels within Maniapoto, through whānau, marae, and hapū; through the seven Regional Management Committees (RMCs) that are regional clusters of Maniapoto marae who, amongst other things are active in environmental matters; through the Trust Board, and, more recently, through the Trust Board resourcing a larger environmental team, Whanake Taiao.

Whanake Taiao is the environmental team of the Trust Board and was established with the passage of the Waipā River co-management legislation and the provision of its accompanying capacity building funding. The team is a resource to support Maniapoto mana whenua in their kaitiaki roles and responsibilities. The Whanake

\begin{itemize}
\item \textsuperscript{343} Document A148, pp 309–310.
\item \textsuperscript{344} Document A148, p 310.
\item \textsuperscript{345} Document A148, pp 310–311.
\item \textsuperscript{346} Document A148(b), p 9.
\item \textsuperscript{347} Document Q25 (Wilson), p 3.
\end{itemize}
Taiao scope of work encompasses all environmental matters and the implementation of the co-governance and co-management arrangements promulgated in the Ngā Wai o Maniapoto (Waipā River) Act 2012 and the 2012 Co-Management Deed. The team currently has a fulltime staff complement of six with a triennial and annual plan and capability in broad areas of policy and project management. However, despite the establishment of Whanake Taiao, significant challenges remain in dealing with environmental issues, especially because:

(a) Maniapoto is not a decision-maker in relation to issues concerning the environment and natural resources; and

(b) comprehensive resourcing does not exist to ensure Maniapoto engagement in all environmental matters at all levels. 348

None of the iwi in the district were able to produce iwi management plans in the 1990s to be referenced in the first-generation RMA planning instruments in Te Rohe Pōtæ. 349 It seems they lacked the resources to complete such plans.

The Maniapoto Trust Board commissioned the Te Purongo – Maniapoto – State of the Environment Report, A Tribal Perspective, 2002 and He Mahere Taiao – The Maniapoto Iwi Environmental Management Plan, 2007. According to the evidence for the Trust Board, the plans have had little or no affect in advancing or protecting Maniapoto interests under the RMA. 350 Each Maniapoto regional committee's assessment of environmental issues is summarised on the environmental management plan. 351 These include forest clearance, drainage of wetlands, waterway and fisheries health and pollution issues, impact of introduced exotic species and the use of 1080, damage to and desecration of wāhi tapu, soil erosion, flooding and siltation, damage to caves, quarrying, and mining. 352 Some funding was received from the Ministry for the Environment for the Maniapoto plan. 353 Conversely, attempts by Ngāti Hikairo to obtain funding were not successful, and at the date of hearing they had not completed such a plan. 354

The Tribunal notes that at least with respect to one of their major waterways, Ngāti Maniapoto have the Ngā Wai o Maniapoto (Waipā River) Act 2012 which provides for a co-management regime over the Waipā River and its catchment. This extends to the headwaters of the river at Pekepeke Spring in the Rangitoto Ranges. Under section 16 of the Ngā Wai o Maniapoto (Waipā River) Act 2012, a person carrying out functions or exercising powers under conservation legislation in relation to the Waipā River and its catchment must also have particular regard to the Maniapoto Iwi Environmental Management Plan.

Despite this legislation, key issues for Maniapoto include the 'layers of requirements and compliance resulting from a raft of legislation and policies, coupled
with the ongoing lack of resourcing within Maniapoto to meet those legislative requirements.\(^{355}\) In terms of resource consents granted under the RMA their view was that consultation ‘is at times seen as the outcome rather than as a process to ensure that, for instance, relevant part 2 matters within the RMA can be considered.’\(^{356}\) It was their experience that when it comes to considering Māori perspectives, very limited consideration was given to these matters as compared to other values in part 2 of the RMA including amenity and scenic values.\(^{357}\)

They note that local and regional authorities continue to have the main decision-making responsibility under the RMA for regulating land use in the district. As discussed in chapter 19, section 19.11.1, there are a number of provisions in the Local Government (Rating) Act 2002 that require more informed consultation to take place with Māori. In the Maniapoto 2007 environmental management report they note:

The main barrier to the effective participation of Maniapoto in local government is the lack of recognition of the rights and status of iwi and hapū as Treaty partners, and a lack of knowledge of, and provision for the Treaty relationship within local government.

The Crown has devolved responsibility for certain matters to local authorities by statute. The provisions of those statutes, and the inherited responsibility not to place the Crown at risk, govern the extent to which local authorities are required to consider the principle of the Treaty.

Local government implicitly has a responsibility to have due regard for the articles and principles of the Treaty of Waitangi in the conduct of its business, in particular Article II rights of self-government by tangata whenua and citizenship needs of Māori under Article III.

The current systems of local government representation do not recognise and provide for the representation of the iwi/hapū Treaty partner as of right, nor does it provide for representation that will ensure that Article II and III Treaty responsibilities will be upheld by local authorities . . . \(^{358}\)

The Ministry for the Environment has offered guidance to local authorities on the Resource Management Act 1991 (RMA) and its planning documents in the form of commissioned studies and manuals. It has also provided funding to iwi for the development of iwi management plans.\(^{359}\) The Ministry has a Māori unit, it has produced resources and reports on Māori issues and the environment, and it has completed biannual surveys on the degree to which iwi are consulted and have participated in RMA consent processes.\(^{360}\) That survey for 2010–11 indicated

---

that only 24 per cent of 78 local authorities had a policy requiring cultural impact assessments as part of a resource consent application but it does not break down this figure to district level. Other results that would cover Te Rohe Pōtāe are that: 92 per cent of local authorities keep and maintain records of iwi and hapū groups in their region or district; 100 per cent provide advice to applicants for consents about known interests or concerns of iwi or hapū applicants; and 97 per cent have standard conditions for resource consents to cover the discovery of sites or items of significance to iwi or hapū. Only 54 per cent make budgetary provisions for funding of iwi or hapū participation in plan change processes, or in resource consent processes. These results raise issues about how information obtained from iwi and hapū is being used. It appears that the major beneficiaries of local authorities gathering such information, are applicants for resource consents.

The Maniapoto regional committees have appealed decisions to the Environment Court on resource consents. Alexander lists a number of these, and that list indicates the Mōkau ki Runga Regional Management Committee has been the most active in litigation, with some limited success. Appeals it was involved in include:

- An appeal against the reopening of the Tatu mine (outcome unknown).
- An appeal against the Historic Places Trust's decision to give authority to modify, damage, or destroy the Kuwhatai archaeological site, which was uncovered during excavations for State Highway 3 (successful).
- An appeal against the resource consents for the Wairere Falls and Mōkauiti River hydro-electric power stations (dismissed, consent subject to conditions).
- An appeal against the Piopio sewage treatment scheme and its discharge into the Mōkau River (dismissed, consent subject to conditions).

The lack of ability to protect important sites under the RMA, even where the sites have registration under the Historic Places Act 1993, demonstrates that the 1993 legislation and the RMA weighting system is not capable of actively protecting taonga sites. Problems protecting Raukuri Cave, Motutara Peninsula, wāhi tapu

364. Mōkau ki Runga Regional Management Committee v Manawatu Wanganui Regional Council, decision of the Environment Court, 21 December 1998 (Decision W114/8); Mōkau ki Runga Regional Management Committee v Manawatu Wanganui Regional Council, decision of the Environment Court, 30 July 1999 (Decision W77/99).
at Tongaporutu, and Te Rongomai o te Karakate were identified in the technical evidence.\textsuperscript{368}

Thus, and despite part 2 of the RMA and the Local Government Act 2002, the evidence of the claimants was that they continue to experience difficulties regarding having their concerns taken into account both during the consultation process with local and regional authorities and during formal consent and planning procedures. Ngāti Maniapoto, for example, note the current system of local government representation does not recognise and provide for the representation of the iwi/hapū as a Treaty partner as of right. Further, the current system also does not provide for representation that will ensure that rights and responsibilities under articles 2 and 3 will be upheld by local authorities.\textsuperscript{369} In particular, their experience has been:

\begin{enumerate}
\item Processes and time frames that do not take account of iwi/hapū processes and the limits in iwi/hapū resources.
\item Actions by local authorities that impinge on iwi/hapū rights – e.g. lands subject to Treaty claims, developments that desecrate wāhi tapu, loss of access to sites and under resourcing of facilities.
\item A lack of knowledge of Maniapoto issues at all levels of government and local government.
\item A lack of Māori representation at all levels of local government.
\item Maniapoto representatives are put in the position of having to discuss the same issues over and over with successive councils and their views are still not being taken into account.
\item Offensive pollution practices have been and continue to be approved by local authorities with little or no regard to Maniapoto concerns.\textsuperscript{370}
\end{enumerate}

Ngāti Maniapoto’s relationship with the Ministry for the Environment was also challenging at the time of hearing. That is because of the manner in which the amendments to the National Policy Statement on Fresh Water Management were developed. Maniapoto were notified of the content of the Statement after it was made public.\textsuperscript{371} This was despite the fact that the iwi has an accord with the Ministry. It was only at their Annual Relationship Meeting that the Ministry for the Environment’s Chief Executive, Dr Paul Reynolds, acknowledged that the Ministry engagement with Maniapoto could have been better.\textsuperscript{372}

Concerns from Te Rohe Pōtāe Māori about how DOC has, or has not, engaged with them were raised by claimants. The current legislative statutory and policy framework governing the Department of Conservation and its functions is based

\textsuperscript{368} Document A148, pp 287–300.
\textsuperscript{369} Document Q25, p 6.
\textsuperscript{370} Document Q25, p 7.
\textsuperscript{371} Document Q25, p 9.
\textsuperscript{372} Document Q25, p 9.
upon the Conservation Act 1987, its statement of intent, general policies, conservation management strategies, and conservation plans.\(^{373}\)

The Tribunal was told that DOC’s engagement with Rohe Pōtae Māori varies and takes different forms with the different whānau, hapū, and iwi, and with respect to individual places, species or resources.\(^{374}\) The engagement with whanau, hapū, and iwi has spanned a variety of mechanisms ranging from formal to informal; verbal to written; hui-a-iwi to one-on-one conversations.\(^{375}\) DOC seeks advice about who best to engage with at particular places or on particular projects. For example:

within the tribal lands of Maniapoto, DOC has been guided by the Maniapoto Māori Trust Board to engage with the Maniapoto Regional Management Committees (RMCs), which represent various marae and have local expertise in dealing with environmental issues. In turn, those RMCs may have directed DOC to engage with individual marae or whanau who exercise kaitiakitanga over particular resources. In other situations, DOC may engage directly with individual Māori landowners. The appropriate opportunities for engagement with tangata whenua have been worked out on a case-by-case basis.\(^{376}\)

However, the evidence was that DOC has only really engaged with iwi since 2007. Even now Ngāti Maniapoto continue to experience relationship challenges with DOC with whom an accord also exists.\(^{377}\) A recent problem with its consultation processes with Te Rohe Pōtae Māori concerns the formation of the section of the Te Araroa Trail, which crosses public conservation lands and utilises existing walking tracks in the Hakarimata Scenic Reserve, Pirongia Forest Park, and Pureora Forest Park. DOC assumed that Te Araroa Trust had undertaken consultation with whānau, hapū, and iwi, and the Te Araroa Trust believed that DOC had done this. Effectively, neither side had consulted with Te Rohe Pōtae Māori.

DOC has a statutory function to advocate for the conservation of natural and historic resources generally under section 6 of the Conservation Act 1987. Within the Inquiry District, DOC has exercised this advocacy role in resource consenting processes under the RMA. It has no similar responsibility to advocate for Treaty issues in relation to the environment.

### 21.3.6 Treaty analysis and findings

Following the negotiation of the Te Ōhāki Tapu and associated agreements, Te Rohe Pōtae Māori sought to control the rate of settlement in their district and its impacts on their environment. However, instead of honouring those agreements, the Crown took administrative control of the region, and in doing so instituted its own laws and policies in relation to environmental management with no or

\(^{373}\) Document T3, p 10; doc T3(a).

\(^{374}\) Document T1, p 8.

\(^{375}\) Document T1, p 8.

\(^{376}\) Document T1, p 8.

\(^{377}\) Document Q25, p 9.
limited provision made for the mana whakahaere of Te Rohe Pōtae Māori. The Crown would often refuse to accede to Māori demands for the right to exercise all the rights they possessed as the owners of private property or owners of their natural resources. Rather it introduced discriminatory legislation.

In parts 2 and 3 of this report, the Tribunal has found that the Crown’s native land legislation that governed the operation of the Native Land Court, and the operations of the Land Boards were actions inconsistent with the principles of the Treaty of Waitangi. It has also found that due to the manner in which it conducted its purchasing activities in Te Rohe Pōtae, the Crown further acted in a manner inconsistent with those principles. The Crown’s obligations towards Māori in respect of the environment in Te Rohe Pōtae were given a particular flavour by the unique circumstances in which the Crown acquired and applied its powers of governance in the region, and the resulting way that European settlement proceeded.

During this period of one of the greatest cycles of environmental transformation in New Zealand’s history, decisions around resource use and the consequential impacts on flora and fauna were essentially left in the hands of private enterprise, frequently with active Crown assistance. No or little regard was had to Te Rohe Pōtae Māori and their issues and limited provision was made for their access or participation outside of any other sector of the public.

The Crown’s attitude in the early twentieth century to the dramatic changes to the New Zealand landscape, including Te Rohe Pōtae, had little to do with notions of ‘the environment’ and resource management as we know them today. Crown officials shared the view that forest clearance, the extraction of native timber, swamp drainage, and the growth of agriculture were all beneficial improvements upon nature. The upshot of these attitudes was the development of a ‘capitalist economy [that] was subject to almost no legal regulation.’ Changes to this attitude only slowly pervaded official policy from the mid-twentieth century, but the statutes relating to forestry, to fisheries, to sites of importance and taonga and reserves, all subjected Te Rohe Pōtae Māori to the authority of central, local and regional authorities who did not have to consider Treaty principles, provide for Māori co-management, engage and consult Māori, enable their participation in management or have regard to their customary values outside of possible granting of authorisations or permits for gathering, taking or catching species or for the protection of their archaeological sites. The case studies in this chapter highlight how deficient that legislation was.

In terms of environmental management, the history reveals that Te Rohe Pōtae Māori were excluded from many of their important taonga sites and species and there was a corresponding loss of mātauranga Māori. The issues for Māori in this district were compounded by land loss, urbanisation and dislocation from the 1940s onwards. As a result, many Te Rohe Pōtae Māori moved away from their kāinga to the towns and cities in the Waikato or further afield, making it even

---

more difficult to retain strong relationships with their traditional resources and taonga.\textsuperscript{380}

The Town and Country Planning Act 1977 was the first statute to recognise that Māori continued to have a relationship with certain areas even where they no longer owned land. It would not be until the introduction of the Conservation Act 1987 and the Resource Management Act 1991 that the principles of the Treaty were considered to be relevant to environmental management. The Crown acknowledges the deficit of references to the Treaty in its legislation prior to 1987. The Tribunal accepts that acknowledgement. The Crown also considers that as an expression of its kāwanatanga role, the Conservation Act 1987 and the \textit{RMA} currently achieve an appropriate balancing of interests for all New Zealanders. As we did in the \textit{Maui Dolphin Report}, we accept that the Crown has the kāwanatanga power to enact legislation for the protection of the environment and natural resources on behalf of all New Zealanders. Yet, we also noted, the Crown’s right to perform its legitimate kāwanatanga role is not unconstrained. That is, although article 1 confers on the Crown the right of kāwanatanga ‘this is immediately qualified by its promise under article 2 to protect the Māori right to rangatiratanga over their lands, forests, fisheries, and other taonga. Essentially, the Crown’s kāwanatanga role should always be balanced by a respect for Māori rangatiratanga (and through that, kaitiakitanga).’\textsuperscript{381}

The Crown’s position in this inquiry was that it must treat Māori equitably with non-Māori in the application of its policies and practices and take a balanced approach. However, this was not a position apparent in any legislation until 1987. The fact is that it did not treat Māori equitably with non-Māori because it made only limited provision for their rights and interests under the Treaty of Waitangi in its management of the environment before the late 20th century. The only early concession it did made was the limited provision made in section 3(1)(g) of the Town and Country Planning Act 1977. The Conservation Act 1987, the \textit{RMA} and the Local Government Act 2002 have improved the situation, but these limitations given the evidence from the iwi in this district.

Clearly the experience of the largest iwi in Te Rohe Pōtae, Ngāti Maniapoto, is that the \textit{RMA} and the local and regional government regime is not addressing their concerns well enough. They point to those policies and procedures that inhibit their effective representation or participation. They doubt that engagement is meaningful consultation, and they are concerned that they have limited influence on planning and resource consent decisions. The system is also demanding of their time with no corresponding resource assistance to provide for their participation. This is worrisome for, as found by the Court of Appeal in \textit{Ngai Tahu Māori Trust Board v Director-General of Conservation} (1995), the Crown’s duty to Māori goes

\begin{itemize}
\item \textsuperscript{380} Document A76, pp 26–28.
\item \textsuperscript{381} Waitangi Tribunal, \textit{The Priority Report Concerning the Māui’s Dolphin, pre-publication version} (Wellington: Waitangi Tribunal, 2016), p 24.
\end{itemize}
beyond mere listening or consultation without any intent to give weight to their interest in the final decision-making process.\textsuperscript{382}

Taonga sites of importance to Māori were not protected by legislation (other than the Native land legislation) prior to 1980. Even where that Native land legislation was used, the Crown did not provide support to enable Māori to maintain their sites, as the case of Rewi’s Reserve demonstrates. The heritage protection legislation has been unable to engage Māori to prevent the destruction or modification of many sites of importance to Te Rohe Pōtae Māori. It has also emboldened archaeologists to operate without regard to the views of tangata whenua, at least until 1993. The new Heritage New Zealand Pouhere Taonga Act 2014 may improve the position, but its impact was not known at the time of hearing. Furthermore, it is clear that prior to 2014 protection of sites for their archaeological value had been elevated over the cultural importance of sites and that the RMA planning provisions and part 2 have not improved protection for sites registered or not.

One of the main issues, as previous Tribunals have found, lies in the RMA as far as Treaty principles are concerned. Section 8 needs to be amended to reflect wording more akin to that in section 9 of the State-Owned Enterprises Act 1986. Alternatively, it should be integrated into section 5 of the RMA. Left as it is the RMA is incapable of ensuring that the Crown’s Treaty guarantees to Māori are honoured. Furthermore, the Crown’s heritage system while improved to that which existed before the Historic Places Act 1993, continues the ad hoc approach to the protection of all sites important to the claimants. The problem is that registration under the Historic Places 1993 and its link to the RMA, recognises only a small proportion of their sites and their experience has been that protection for those sites registered is not guaranteed.

The Ministry for the Environment needs to adhere to its undertakings with iwi and undertake further training for its staff in terms of its own Treaty commitments and engagement issues. The experience of Ngāti Maniapoto suggests that it has been developing policy contrary to the preamble of the Environment Act 1986, and it is not engaging in appropriate consultation with Māori, even those who have agreements with them.

The legislation and policy operation of DOC also indicates that Treaty of Waitangi obligations has not been fully understood. The evidence is that the Director-General and staff will not usually delegate any DOC functions to iwi without settlement legislation as they consider it contrary to the Conservation Act 1987 and the range of other statutes they administer.\textsuperscript{383} We are not sure that is the case if a wide view to the interpretation of section 4 were taken. However, given that DOC relies so much upon statutory guidance, what is needed is an amendment to section 4 and 6 of the Conservation Act 1987. These amendments should make it clear that section 4 does prevail over all statutes administered by DOC. That would require a further amendment to section 6 of the 1987 legislation to provide guid-

\textsuperscript{382}. \textit{Ngai Tahu Māori Trust Board v Director-General of Conservation} [1995] 3 NZLR 553, 558 (CA)

\textsuperscript{383}. Document T3, p10; transcript 4.1.20, pp1364–1365 (Jeff Flavell, hearing week 14, Waitomo Cultural and Arts Centre, 7–11 July 2014),
In terms of its policies, the Conservation General Policy 2005 remains the same as that analysed by the National Park Tribunal. We agree and adopt their finding that while there are positive statements about the principles of the Treaty of Waitangi, these policies do not ‘provide complete policy guidance as to how these can be made operational across the wider spectrum of Crown conservation activities’. Furthermore, the Treaty of Waitangi principles are ‘incomplete and out of date’ omitting as they do principles from article 2 such as the principle of reciprocity underpinned by the exchange of kāwanatanga for the guarantee of rangatiratanga, mutual benefit and the duty to actively protect taonga, and there is no reference to the article 3 principle of the right to development.

As for references to kaitiakitanga, mana, and tikanga in the DOC documents, these seem to us meaningless if there are no authorities or DOC functions that can be transferred to Te Rohe Pōtae Māori who have not achieved a Treaty of Waitangi settlement. After all, kaitiakitanga and mana cannot be achieved without recognition of rangatiratanga. The long and the short of it is that the Crown and DOC have almost complete control over the management of the Conservation Estate. Decisions they make and prioritise are implemented, while Te Rohe Pōtae Māori priorities are not. A case in point concerns the collaboration it encourages for pest control and DOC’s 1080 programme. There were a number of claimants concerned about the use of 1080 and DOC’s method of pest control, who also blame the Crown for the introduction of pest species into New Zealand and that this has had a detrimental impact on some indigenous species. In some cases, the Crown conceded the effects have been severe. Ultimately, the Crown submitted that the introduction of exotic flora and fauna into New Zealand did not constitute a Treaty breach, as this ‘incident of colonisation’ was ‘reasonably believed to be in the national interest’. We do not have sufficient evidence to make a finding of Treaty breach with respect to the introduction of exotic terrestrial flora and fauna.

DOC witnesses also acknowledged under cross-examination that it has decided to use 1080 for pest control and that this policy is non-negotiable. Its engagement with Māori on the issue is only to advise of when and where drops will take place. An approach consistent with the principle of partnership would be to collaborate at the regional level with the major iwi of Te Rohe Pōtae and at the local level with hapū to ascertain how such programmes can be implemented in a manner where Māori spiritual, historical, and customary values can be integrated into its pest control programmes.

384. Waitangi Tribunal, Te Kāhui Maunga, p 890.
385. Waitangi Tribunal, Te Kāhui Maunga, p 893.
386. Waitangi Tribunal, Te Kāhui Maunga, p 913.
387. Statement 1.3.1, p 354.
For all the above reasons, including for failing to provide in any significant way for Māori participation in environmental management in Te Rohe Pōtae from 1880 to 1977 (but not with respect to the introduction of exotic terrestrial flora and fauna), we find that the Crown acted in a manner contrary to the principles of the Treaty of Waitangi and Te Ōhākī Tapu and associated agreements. It used its authority to regulate land and natural resource management and use contrary to the principle of partnership, the principle of reciprocity and mutual benefit, the principles of equity and development in article 3 and the Crown’s duty of active protection of rangatiratanga over taonga (which also denotes kaitiakitanga). In doing so the Crown has failed to actively protect the rangatiratanga and kaitiakitanga of Te Rohe Pōtae Māori over their forests, lands, waterways, and other environmental taonga. While the Town and Country Planning Act 1977 (section 3(1)(g)), the reforms heralded by the Environment Act 1986, the Conservation Act 1987 and the RMA 1991 had led to improvement, the experience of Ngāti Maniapoto indicates that further reforms are needed. This is consistent with findings made in previous Tribunal reports. Current environmental statutes and policies do not adequately meet appropriate Treaty standards and must be amended and the continued failure by the Crown to address these matters is a breach of the principle of good government. Ultimately, the Crown is responsible for the policy and legislation that was not put in place in partnership with Te Rohe Pōtae Māori, nor in adequate consultation with them.

21.4 Te Nehenehenui

21.4.1 The forests as taonga

At the time of the Treaty and well into the 1880s, a vast proportion of Te Rohe Pōtae was covered in dense conifer-broadleaf forest. On the eve of European settlement the Te Rohe Pōtae landscape was dominated by an expansive forested area, broken only by patches of sand dune and wetland.

The podocarp forests of the central and western North Island were the food basket, pharmacy, and equipment store for many generations of Te Rohe Pōtae Māori. Primary or old-growth forest cover provided areas for hunting birds and kiore, plants for food and medicine, and tall trees for building waka. Secondary forest, which was in a phase of regrowth following burning or extensive harvesting, could be easily cleared for cultivations and dwellings, while the wetlands and waterways sustained by the forest were rich sources of birds and fish.388

To Ngāti Maniapoto, the great forest was known as Te Nehenehenui, a name that described both the forest itself and their traditional tribal area.389 Te Nehenehenui stretched from Tuhua in the south (just north of Taumarunui) through to Pūniu in the north, and included great swamplands and the lakes of Te Kawa and Kōpua.390 The spiritual aspects of the forests were profound. Ngāti Huru, associated with

the Hurakia Range, as an example, demonstrated their knowledge of the area as follows:

Within this rugged terrain in small sacred lakes the feared barking red eels reside in waters which are dotted around the Hurakia Range and the sacred groves of the red harakeke which grow amongst the mist and fog covered hills and in the deep ravines. The tohu or signs of the tribal domain of the Patupaiarehe, the original ancient dwellers and keepers of this place, are also evident here.
It is with solemn respect and acknowledgement that Ngāti Huru and many other hapū have always known this area as being the abode of the Patupaiarehe tribes from time immemorial led by their mystical chiefly leaders, Rakeiora, Tarapikau, Te Ririō, Takaka and other honorific beings who still endeavour to sustain their kaitiakitanga over the forests and wildlife in this region. We of Ngāti Huru still ask for the permission and spiritual protection of these deities before entering into the ngāhere.  

In addition to its spiritual and political importance as discussed above, Te Nehenehenui was a food basket for many generations of Te Rohe Pōtai Māori.

A number of claimants expanded on the customary food resources of Te Nehenehenui at hearings. Piripi Crown described how his Ngāti Maniapoto ancestors came to be known as ‘bird people’, due to their extensive and innovative methods of hunting for kererū, kākā, kiwi, weka, and other bird species. Jim Taitoko explained how plentiful the forest was and how giant flocks of kererū – nourished by the plant life – were so large that they blocked out the sun when they took flight. According to Hoane Wi, this was the reason behind the naming of the Rongoroa ranges, which translates as ‘hear from afar’, for the beating of a multitude of wings, which could be heard at a great distance. He went on to detail how the birds were preserved in their own fat (huahua), to be traded with relatives for other specialities such as kooki (dried shark) from Kāwhia; in later years they were presented ceremonially to mark the koroneihana.

At Maraeroa there was an abundant pātaka kai. The kererū and tūī flew in flocks that could be counted in the thousands. These birds would be carefully laid out on the marae and given appropriate karakia and mihi, before being shared among everyone. Miro, maire and other trees were named and respected for what they provided.

Alexander confirmed that the ‘[p]rimary forest cover provided areas for hunting birds and kiore, plants for food and medicine, and tall trees for building waka’. ‘Secondary forest could be cleared for cultivations and dwellings’, while wetlands and waterways were also rich sources of birds and fish.

After the upheavals of war and confiscation, Te Nehenehenui assumed even greater significance, as King Tāwhiao and his Waikato followers crossed the Pūniu River to take refuge in the forest, along with Te Kooti and many others displaced by the turmoil. Thereafter, Māori increased the size of their gardens to meet the demands of an expanding European market, and of refugees inside the aukati. Yet although the forest underwent some change in the years before Te Ōhākī Tapu, this was limited to areas of secondary regrowth. This is to be compared to other districts where by the 1880s, bush had already given way to pasture. In Te Rohe

---

394. Document A110(b), pp 3, 498; see also doc H17(e) (Harold Maniapoto), p 6, and doc P15(e), p 5.
Pōtae, the hill forests and lowland forest-swamps that were so highly valued by Te Rohe Pōtae Māori remained substantially intact.  

21.4.2 The regulation of indigenous forestry  
Nineteenth century Crown officials placed little value on forests and their resources. Although accessible timber had obvious worth, milling was seen by most as an optional, albeit potentially lucrative step towards pastoral conversion. The Crown’s legislative framework therefore tended to permit, or even actively encourage forest removal as a way of bringing vacant land into production. That noted, there were also debates within the community over forest preservation. These took place from the 1870s, but official confidence in the inexhaustible bounty of nature generally won out. This was particularly the case for Te Rohe Pōtae, which was opened to milling and agriculture at time when refrigerated shipping had made intensive land settlement even more desirable.  

The construction of the main trunk railway stimulated massive deforestation, allowing Pākehā and foresters to access previously remote forest lands on either side. Māori also participated in this growing timber and milling industry. As we discussed in chapter 9, a lack of capital meant that the promised economic benefits for them being able to monopolise the industry did not occur (see section 9.4.6). Rather, the benefits for Māori of the industry were mostly limited to granting timber cutting agreements and wage labour. Moreover, while the Crown initially made some efforts to discuss the potential impacts of the railway with Māori, it made no further attempt to seek their views on the pace and scale of deforestation, let alone to protect forest lands valued by Māori.  

Land alienation and settlement inevitably brought environmental change, which had further implications for the customary activities and significant places of Te Rohe Pōtae Māori. The following map demonstrates that between 1840 and 2010 much of Te Rohe Pōtae was denuded of its primary forest.  

Prior to the 1880s, there were limited Crown efforts to set aside forest reserves, beginning with the New Zealand Forests Act 1874, which enabled the acquisition and setting aside of state forests. Introducing the measure, Premier Julius Vogel observed: ‘how very large was the demand for timber which arose from our railway works and our telegraph construction and maintenance; how very great were the injuries caused by floods, and how much deterioration our climate was liable to sustain, from the destruction of forests’. Proponents of the legislation were motivated by fears that the colony’s timber supply would shortly be exhausted, as well as evidence linking forest removal to flooding, changes in climate and water temperature, soil erosion, and increased run-off into waterways. The need to preserve ‘guardian forests’ in steep hill

395. There was small-scale trade in timber at Kawhia and Mōkau from the 1840s (doc A25, p 32; doc A148, p 11).  
country, at the headwaters of rivers, and along riparian strips featured prominently in the debates and in supporting literature.\(^{399}\)

The arguments put forward by Vogel in 1874 are now considered orthodox science.\(^{400}\) In the late nineteenth century, however, forest preservation lacked enduring political support. The 1874 Act applied only to forests on Crown lands which amounted to approximately 8,000 acres by this stage: it made no restrictions on privately owned lands, Crown leaseholds, or Māori land and it contained no specific protections for guardian or riparian forests. It was weakened further by the removal of a clause enabling the setting aside of up to 3 per cent of provincial forest lands, replaced by a voluntary scheme. While the Act established the Forests Department, led by a chief conservator, these measures were reversed when Vogel’s Ministry lost power two years later. The State Forest Act 1885 saw a forestry branch established within the Department of Lands and Survey, but it was never fully implemented due to the deteriorating conditions that followed.\(^{401}\)

The debate over forest preservation in the 1870s and 1880s was essentially between two groups of Pākehā politicians advocating short-term economic interests. One side was concerned that forest conservation would hinder land settlement; the other that colonial prosperity would be hindered by timber shortages, flooding, and soil erosion. Both, however, remained ignorant of Māori forest economies.\(^{402}\) Indeed, Māori played only a limited part in the discussion, apart from in the context of ‘displacement theory’, as for example when John Sheehan, member of Parliament for Rodney argued:

> the same mysterious law which appears to operate . . . by which the brown race, sooner or later, passes from the face of the earth – applies to native timber . . . The moment civilization and the native forest come into contact, that moment the forest begins to go to the wall.\(^{403}\)

In July 1896, delegates at a national Timber Conference were told that a shortage of native timber would be experienced in coming decades.\(^{404}\) One estimate


\(^{400}\) With the exception of links between deforestation and macro-scale climate change: see doc A154(a) (Cant), p 26; transcript 4.1.20, pp 1221–1228 (Garth Cant, hearing week 14, Waitomo Cultural and Arts Centre, 7–11 July 2014).


\(^{404}\) Document A25, p 30.
in 1901 was that all accessible timber forests would be cleared in 20 years. In 1903, a policy of ‘Acquisition and Resumption of Forest lands’ was discussed in the Department of Lands and Survey annual report. As noted by Cleave this policy was aimed at increasing:

amount of forest land under official control, the acquisition part of the policy looked toward the purchase of ‘waste’ Māori land, while the resumption part of the policy looked to increase the amount of Crown land designated as State Forest. Legislation passed in 1903 also aimed to conserve forest areas and protect the future of the saw-milling industry by discouraging the export of timber. Under the Timber Export Duty Act 1903, the duty on all logs exported was raised.

In response to growing concern about the need to conserve timber supplies, the Timber and Timber Building Industries Commission was established in March 1909 and requested to investigate various aspects of the timber industry, including the extent of the remaining forest resources. In its report, the Commission recorded wastage in the industry and proposed more efficient cutting of native forests. However, it considered that it would not be possible to protect indigenous forests, particularly from fire, and – reiterating the views expressed at the 1896 Timber Conference – concluded that at some time in the future the timber supply would have to be met by plantations, the creation of which the Commission believed was the responsibility of the state.

There is no evidence that the Crown pursued this approach in Te Rohe Pōtae. Crown officials saw the forests of the central and western North Island as wastelands awaiting Pākehā improvement. The process by which this was to be achieved was two-fold. Forest areas close to transport networks would be harvested as a single crop then cleared for farming; those that were not would simply be burnt where they stood. By the 1890s, when settlement began in Te Rohe Pōtae, forest clearance had assumed some priority.

In keeping with its generally permissive approach, the Crown did little to regulate forest removal in the nineteenth and the first two decades of the twentieth century. This reflected the priority placed on land clearance and agricultural settlement. The first two decades of the twentieth century were years of expansion, in which the area of land farmed, number of livestock, and volume of indigenous timber removed for milling in Te Rohe Pōtae all grew rapidly.

Farm development and sawmilling alike were dependent on the Crown’s native land laws and the Native Land Court, and from 1905 on Māori Land Board administration and leasing, to facilitate their access to land and the right to cut timber.

The Crown's land purchase policies focused on securing freehold title for on-sale to Pākehā, who then undertook forest clearance.

By 1910, almost half of the land in the inquiry district had been purchased by the Crown, including forest lands.\(^{409}\) The Crown's purchasing policies were discussed in parts 2 and 3 of this report. Importantly, and as Cleaver notes, the value of timber on forest lands was not factored into the purchase price for these blocks.\(^{410}\) While that was rectified from the second decade of the twentieth century, due to the work of the Land Boards, valuations of timber could vary widely and were determined by estimation rather than detailed appraisal.\(^{411}\) It was not until the early 1930s, when the State Forest Service's appraisal system was applied to Māori land, that the prices paid for Māori forest lands began to be based on thorough and accurate valuation.\(^{412}\)

In the second decade of the twentieth century, there emerged again concerns regarding future timber supplies. Under section 34(6) of the War Legislation and Statute Law Amendment Act 1918, the Governor General in Council was able to make regulations to limit the export of timber, to prohibit the sale of standing timber, and to require that licences be granted for the cutting of standing timber on public or private lands of any tenure. In August 1918, regulations imposing restrictions on the export of native timber were introduced.\(^{413}\) These restrictions also fixed permissible quantities of sawn timber and required that detailed returns be furnished from all sawmills.

The State Forest Service was established on 1 September 1919. Under the Forests Act 1921–22, the State Forest Service was charged with six major functions under section 6:

- control and management of all matters of forest policy;
- control and management of permanent and provisional State Forests;
- the planting and maintenance of nurseries;
- the enforcement of leases, permits, and licences;
- the collection and recovery of rents, fees and royalties; and
- general administration of the Forest Act.

Under part 2 of the legislation land could be set aside as State Forests and existing state forests were continued as such. Section 22(1) gave the Minister power to ‘purchase or otherwise acquire any land for the purposes of a permanent State forest or a provisional State forest, or for the purpose of providing access to any State forest’. Under section 22(2), the Governor-General could take under the Public Works Act 1908 ‘any land which in his opinion is required for the purposes of a State forest or for providing access to any State forest. Section 35(2) provided that neither the Māori Land Court nor a Māori Land Board should grant timber cutting rights without the agreement of the Commissioner of State Forests.

\(^{409}\) Chapter 14, section 14.3.1.
\(^{410}\) Document A25, p71.
\(^{411}\) Document A25, p71.
\(^{412}\) Document A25, p71.
Conversely, the Act contained no provisions concerning the alienation of privately owned, non-Māori forest lands. This special provision reflected the fact that Māori owned a significant proportion of the remaining indigenous forest land. It was also because the Land Board system could be easily modified to provide for State Forest Service scrutiny. There appears to have been limited consultation with Māori forest owners over this provision. Before the 1930s the State Forest Service did not conduct many appraisals. From the early 1930s, the State Forest Service increased its involvement as an appraiser of proposed timber alienations, and they continued this role into the 1970s.

The Forests Act 1949 extended the State Forest Service powers over the alienation of Māori-owned timber by providing that neither the Māori Land Court nor a Māori Land Board could grant any right to cut or remove trees or timber or confirm any 1921–22 instrument or grant of such right without the consent in writing of the Minister of Forests, who could in his discretion (with the concurrence of the Minister of Māori Affairs) refuse his consent or grant his consent wholly or partly and either unconditionally or upon or subject to such conditions as he thought fit. Under section 65(2) in any such consent the Minister could specify the area and kinds and sizes of trees to which the consent related. He could also state the value of the trees or timber as assessed by the State Forest Service within such a block. The requirement for the (by this time) Minister of Forests to consent to the alienation of timber on Māori land was repealed by section 473(1) of the Māori Affairs Act 1953 and replaced by section 218(2) of the Māori Affairs Act 1953. That provision provided that for alienations to any person other than the Crown, primarily or substantially for effecting the disposition of any timber, the Court could not confirm the alienation except with the consent of the Minister of Forests. His consent could be unconditional or subject to such general or specific conditions as that Minister wanted to impose.

The Minister’s powers were repealed totally by the Māori Affairs Amendment Act 1962. However, even under this Amendment section 17 provided that the Māori Land Court could not confirm a timber agreement or timber lands unless satisfied that the local Conservator of Forests had been given the opportunity to be heard regarding any matters that may affect the public interest.

Exactly what was meant by the public interest was defined in policy by the Forest Service. In a circular letter dated 29 March 1963, the Director-General of Forests advised Forest Service officers that from 1 April 1963 the Minister of Forests consent would no longer be required for the sale of timber on Māori-owned land. The Director-General highlighted that ‘copies of resolutions to alienate timber passed by meetings of owners and applications for confirmation would continue to be forwarded to Conservators’. In considering whether any proposed timber alienation might be contrary to the public interest, the Conservator stated that consideration should be given to ‘the preservation of scenic beauty and amenities,

---

the protection of water supply, and the prevention of erosion. Thereby, reflecting Government policies of this time. There is no evidence that Te Rohe Pōtæ Māori land-owners were consulted regarding the development of this policy; indeed, the policy fails to even mention them.

Crown attitudes to forest management underwent significant changes by the mid-twentieth century, with greater awareness of the interconnections between land use and soil and water quality. This realisation arose in part from failed attempts to farm unstable North Island hill country, including in Te Rohe Pōtæ. By this time excessive deforestation resulted in cleared farm-land or it left a large proportion of Te Rohe Pōtæ as ‘cutover bush dominated by second-tier trees’ and ‘infested with possums, goats and other noxious animals.’

Today, indigenous forests in the region include Pureora and Pirongia Forest Parks, both administered by the Department of Conservation (DOC). Environmentally, Te Nehenehenui is a shadow of its former self but there are a number of other conservation areas which were formally part of the great forest.

21.4.3 Deforestation in Te Rohe Pōtae

The North Island main trunk railway, which reached Taumarunui in 1903 and was completed in 1908, was the single most powerful initiator of deforestation in Te Rohe Pōtae. As Alexander notes, land clearance and mixed farming spread outwards from the railway in two main phases. First came the gradual acquisition and survey of land for farm sections, connected by bridle tracks and wagon roads to larger settlements along the railway line such as Ōtorohanga and Te Kūiti. Those closest to the railway logged their sections, while those further out cut, dried and torched thousands of acres, sewing grass into the fertilising ashes.\(^{420}\)

With the decline of kauri exports from the 1890s, the podocarp forests of southern part of the district began to receive attention from timber millers. By building bush tramways connected to sawmills on the railway, timber companies were able to access Māori and Crown land that had not yet been converted for farming.

Among those arriving into the region at this time was JW Ellis, who began milling at Kihikihi by 1886, before moving to Ōtorohanga in 1890 along with the engineer JHD Burnand. The former’s commercial expertise and relationships with Māori, and the latter’s knowledge of steam technology proved a successful combination; their firm, founded in 1903, would dominate the timber industry in Te Rohe Pōtae for more than 70 years.\(^{421}\)

Prior to 1907, timber agreements were being negotiated directly with Māori landowners during this period, a large number with Ellis and Burnand. Interestingly, the Crown did little to regulate these prior to 1903 or the sawmilling in Te Rohe Pōtae. This appears to have been left to the industry to work out, despite questions being raised about the activities of timber companies from the 1890s concerning the agreements they entered into with Māori.

That position could have changed due to the Crown’s introduction of the Māori Land Laws Amendment Bill 1903. This Bill attempted to invalidate all existing agreements for access to timber on Māori land.\(^{422}\) However, due to lobbying from the industry, these clauses were eventually deleted from the 1903 Bill leading Hone Heke MHR to express concern that no legislative intervention was retained.\(^{423}\) That failure to intervene meant that by 1907 at least 85,000 acres of land in the Rohe Pōtae inquiry district were subject to timber agreements.\(^{424}\)

Legislative intervention did eventually occur with the enactment of the Māori Land Claims Adjustment and Laws Amendment Act 1907. Section 26 of that Act required that parties to existing agreements concerning timber, flax, and other commodities were, within two months of the passing of the Act, able to apply to the local Land Board to have the agreements approved. Upon receiving an application, the Board was required to enquire into the agreement and make a

\(^{420}\) Document A148, p 12; doc A64, pp 24–25.

\(^{421}\) Ellis was one of the first Pākehā traders in Te Rohe Pōtae, opening a general store at Motakotako on Aotea Harbour in 1875. He was twice married to local Māori women (doc A25, pp 24, 38–390).

\(^{422}\) Document A25, pp 48–54.

\(^{423}\) Document A25, p 52.

\(^{424}\) Document A25, p 48.
recommendation to the Native Minister as to whether it should be approved or whether modifications were required. Section 28 of the Māori Land Laws Amendment Act 1908 extended the timeframe for applications to six months from the passage of that Act.

Commercial logging pursuant to timber agreements took place largely on land still owned by Māori. In the main, these contracts were directly negotiated with owners but after 1907 had to be approved by the Land Boards. As a result of the change in law in 1907, 16 applications were made under section 26 of the Māori Land Claims Adjustment and Laws Amendment Act 1907 to the local Māori Land Board. The 16 applications sought approval for timber cutting agreements. As Cleave notes:

nine of these applications concerned timber cutting agreements over forested subdivisions of the Rangitoto Tuhua block, reflecting the importance of these lands and their proximity to the NIMT railway. All of the remaining applications, except one, concerned timber cutting agreements over lands in the Te Kūiti and Otorohanga districts, which were also broadly located along the railway. The agreements to which the applications related varied considerably in terms of the area of land involved – from just 100 acres (the agreement concerning Puketarata block) to 30,163 acres (Ellis and Burnand’s agreement concerning Rangitoto Tuhua 36). Details recorded in the Maniapoto–Tuwharetoa District Māori Land Board’s register of applications suggest that the agreements to which the applications related may have been largely standardised. In one case, the application concerning Rangitoto Tuhua 68, it is noted that the agreement contained the ‘usual rights to pay royalties quarterly and to erect sawmills within six months’.

The two agreements that are known to have been confirmed are those that related to Rangitoto Tuhua 36 and Rangitoto Tuhua 66, involving a total land area of 40,545 acres. At least seven of the agreements were not confirmed, with the remaining applications not proceeding to enquiry or being dismissed. In the case of the remaining applications, some were subject to later timber agreements, thus escaping the requirements of the 1907 legislation.

As discussed in part 111, the Māori land legislation from 1907 to 1909 provided for the compulsory vesting of Māori land in the land boards of the district. The Native Land Act 1909 made access to Māori forest land easier, by reducing to five the number of owners needed to agree to sell the timber at a duly convened meeting of owners. The procedures associated with meetings of owners under the 1909 legislation were discussed in part 111 of this report. As a result, timber agents were able to overcome opposition to timber milling by encouraging groups of willing

owners to conduct meetings of owners, apply to partition their interests, and this allowed cutting to proceed on the partitioned blocks. 429

Cleaver summarises the effects of this legislation as follows:

In March 1909, Orders in Council declaring specified blocks within the Rohe Potae to be set apart under the Native Land Settlement Act 1907 began to be issued. By March 1910, some 203,000 acres of land in the inquiry district were vested in the Waikato-Maniapoto District Māori Land Board under Part XIV of the 1909 Act. The vested land comprised about 21 percent of the land that remained in Māori ownership in 1910. As detailed above, about 957,000 acres or approximately half of the land area of the inquiry district continued to be held by Māori in 1910. Of the remaining land that was not vested, it appears that a sizeable proportion was leased. In their first report of July 1907, Stout and Ngata detailed significant leasing of land, and in their fourth report of June 1908 they noted an increase in the area held under lease.

In August 1910 and July 1911, meetings of owners were called to consider what action should be taken by the Land Board in respect of the vested lands. At the second meeting, some 300 owners were recorded as being present and a great many telegrams were received from others who objected to alienation. In spite of such opposition, the Land Board made quick progress in alienating some of the vested lands, and by 1925 about 38,000 acres had been leased and some 70,000 acres sold. The land that had not been alienated – a little less than half the vested area – mostly remained vested in the Land Board. A small proportion of the vested lands were revested in the owners. By 31 March 1927, 11,865 acres had been revested. The vested lands included a range of blocks from across the inquiry district. They included a number of areas that lay to the east of the NIMT railway between Te Kūiti and Taumarunui – lands that were the focus of the sawmilling industry. . . .

No evidence has been located to suggest that owners were engaged in sawmilling themselves on any of the vested lands that were not leased, sold, or subject to a timber cutting agreement. It is possible that the Land Board may not have permitted such activity (though no evidence concerning this had been found), meaning that the land would have remained ‘idle’. 430

Cleaver notes that under the Native Land Act 1909, the number of timber alienations in the Rohe Pōtae inquiry district increased considerably. The Waikato-Maniapoto Māori Land Board, for example, authorised 45 timber alienations during the period 1910–22. This was a process provided for by the 1909 legislation. Under section 211 of the Native Land Act 1909 the sale of timber was deemed to be an alienation of land. The table reproduced as an appendix to this chapter provides details of these 45 cases. In each of these cases, the Board ‘either confirmed the alienation or expressed an intention to confirm subject to certain conditions being
These timber alienations concerned a range of blocks, but they generally appear to have been confined to locations in the vicinity of the railway.

Turning to the values attributable to the forests, the Crown’s right of pre-emption over land sales ended with the passage of the Native Land Act 1909. However, upon the issue of an order in council, the Crown could prohibit the alienation of specified blocks that it wanted to purchase. The land that the Crown did purchase between 1920 and 1940 included areas covered with forest.

In 1921, the State Forest Service identified Māori-owned forest lands (of primary importance) for potential acquisition. Only Maraeroa A3B2, a block south-east of Te Kūti totalling 1,950 acres, made this list. Due to lack of funds, the Service was unable to purchase the block, as well as the neighbouring Maraeroa A3B1 block (261 acres). As a result, the order in council favouring the Crown as purchaser was lifted, allowing private negotiations to take place. The subsequent private purchasers, Hawkes Bay sawmillers McLeod and Gardner filed an application for Maraeroa A3B2 under section 34 of the War Legislation and Statute Law Amendment Act 1918. The application detailed that ‘the land and timber was to be purchased at the Government Valuation of £4716’. The estimated quantity of timber on the block was three million superficial feet. (A ‘superficial’ unit of length converts that unit into a ‘square’ unit. For example, one superficial foot is equal to one square foot.) Amiroa Te Tomo and 40 others were stated to be the owners of the block. Cleaver records:

On 23 December 1921, the Secretary of the Forest Service forwarded the application to the Commissioner of State Forests for his approval. Commenting on the application, the Secretary stated that the recent inspection by the ranger, though cursory, indicated that the amount and value of timber on the block was considerably greater than set down in the application. On the basis of figures provided by the ranger, he calculated that the block contained 50 million feet of timber, which he estimated would be worth £25,000. In light of this, he believed that the interests of the Māori owners were ‘receiving little regard.’ In spite of this assessment, the Commissioner of State Forests authorised the owners to sell the timber in accordance with the application.

Further evidence of exploitation emerged in 1928, when McLeod and Gardner wrote to the Commissioner of State Forests, offering to sell Maraeroa A3B2 to the Forest Service for £12,000. The proposition also detailed that the block contained 18 million feet of millable timber. Although the offer was refused, the ranger who originally inspected the block in 1921, commented that the initial estimate of three million feet of timber was ‘ridiculously low’. Moreover, the Conservator of Forests wrote to the Director of Forestry, stating that the interests of the former

---

Māori owners had been ‘sacrificed’, which was ‘nothing new in the history of dealings in Native Lands’.

The Rangitoto-Tuhua 36 agreement, covering a subdivision of 30,163 acres, gives an indication of the limited role Māori land-owners played in timber cutting. Under their first contract in 1898, the Māori-owners agreed to fell, cross-cut, and load onto wagons the timber on the Rangitoto-Tuhua block. Ellis and Burnand would then buy the timber at an agreed price. Under the second agreement, the owners contracted Ellis to fell, cross-cut, and load the timber in terms of the first contract. Cleaver notes that the land board’s inquiry into Rangitoto-Tuhua 36 was inadequate in a number of ways, namely:

- the owners were not represented at the hearing;
- the Board therefore only considered the evidence submitted by Ellis and Burnand; and
- the Board did not carefully scrutinise the adequacy of the royalty rates and confirmed the 1898 agreement without any requirement for a review of rents or a limitation on the terms of the agreement.

By 1924, the owners petitioned the House of Representatives because they were still being paid the same rates negotiated in 1898. This example of Māori land receiving less than the full value of timber resources was not isolated. Ellis and Burnand had a similar arrangement with the Māori-owners of the Maraeroa C block, near Bennydale. Both the Rangitoto-Tuhua 36 block and the Maraeroa C block involved cutting licences that preceded the passage of the Forests Act 1921–22. As a result, no appraisals from the Forest Service were required. The Rangitoto-Tuhua 36 agreement was dated from 1898, while the Maraeroa C agreement was dated from 1912. These were both extended at various times between 1920 and 1950:

- Though royalty rates were increased when the licenses were extended, the Land Board does not seem to have carefully considered the new rates and the licenses were set for long terms without provision for reviewing royalty rates.
- In the case of the 1950 extension of the Maraeroa C license, the government and State Forest Service were aware that the royalty rates offered by the company were low, but the license was nevertheless confirmed by the Board without alteration.

These case studies are important as they demonstrate both that private purchasers of timber rights were generally paying significantly less than the timber resource on these Māori land blocks was worth from 1900 to the 1950s.

---

442. Document A25, p 137.
444. Document A25, p 137.
and that the Crown, through the Forest Service, knew about it. Where appraisals were carried out, a fairer price was more often than not achieved. But after the Second World War, and even though the cost of appraisals were included in the schedule of production costs faced by the sawmiller, when calculating the value of timber, ‘the Forest Service officers deducted these production costs from the estimated market value of the timber once it had been sawn.’ This meant that, though appraisal costs were paid by the sawmiller, they were ultimately met by the owners as a reduction in the value of their timber. For example, the cost of the Forest Service’s 1946 appraisal of timber on Rangitoto Tuhua 35H2A and 35H2B was almost £58, while the timber on the block was valued at £578 13s 5d. In 1951, the cost of appraising the timber on Rangitoto A48B2B1 was almost £370, while its value to the owners was assessed to be £3,834 15s.

Also important to the process of the alienation of these timber cutting rights were the formal inquiries of the land boards into the leasing and sale of cutting rights. The local Land Boards appear to have prioritised the evidence of the timber companies rather than the Māori owners themselves. Rangitoto-Tūhua 76, also known to Ngāti Raerae as the Tui Bush, or the Bird Block, shows that Māori sought to preserve the customary resources of Te Nehenehenui even while their land was being leased and sold for commercial forestry. It was leased for milling and later subdivided. It was certainly one of the blocks that was subject to an application under section 26 of the Māori Land Claims Adjustment and Laws Amendment Act 1907 filed by Travers, Russell, and Campbell (for J McGrath). The application related to about half the block, which was a total area of 8,757 acres.

Claimant witnesses Eliza Rata and Michael Burgess told the Tribunal that part of the abundant area of forest that their tupuna called Te Rongoroa, on the banks of the Ōngarue river, was intended to have been ‘kept as a tribal reserve for the birds.’ The claimants cite the land court testimony of their tūpuna Tūtahanga Te Wano and others, to the effect that this area, awarded as Rangitoto-Tuhua 76 block to 173 owners in 1904, was intended at the time to be inalienable. There was an inquiry held on 29 September 1908, but it is not clear from the evidence what the outcome was. By the time of hearing, out of the original 8,758-acre block, only one 988-acre partition remains, now vested in an ahu whenua trust under Te Ture Whenua Māori Act 1993.

As noted by Cleaver, a period of expansion in the industry took place following the Second World War and then, from around 1960, production of indigenous
timber in the district began to decline. During the new boom, the use of trucks and better roads meant Māori timber owners could sell cutting rights to isolated areas of bush for royalty rates that were much higher than had previously been paid, reflecting a ‘huge increase in the price of indigenous timber.’

As most of the Māori owned timber lands were owned by multiple owners, in almost every case the timber that was alienated between 1939 and 1980 was sold in accordance with resolutions passed by meetings of owners. Cleaver records:

In the Rohe Pōtae inquiry district, at least one agent, Thomas Hetet, helped to facilitate the sale of Māori timber, assisting sawmillers to summon meetings of owners and working to ensure that the resolution to sell was passed. At the end of 1941, concerns relating to the sale of Māori-owned timber were raised by the Director of Forests in a memorandum written to the Commissioner of State Forests. The Director stated that his awareness of certain problems had arisen through his involvement in the administration of the Timber Emergency Regulations 1939, which required the consent of the Timber Controller (a position he also held). Commenting on the method of disposal, the Director reported:

It may be explained in connection with the purchase of Native timber a sawmiller engages an agent to personally contact the Native-owners and to influence a sufficient number of them to agree to sell, and to secure proxies from a sufficient number to carry a resolution in that connection, and to attend to Native Land Court formalities on behalf of the Natives. This practice is unquestionably open to grave abuse, and I am advised that large sums of money are used by Agents in securing Native owners signatures and proxies in favour of resolutions to sell timber to specified companies and at stated prices.

The Director noted that individual owners received varying amounts in cash for their timber. This money, he stated, would be put to individual uses and, when suspended, the owner’s capital would be exhausted. The Director thought that in many cases the land was of little farming value and the timber crop was the only source of monetary return that they could expect to receive, something that he thought no doubt influenced many to sell.

The cutting of indigenous timber in the Rohe Pōtae inquiry district continued into the 1970s, when it declined to an insignificant level. Some of the late cutting involved Māori-owned timber. Cutting also continued in Pureora State Forest before it was wound down from the mid-1970s, when growing environmental concerns resulted in political pressure to end the cutting of indigenous timber on Crown land. Māori workers in the industry lost jobs as a result. Between 1939 and 1960s, Māori-owned forest land continued to be purchased in the Rohe

Pōtae inquiry district, though on a much-reduced scale, due largely to Crown resource constraints. It did complete the purchase of Kinohaku West S1, a block comprising over 800 acres.

21.4.4 Impacts of the loss of forests lands on Te Rohe Pōtæ Māori
During discussion over the construction of the main trunk line in the 1880s, Māori leaders had voiced objections about the impact on their mahinga kai. At the hui at Kihikihi held in 1885, Aporo Taratutu made a request that the forests be preserved. He would allow matai trees to be felled for sleepers, as long as they were paid for, but insisted on retaining the kahikatea, ‘because in summer he used the berries of that tree for food’. In reply, Native Minister John Ballance promised ‘[n]o injury whatever will be done to Native land’. But he also belittled Māori concern about ‘mahika kai’, stating that the money they would earn as a result of the railway would ‘be worth all the berries in the world, and the eels, too’.

Ballance’s comments dismissed Māori food gathering techniques as relics of the past, to be replaced by a new cash-based economy. The loss of mahinga kai, he suggested, would be more than compensated for by economic advantages to landowners, if the railway was pushed through their forest lands. Forest owners would be paid for any timber used in building the railway, and construction contracts would be offered to local Māori. Above all, Ballance stressed the benefits that proximity to transport would have to the value of forest land:

> In other parts of the country, where Europeans own timber land, they are very anxious that roads and railways should be taken through their land, in order to develop the value of the timber; so I strongly recommend the owners of the bush to insist upon the line going through it, for their own benefit.

In part, these predictions came to pass. From 1885 to 1887, Te Rohe Pōtæ Māori initially successfully negotiated to supply railway sleepers. As the railway progressed south from Te Kūiti, Māori involvement declined in part because commercial logging became practicable in deeply forested parts of the forest not yet penetrated by Crown purchasing, particularly the large Rangitoto Tuhua and Rangitoto blocks.

Yet, ultimately, the benefits of Māori involvement in forestry appear to have been modest at best. While a tribally based sawmill operated for short period at Ōngarue from 1900, it was subsequently leased to Ellis and Burnand. Thus most of the saw-mills were operated by Pākehā and over time the role of Māori

---

460. ‘Notes of a Meeting between the Hon Mr Ballance and the Natives at the Public Hall at Kihikihi on 4 February 1885’, AJHR, 1885, G-1, pp 23–24.
461. AJHR, 1885, G-1, p 23.
in the industry was largely reduced to being owners of forest lands or they were participating as manual labourers.  

It is possible to ascertain from the contracts for the supply of railway sleepers and from the addresses of the contractors and the places of delivery, that most of the sleepers that came from Te Rohe Pōtae were supplied from mill operators in forest areas located at Poro-o-tarao and Ōngarue. In total 62,631 sleepers were supplied from the district, and Cleave records:

Almost all of the contracts were for the provision of totara sleepers, for which the sawmillers were generally paid three shillings each. In total, the value of the sleeper contracts amounted to at least £9,400. Many of the contracts were relatively small – 17 of the 39 contracts involved fewer than 400 sleepers. These small contracts were probably held by individuals who milled the timber by hand and, at the same time, were engaged in other forms of work. By far the greatest supplier of sleepers was Ellis and Burnand, who fulfilled contracts to provide 38,000 sleepers – more than half the total number supplied from the inquiry district. As detailed below, Ellis and Burnand’s operations had by this time expanded beyond the Otorohanga sawmill and cutting of the Mangawhero bush. The sleeper contracts were no doubt helpful to this expansion.

Māori appear to have been involved in the supply of some 7000 sleepers, for which they would have been paid about £1050. The most prominent of the Māori contract holders was an individual named Tutahanga, who supplied almost 6000 sleepers. Where timber was cut from land that had not passed through the Native Land Court, Māori initiatives to supply sleepers met some resistance from government land purchase officials. In a letter written on 18 August 1900, Wilkinson advised the Under Secretary of the Land Purchase Department that Māori were cutting railway sleepers from bush near Ōngarue, on land the title to which had yet to be decided by the Court. Wilkinson had been informed that payment for the sleepers was being held back until the owners of the land were known. In response, Sheridan stated that, though his Department was not particularly concerned, the Māori involved should be made aware that the activity was a serious breach of the law.

With the exception of a sawmill that operated for a few years at Ōngarue, all of the sawmills that were established in the inquiry district around the turn of the twentieth century seem to have been owned by Europeans. However, it appears that most of the timber processed by these mills was cut from Māori land. Much of the forest land that lay along the NIMT railway in the south of the inquiry district, which was the focus of the expanding sawmilling industry, remained in Māori ownership at this time.

Reduced to negotiating timber agreements, for values far less than what their timber was worth, suffering the impacts of land loss, then the paternalism of the Land Boards, Māori became the servants of the industry working in ever increasing number as labourers. In terms of labouring, Cleaver estimates that by the early 1960s some 500 people were engaged in work in the indigenous forest

---

industry and a significant portion of those would have been Māori.\(^{466}\) That at least was some benefit. They were also the people most affected by the closure of that industry during the 1970s–80s.

For Te Rohe Pōtae Māori, the effects of the loss of those parts of their forest lands that were important to them, have been significant and ongoing. Claimants at hearing spoke of the great sadness they felt, not only for the removal of their taonga forests, but also the numerous species that have lost their primary habitat and the Mātauranga Māori associated with those. Jack Cunningham captured this sense of sorrow when he recited the lines of a waiata sung by his grandfather: ‘kua riro te totara, kua kore he kāinga mōna’ (the totara tree is lost, there is no home for the birds).\(^{467}\)

As deforestation spread with the building of the railway and accelerating land settlement, Te Rohe Pōtae Māori were increasingly cut off from their customary harvests. For the people of Te Nehenehenui and other forests in the district, the forests were a rich source of food, providing birdlife such as kererū, kākā, kiwi, weka, and tūī, edible plants like karaka, tapara, and tiori, and kahikatea, tawa, miro, and hinuia berries. Likewise, plants utilised for medicinal purposes, such as king fern, piko piko, nikau palm, and fern root could once be gathered with relative ease. As the forest was reduced, and land titles awarded, it became more difficult to access these important taonga species.\(^{468}\)

### 21.4.5 Crown exotic forest management in Te Rohe Pōtae

The establishment of exotic forestry in New Zealand was led by the state. It commenced large scale planting in the 1920s mostly in the central North Island, particularly at Kaingaroa.\(^{469}\) By the 1950s the first rotation was maturing (almost all *Pinus radiata*) and under harvest. A second round of planting commenced in the late 1950s.\(^{470}\) By the late 1960s there had been only a limited amount of exotic afforestation in Te Rohe Pōtae, undertaken by either the State Forest Service or private interests. The district at this time was supplying more indigenous forest at approximately 24 per cent of New Zealand’s indigenous timber, than exotics with its supply reaching only 0.24 per cent of New Zealand’s exotic timber.\(^{471}\)

Some of this timber came from lands planted by the Forest Service. It had by the 1960s undertaken some exotic forest planting creating the Mangaokewa, Pirongia South, Pureora, Tainui Kāwhia, and Tawarau exotic forests. With the exception of the Tainui Kāwhia forest, these forests were planted on Crown land and are today held as Crown forest licence land.

---

\(^{466}\) Document A25, pp 174–176.

\(^{467}\) Transcript 4.1.2, pp 257–8 (Jack Cunningham, Ngā Kōrero Tuku Iho hui, Waipapa Marae, 29–30 March 2010).


\(^{469}\) Document A25, p 177.

\(^{470}\) Document A25, p 177.

\(^{471}\) Document A25, pp 177–178.
The Tainui Kāwhia Incorporation forest was planted on Māori land after pressure from the local community (the Incorporation itself was formed after a meeting of owners was held on 12 October 1963).\(^{472}\) Negotiations between the Committee of Management and the Forest Service do not seem to have begun until 1966.\(^{473}\) It appears that it provided for the owners to receive a proportion of the revenue from timber sales and grazing licences. The trees planted between 1970 and 1977 have since been harvested.\(^{474}\)

The New Zealand Forest Service also assisted with the costs of a nursery on the Tahāroa c Māori land block. It seems that the Proprietors of Tahāroa c Incorporation wanted to establish a land use pattern where mining of discrete parts of their land fitted into a planting and harvesting regime that covered the whole block.\(^{475}\) Restoration of mined areas would be carried out in a manner that aided this objective.\(^{476}\) This approach to restoration was included in the mining agreement with the Crown and New Zealand Steel Mining Limited.\(^{477}\) The owners of the land then approached the New Zealand Forest Service to assist with reforestation.\(^{478}\) Consent from the Minister of Energy and the Minister of Forestry was given in 1979.\(^{479}\)

As well as the developments at Kāwhia and Tahāroa, in the early 1970s a private company, New Zealand Forest Products, entered into a 99-year leasing arrangement with the Proprietors of the Maraeroa c Incorporation for the purpose of establishing an exotic forest.\(^{480}\) These developments occurred during a time when land use in Te Rohe Pōtāe was the subject of much debate. The debate emerged after the public notification of an exotic forest plantation proposal from New Zealand Forest Products requiring the use of State Forest land, Crown Land, and private land including Māori land.\(^{481}\) It was assessed at the time that the land that would be needed was a total of 161,690 acres – 25 per cent was State Forest or Crown Land, 20.3 per cent was Māori land and 34.3 per cent was general land with 19.5 per cent in title not assessed.\(^{482}\) In 1975, the amount of Māori land required was assessed as 20,643 hectares.\(^{483}\)

A King Country Land Use study was commissioned by the Crown and released in July 1978. It found it would be undesirable for exotic forest to be planted on a large proportion of these lands as they were more suitable for agricultural production. It also suggested reducing the area of the State forest that could become

\(^{472}\) Document A25, p 178.
\(^{473}\) Document A25, p 180.
\(^{474}\) Document A25, p 180.
\(^{475}\) Document A148, p 623.
\(^{477}\) Document A148, pp 626–627.
\(^{479}\) Document A148, p 630.
\(^{480}\) Document A148(b), p 8.
\(^{481}\) Document A148, p 106.
\(^{482}\) Document A148, p 107.
\(^{483}\) Document A148, p 108.
part of the proposal. Cleaver notes that by 1979, New Zealand Forest Products decided not to proceed with the scheme.

The King Country Regional Land Use study did find that 60,000 hectares of land was ‘suitable for exotic forestry . . . without encroaching on lands of high suitability for agriculture or high suitability for a wide range of protection needs such as soil and water, wildlife and recreation.’ Alexander notes that, besides land suitable for forestry, the land-use study identified lands best left in farming use and native forest areas that had high biodiversity and recreational values. He also notes that one consequence of the study was that ‘plantation forestry ceased to be treated as a use permitted as of right in the district planning schemes of the local authorities and became a conditional use subject to a regulatory check as to its suitability.’

21.4.6 The remnants of Te Nehenehenui and other forests
In Te Rohe Pōtae Inquiry District, what land Te Rohe Pōtae Māori still own, has only the odd remnant of forest lands left standing. The great bulk of what remains of indigenous forest land either is owned by the Crown and administered by DOC after it was transferred from former government agencies or is subject to one of the statutes administered by DOC.

DOC controls over 155,000 hectares of public conservation land. DOC manages these forests through its administration of the relevant legislation, its general policies, and its regional conservation management strategies.

DOC has accorded priority to a series of places or conservation corridors. Beginning in the north of the district, the Karioi to Whareorino Place includes large blocks of protected indigenous forest including the Pirongia Forest Park, Tawarau Conservation Area and Whareorino Forest. ‘Indigenous forests in private ownership links protected areas along this forest corridor.’ The Department has identified five priority ecosystem management units within this Place: Mount Karioi, Pirongia Mountain, Te Kauri, Lake Koraha and Whareorino. The Waitomo Place includes Matakana and it contains ‘karst features that have internationally significant natural, cultural, recreational and tourism values’ including the Waitomo Caves. It also features small fragmented reserves with ‘uncommon remnant examples of forest overlying karst that contains uncommon, and threatened and at-risk species.’ The Pureora Place ‘comprises approximately 85 000 ha of public conservation land between Otorohanga and Lake Taupo (Taupomoana), the majority of which is encompassed by Pureora Forest Park.’

---

488. Document T1, p 3.
also incorporates, for the ‘purpose of integrated management, an ecological
corridor of private land managed by the Department under agreement with the
landowners’.493

The next section examines a representative sample of areas within these
places or near the vicinity to ascertain how DOC’s policies concerning the Treaty
of Waitangi and its engagement with Te Rohe Pōtae Māori are reflected on the
ground.

21.4.6.1 Karioi to Whareorino Place – the Pirongia Forest Park

The Pirongia Forest Park was established in 1971 under the Forests Act 1949.494 Over
time, Karioi mountain (an area of 1,295 hectares, in 1976) and Tapuwaeohounuku
(around 2,165 hectares, in 1984) were added.495 The first Advisory Committee for
the park was established in 1979 with no Māori members.496 DOC now administers
the park.

The current status and importance of this park was described in evidence for
DOC was that Pirongia Forest Park centres on Pirongia maunga, which is the
highest volcano in the western Waikato and a nationally significant landform and
landscape.

Notable flora includes podocarp-broadleaf to monotone forest, with rare kai-
kawaka/New Zealand cedar (Libocedrus plumosa) forest at higher altitudes and
the threatened Dactylanthus taylorii.497 The kārearea (New Zealand falcon) and
pekapeka (long-tailed bat) are also present, along with at risk tuna/longfin eel and
shortjaw kōkopu, for which the Mangakara Stream is a stronghold.498

A large proportion of the forests on Pirongia Maunga have been identified as a
priority ecological site by DOC for the ‘protection of representative ecosystems and
species’.499 DOC note the importance of the Pirongia maunga to Waikato-Tainui
and understand that it is a culturally important tribal landmark. The eastern slopes
of the mountain are part of the Waipā River and Waikato River catchment and are
therefore subject to the Waikato River and Waipā River Treaty settlements.500

Aside from Waikato-Tainui who received acknowledgements to the maunga
pursuant to its settlement in 1987, Ngāti Hikairo claim Pirongia as their sacred

mountain as well. One fundamental issue for Ngāti Hikairo with respect to Pirongia Forest Park is:

a large percentage of the actual Pirongia Mountain now part of the Forest park, was awarded to Ngāti Hikairo through the Native Land Court and or through the Compensation Court in the 1860s. The second is that Ngāti Hikairo was acknowledged by the Crown in Te Ōhākī Tapu [and associated agreements] 1883–1886 as one of five tribes of Te Rohe Pōtāe.\textsuperscript{501}

This issue, compounded by the Crown purchasing tactics of the 1890s–1909, the rehearing of the Pirongia West Investigation in 1894, and the purchase of Pirongia West 3A where the Crown purchased interests from such a large number of minors, has resulted in the loss of Ngāti Hikairo’s ownership interests in some of their lands.\textsuperscript{502} However, their relationship with the land remains. Yet, Ngāti Hikairo’s relationship with DOC is practically non-existent and attempts by them to have their interests recognised at Pirongia have not proved successful.\textsuperscript{503} In response to questioning from counsel for Ngāti Hikairo, DOC witnesses acknowledged that it has no partnership arrangement, accord, or any form of memorandum of understanding with this iwi with respect to Pirongia Maunga. They also acknowledged that the only time Ngāti Hikairo have been consulted by DOC was when 18 marae surrounding Pirongia (including representatives of Ngāti Hikairo) were invited to a Hui-a-Marae hosted by DOC in 2012 held to discuss DOC’s conservation programmes and plans relating to Pirongia Maunga.\textsuperscript{504}

\subsection*{21.4.6.2 Waitomo Place – Matakana Conservation Area}

The caves and lands of the Waitomo area fall within the Waitomo place and these have special value to Ngāti Maniapoto, Ngāti Ueka hapū and others. According to DOC, this land has karst (limestone) features that are internationally renowned for their significant natural, cultural, recreational and tourism values.\textsuperscript{505} After the Crown acquired ownership, the Department of Tourism and Health Resorts managed these lands. The caves and surrounding land were transferred to the Crown Tourist Hotel Corporation in 1955.\textsuperscript{506} The DOC Conservation Management Strategy for the Waikato Conservancy 2014 records what happened next:

The Waitomo Glowworm Caves Claim WAI 51 was implemented and signed on 14 June 1990. The document was an Agreement to Licence Waitomo Glowworm Caves, which was signed by the Minister of Conservation, Tourist Hotel Corporation (THC),

\textsuperscript{501} Document N51 (Thorne), pp 21–23.
\textsuperscript{502} Document N51, pp 21–23; see also doc A79 (Husbands and Mitchell), pp 450–451.
\textsuperscript{504} Document T1, p 14; transcript 4.1.20, pp 1468–1480 (Dion Patterson, Meirene Hardy-Birch, Jeff Flavell, hearing week 14, Waitomo Cultural and Arts Centre, 7–11 July 2014).
\textsuperscript{505} Document T1, p 17.
\textsuperscript{506} Document A148, p 163.
The relationship of these people with the rest of district was recited for the Tribunal in this waiata *Kakepuku* written by Hinekahukura Aranui:

*Kakepuku* te tatau o te Nehenehenui  
Kei raro i o parirau nga nekehanga tapu.  
H uri ake ki uta ki Mangaorongo,  
Te whenua tupu o Ngati Matakore  
Whitiki ake ki Pirongia,  
Whakangaro nga ‘paiarehe a Te Kanawa  
Heke atu ra ki Kawhia,  
Moe mai taku waka i Te Ahurei.  
Whakawhititutuki ki Marokopa,  
Te kauhoetanga o Ruaputahanga  
Whikoi atu taku rangatira,  
A Motai i te One o Hakere.  
Tae atu ki te Punga o Tainui,  
Te puaha o te awa o Mōkau,  
Hoki whakauta ki Kahuwera,  
Kei a koe te tini, me te mano,  
Orongokoekoea e tuunei,  
Ko Tawhiao Te Ariki i puta.  
Honohonotia a Raukawa,  
Te Kaokaoroa o Patetere.  
Hoki waenga mai ki Otewa,  
Te kawenga atu o Ngai Tuhoe.  
Ruku atu koe ki Waitomo,  
Kokiri atu ki nga ana kohatu.  
Tuu atu ra ki Motakiora,  
Te paa Maniapoto kei te Tonga.  
Whakataaa ki Te Miringa Te Kakara,  
Ma Rereahu koe e awhi atu.  
Kua tae ki te rae o Hikurangi,  
Nga tohu enei o tuku rohe.  
Kokiri!  

and the hapū of Ruapuha and Uekaha (‘the Claimants’), being the descendants of the original owners of Hauturu East Block Nos 1A, 1A6 and 3B1. The resulting arrangements saw the interests in the land recognised by the Trust holding a 75% interest and the Crown retaining its 25% interest through the Department of Conservation. An Agreement in Principle provided for 3 acres of the cave area to be vested in the claimants, with 1 acre to remain vested in the Crown.  

The Waitomo Glowworm Cave continues to be managed in partnership by the Ruapuha-Uekaha Hapū Trust and DOC through a joint management committee. There is a lessee who operates guided cave tours and the parties share revenue from this lease in proportion to their landholding interests. DOC considers that it has significant relationships with whānau, hapū and iwi around the Waitomo area but the Tānetinorau Opataa Whānau Trust and the Haawaii ki Uta Regional Management Committee of Ngāti Maniapoto were the only groups identified in evidence. The Tribunal was told that there have been many initiatives where DOC, whānau, hapū and iwi and individual Māori landowners have worked closely together in recent years.

Waitomo is within the traditional territory of Ngāti Uekaha and the Patupaiaarehe peoples. The Tribunal was told that the settlement Parahamutu was centred at the heart of Ngāti Uekaha and in fact the rangatira Uekaha lived in the vicinity in a cave. Known in claimant history as ‘peaceful man’, the Tribunal was told that ‘many people came to seek his wisdom and he in turn ensured that the people were well fed from the many large gardens’ in the area during his time.

The area was surrounded by forest and served as ‘a stopover point for whānau travelling on “the kai road” to the coast to gather kai moana for the winter. It was a place for travellers to rest.’ Mrs Magner remembered her koro, Otia Te Rongotoa Te Aranui, who spoke of the times he would be asked to go with his father, Te Ruruku Te Tahiwi Te Aranui, to gather kai from the bush. Along with the poaka that roamed the area, they helped to provide kai for the manuwhiri. The area was associated with the Pai Mārire faith. The people have also been supporters of the Kingitanga. They constructed a temepara building near their original marae, opened by Kingi Te Rata in 1910 on land they thought was theirs. From its opening, the temepara was also of the Pai Mārire faith.

The background to this place was described in the kōrero of Mrs Aranui, who stated:

---

508. Document T1, p 17.
Due to the impacts of war, influenza, and land sales, and as a result of the fear of persecution of Pai Mārire members, and the incarceration of the preacher, Sister Grace Clement, Parahamuti appears to have been something of a sanctuary.

Mrs Magner, representing the Pōhatuiri Marae (known also as Parahamuti) on the Uekaha A15A block, gave evidence. This block is a Māori Reservation established 'for the purpose of a meeting place, recreation and sports ground for the common use and benefit of the owners and all other members of the Ngāti Uekaha sub-tribe'. The Pōhatuiri historical claim concerns the impact of a survey boundary on Uekaha A15A which dissected the temepara. Survey plans were filed in support of the claim demonstrating a survey was undertaken in the late 1899 for the Hauturu East B2 block and redone with the boundaries being redrawn in 1913. When the 1913 plan was prepared the surveyors were aware of the meeting house and flagstaff (which signified the Pai Mārire faith), with both being indicated on the plan. Further to this, there are cross-hashed lines which suggests an alternative boundary line that, according to Mrs Magner, follows the natural contour of the land (marking a drop of 12 to 15 feet). When the temepara was erected in 1910 it was on the Uekaha A15A block. It was also not known that

517. 'Setting away Māori Freehold Land as a Māori Reservation', 14 March 1985, New Zealand Gazette, 1985, no 43, p 1167 (doc S20(a) (Magner), p 2).  
518. ML plan 6745–9 forwarded to the Chief Surveyor on 4 December 1899 (doc S20(a), p 36); and ML plan 9107, dated 25 October 1913 (doc S20(a), p 37).  
519. Transcript 4.1.21, pp 1004–1005 (Dawn Magner, hearing week 12, Oparure Marae, 4–9 May 2014).
the temepara was located across a block boundary. However, as the blocks were
owned by the members of the hapū it did not raise any issues.\textsuperscript{520}

In 1968, Uekaha A15C2, which shared the boundary with Uekaha A15A (owned
by one hapū member), was sold.\textsuperscript{521} In the 1970s, the new owner decided to build a
fence and found that the survey boundary went through the back of the temepara.
After Ngāti Uekaha disputed the fence, parties agreed that ‘the temepara would
be buried on the spot it stood’, with further discussions of the boundary deferred
indefinitely. Claimant Dawn Magner argued that were it not for the dispute the
temepara could have been restored.\textsuperscript{522}

Chapter 10 of this report reviewed survey costs as an expense charged to Māori
land-owners, including for Hauturu East.\textsuperscript{523} The Tribunal noted that significant
increases in survey costs following partitions were recorded for Hauturu East.\textsuperscript{524}
For Hauturu East, there were areas sold to address costs of survey.\textsuperscript{525} “They were
sections of Hauturu East A and B.”\textsuperscript{526} Other parts of the land were taken pursu-
ant to section 65 of the Native Land Court Act 1894.\textsuperscript{527} The land upon which the
Matakanara Conservation Area is located was taken for survey charges.\textsuperscript{528} DOC now
administrers the Matakanara Conservation Area and its witnesses acknowledged
that it knew nothing about the Pōhatuiri Marae and has no policy or relationship
with its trustees. Pōhatuiri is now a marae reservation under the Te Ture Whenua
Māori Act 1993.\textsuperscript{529}

\textbf{21.4.6.3 Pureora Place – Pureora Forest Park}

Pureora remains an important taonga to a number of claimants, including the
Ngāti Huru people who occupied the southern area. Their relationship with the
area as recounted by Tame Tūwhangai gives an insight into the importance of the
forest for all those with relationships to this taonga:

\begin{quote}
Ko Tuhua te Maunga tapu
Ko Hurakia te Pupeaeroa o nga Manu
Ko Mangaokahu te Wai oranga
Ko Maniapoto te Iwi
Ko Te Kanawa te Tangata
\end{quote}

\begin{footnotes}
\item 520. Document s20, p 6.
\item 521. Document s20, p 6.
\item 522. Submission 3.4.140, p 19.
\item 523. Waitangi Tribunal, \textit{Te Mana Whatu Ahuru}, part 1, p 1255.
\item 524. Waitangi Tribunal, \textit{Te Mana Whatu Ahuru}, part 1, p 1255.
\item 525. Waitangi Tribunal, \textit{Te Mana Whatu Ahuru}, part 1, pp 1257–1258.
\item 526. Document A79, p 313; Waitangi Tribunal, \textit{Te Mana Whatu Ahuru}, part 1, p 1258.
\item 527. Document A79, p 318.
\item 528. The Hauturu East block was partitioned in 1888 in favour of descendants of Uekaha for the
peoples of Ngati Uekaha, N Taiwa, N Te Whetu, N Ngapurangi, N Tuwherua, N Tawhaki, N Ariki, N
Tuawa, and N Parekohuru. The block was partitioned into Hauturu East A-E. During consolidation
(28 Oct 1941), certain H East B252 blocks became known as Uekaha 1–17 (doc A60 (Berghan), pp142,
153, 157, 1145).
\item 529. Document A110, p 360.
\end{footnotes}
Ko Ngati Huru te Hapu

It was our ancestor Kahupeka of the Tainui Waka who travelled along the South Eastern extremities of the Hauhungaroa range now within this Te Rohe Potae Inquiry District . . . it was she who bestowed these names upon these features, the Hurakia o Kahu (The discovery of Kahu) and to the Manga-o-Kahu (The Stream of Kahu).

This area with solemn respect has been the Kainga tapu of the Patupaiarehe from mai ra noa lead by their Chiefs, Tarapikau and Rakeiora.

Te Teko o Tuhua – Te Teko o Te Kanawa

The Pinnacle of Tuhua, the Pinnacle of Te Kanawa

The High Chief Te Kanawa-whatupango (Te Kanawa of the Baleful eye) lived around the 17th century . . . as he laid claim to these lands, he stood on the highest point of Tuhua Maunga and blew his sacred trumpet, Pio-o-tawhero towards his rival Tutetawha of Ngati Tuwharetoa to confirm that he had ascended Tuhua, (He mana whenua, He mana Tangata).

Our Tupuna Huru grandson of Te Kanawa lived on this land and when he passed away . . . he was placed inside his wharepuni at the head waters of a stream and the Wharepuni was then buried . . . the stream still bears his name today as Te Whare o Huru Stream on the Hurakia, his sister Kumu had married into Ngati Tuwharetoa, especially within the Hapu of Ngati Hinemihi who are close neighbors and related to us.

Ngati Huru, are a Hapu section of Ngati Te Kanawa, and because of the locality of this region and through connective marriages we are also part of those tribes of Ngati Tuwharetoa who live on the other side of the range along the Western Bays of Lake Taupo.

We are a Humarire people and because of our bloodlines we could cross tribal boundaries to our Kainga throughout this region and procure the abundant birds that frequent this area on the Hurakia and onwards to Titiriaupenga Mountain for the tribes of Maniapoto and Tuwharetoa. Here is a very short example . . . our Tupuna procured manu huahua for the workers who were building the Flour Mill at Te Mahoe Waiharakeke in the Southern Kawhia Harbour in the 1850s at the request of the Chief Haupokia.

Our fires of occupation still burn on this land shared with those Spiritual elements that still hold the mauri and the secrets to this area.530

Ngāti Huru were adherents of the Pao-mīere (beliefs that incorporated the Patupaiarehe people) and had a kāinga (Pukanohi) on Hurakia. Rereahu of Maniapoto also have a similar relationship with the forest.531 It is clear that the forest in this region was important as a source of sustenance. Bird harvesting was a traditional seasonal practice. The kererū were collected in the winter months when the birds were fat.532 The Miro trees which produce red berries are

harvested at different months of the year.\textsuperscript{533} This would take place in the early or later winter months.\textsuperscript{534} The taonga species of the forests in this area aside from the birds and trees, include the Awheto (vegetable caterpillar) and the wooden rose (Dactylanthus taylorii) – both found by Ngāti Huru at Ngairo. The use made of these taonga species in the forest was explained by Wayne Anthony Houpapa:

The Awheto occurs when the parasitic fungus (\textit{Cordiceps Robertsii}) attacks caterpillars of several moth species. The caterpillar feeds on ground leaves and picks up spores from the parasitic fungus. When the caterpillar goes under ground the parasite starts growing a stem inside the caterpillar eventually killing it. The stem grows to the ground surface and releases its spores again.

When the parasite sucks the moisture out of the caterpillar it goes hard and you eat it just like that, you don't need to cook it. It tastes just like a peanut.

The wooden rose can also be found under-ground. Its flower can be seen on top of the surface and below it grows a root bulb. This is cut away from other tree roots and boiled until the bulb softens and reveals the wooden rose. Back in the milling days the bushmen would dig it up and clean them and varnish them and give them away as gifts.\textsuperscript{535}

Rereahu and Ngāti Huru share interests with other iwi and hapū in Pureora South Forest and their interests are inextricably linked through the legal history associated with the blocks of land upon which parts of the forest is located.

\begin{displayquote}
Maraeroa was within Taupōnuiatia, the first of the large Te Rohe Pōtæ blocks to come before the Native Land Court. The application for the Taupōnuiatia block was made in October 1885 by Ngāti Tūwharetoa. In February 1887, the court made an initial title determination for Maraeroa, which was finalised in September 1887 as part of the wider Taupōnuiatia title determination. The court awarded Maraeroa, estimated to be 41,245 acres, to hapū who claimed through the tupuna Tia and Tūwharetoa:

The court’s decision in 1887 caused disaffection amongst some hapū. Applications for a rehearing were declined by the court and some Māori petitioned Parliament for a rehearing. A key issue for these Māori was the location of the boundary between the Maraeroa and Pouakani blocks. On 9 July 1889, the Government appointed the Taupōnuiatia Royal Commission to inquire into, among other matters, the boundary between the Maraeroa and Pouakani blocks. The commission completed its report on 17 August 1889 and its findings were embodied in the Native Land Court Acts Amendment Act 1889, which, in returning Maraeroa to Māori customary land, determined a new location for the eastern boundary of Maraeroa:

The court re-investigated the Maraeroa block in August 1891 and subsequently ordered the subdivision of Maraeroa into 7 blocks that were to be awarded to different
\end{displayquote}

\textsuperscript{533} Document R7, pp 3–4.
\textsuperscript{534} Document R7, pp 3–4.
\textsuperscript{535} Document R7, pp 4–5.
On 12 December 1891, the Native Land Court delivered a judgment on the Hurakia block (a well-known birding area) containing 6,572 acres, some of which now forms part of the Pureora South Forest. Hurakia was awarded in favour of Taiki Te Rawhiti te Kuri and others including some of the Ngāti Huru people. Between 6 April 1892 and 1908 the owners lost a large proportion of their interests in these lands through Crown purchasing and surveying costs associated with partitions.\(^{537}\) By 1936, the largest shareholder in the Hurakia A1 block was the Crown holding 109 shares out of the total 1768 shares.\(^{538}\) By 2014, Hurakia A1 block had 1,846 owners holding the original 1,768 shares in an area of 715 hectares. Technical evidence indicates that current Māori land holdings in the Hurakia A1 block amount to only 1,775.8 acres of the original area of 6,572 acres and that the only known alienations have been in favour of the Crown.\(^{539}\) A similar history of Crown purchasing is associated with Rereahu.\(^{540}\)

Despite its importance to the iwi and hapū of the forest, indigenous logging in this area commenced in the final years of the nineteenth Century and continued until the 1970s.\(^{541}\) As discussed earlier, the Crown did not pay the owners of the land the value of the timber on that land. At Pureora, logging continued until the 1970s and the Forest Service permitted this at a rate faster than the sustainable objectives of the new Indigenous Forests Policy of that agency.\(^{542}\) In 1978, the Minister of Forests announced a halt to logging of all state-owned indigenous forests.\(^{543}\) This moratorium was made final in 1982,\(^{544}\) and all indigenous forestry was subject to this moratorium in 1993.\(^{545}\)

In 1978, the Minister also announced that the Wharepuhunga, Pureora, Tihoi, Hurakia, Taringamutu, and Waituhi State Forests (a total of 71,870 hectares) would be immediately incorporated into Pureora State Forest Park.\(^{546}\) The Pureora State Forest Park was set aside by the Crown through proclamation in the New

---

Zealand Gazette in 1978. 447 The Crown as one of those owners still owns 109,2188 shares in the Hurakia block. 448

Ecological areas were also set aside at Pikiariki, Waipapa and on the slopes of Pureora mountain. 449 The first Advisory Committee for the park was established in 1979 with no Māori members. 450 It would not be until 1985, that a person of Māori descent (Bert Te Tuhu) was appointed. 451

In 1987, DOC took over the administration of the Park and the advisory committee was abolished. The Park's ecological value was described in evidence for DOC. The forest is one of the last remnants of the extensive podocarp forests that once covered much of the central North Island. The Tribunal was told that other important ecosystems are also present, including subalpine forest, remnant silver beech (Lophozonia menzeisii) forest, shrublands, grasslands, temperature inversion frost flat shrublands, and wetlands or mires. It is home to threatened plants such as the Dactylanthus taylorii (commonly known as woodrose or Flower of Hades, and the green mistletoe (Ileostylus micranthus). Its wetlands host rare plants, including the at-risk stout water milfoil and threatened water brome. The frost flat ecosystems provide a home for threatened plants, including Turner's kōhūhū (Pittosporum turneri) and the New Zealand daphne (Pimelea tomentosa).

Its abundant birdlife includes kererū, and toutouwai (North Island robin), the karea (New Zealand falcon), North Island brown kiwi, yellow crowned kākāriki (Cyanoramphus auriceps), whio (blue duck), North Island kākā, and North Island kōkako. The forests of Pureora are also home to the threatened pekapeka (long- and short-tailed bats), with the short-tailed bat being particularly significant for its association with Dactylanthus taylorii, the peketua (Hochstetter's frog), along with a small reintroduced population of the threatened Archey's frog. 452

The DOC Waikato Conservation Management Strategy 2014 declares it recognises the importance of the area to local Māori, noting:

Pureora has special significance to a number of local iwi interests, including Ngāti Maniapoto, Rereahu (affiliated to Ngāti Maniapoto), Ruakawa, Pouakani and Ngāti Tūwharetoa. Ngāti Maniapoto and Ruakawa have interests in the Upper Waipa River catchment in the Rangitoto Range. The peaks of Pureora o Kahu [Mt Pureora], Titiraupenga and Wharepūhunga are tribal landmarks, recognised as maunga tapu by several iwi. The cultural significance and management of Titiraupenga has been acknowledged as a specific component of Treaty settlements with Pouakani and Raukawa. Pureora o Kahu is a culturally significant landmark to Raukawa and Rereahu, and is also included as an overlay site in Treaty settlements for these iwi, with Wharepūhunga also having status as an overlay site for Raukawa. 453

The Te Maru o Rereahu Trust (affiliated to Ngāti Maniapoto) representing the descendants of the original owners of Maraeroa A and B blocks, near Pureora have a settlement regarding their interests in the Pureora forest. According to the DOC Conservation Management Strategy for the Waikato Conservancy 2014:

The Maraeroa A and B Blocks Incorporation Act 2012 and the Maraeroa A and B Blocks Settlement Act 2012 both implement parts of the Deed of Settlement relating to the post-settlement governance arrangements for the management of the Maraeroa A and B Blocks. This includes a Partnership Agreement between the ‘post settlement governance entity’ (PSGE) structure and the Department of Conservation for the management of public conservation land within the Maraeroa A and B Blocks, including statutory acknowledgement for 12 wāhi tapu and the overlay site Pureora o Kahu (Mt Pureora), to which specific protection principles apply. The Deed of Settlement also provides for a conservation corridor that will link two large areas of indigenous forest in the Pureora Forest Park, and a plan for the restoration of the corridor area between central government and the PSGE structure. Te Maru o Rereahu has particular interests surrounding Pureora. Pā Harakeke and the Maraeroa Cycleway at Pureora are two initiatives by this iwi that contribute to conservation values and expand on public recreation opportunities.

Other than Rereahu and Ngāti Raukawa who have Treaty settlements, and Pouakani who have a memorandum of understanding with DOC, all other hapū relationships with Pureora are controlled by DOC. Thus, Ngāti Huru’s ability to access their land, practice their spirituality, and maintain their gathering practices and to teach their associated Mātauranga Māori depends on the DOC approving these activities at the Hurakia range area.

Ngāti Huru still have kāinga at Ngairo in the upper Mangakahu Valley, just before entering Pureora Forest Park. Yet despite their land interests within the park and the fact they have kāinga bordering the park their existence as a hapū was not known to DOC and thus they have no formal relationship with them. During cross-examination, counsel for Ngāti Huru asked ‘can you give Ngāti Huru a good reason for why their ancestral lands are solely managed by DOC’ and the answer given was no.

The claimants’ view is that Hurakia A1 is ‘a failed juggling act of the Crown in having Māori Freehold land in the middle of a Conservation estate, the Pureora State Forest Park, along with my people of Ngāti Huru and others in an inaccessible

557. Transcript Transcript 4.1.20, pp1413–1416 (Dion Patterson, Meirene Hardy-Birch, Jeff Flavell, hearing week 14, Waitomo Cultural and Arts Centre, 7–11 July 2014).
558. Transcript 4.1.20, p1418 (Dion Patterson, Meirene Hardy-Birch, Jeff Flavell, hearing week 14, Waitomo Cultural and Arts Centre, 7–11 July 2014).
area called the Hurakia. The DOC Waikato Conservation Management Strategy 2014 makes no mention of these people in its summary of what occurs in the park. At the time of hearing there was no policy, accord, or memorandum of understanding signed with Ngāti Huru.

DOC did point to the strength of their engagement with iwi and an example is the Timber Trail located in Pureora Forest Park. This track forms part of the New Zealand Cycle Trail (Ngā Haerenga) and provides multi-day recreational cycling and walking experiences from Pureora Village, southwards to Ōngarue, near Taumarunui. The Timber Trail cycleway has been a focal point for the relationship between DOC and tāngata whenua in this area, including with Rereahu, and Pouakani.

DOC have also established a relationship with the marae and whānau represented by several Māori trusts and incorporations who have collectively established a business entity, Kohia Limited, to represent their commercial interests in the Timber Trail. DOC acknowledged that initially there were problems with the way in which it communicated with Kohia, including through the provision of inconsistent and limited communication. By the time of the hearing, however, Kohia had active concessions in the Pureora Forest for guided walking and cycling and facilitated camping, an annual sporting event, the establishment of glamping (glamorous camping); and the use of the DOC Pureora field office and workshop for bookings and operations. Kohia also hold a short-term contract with DOC to manage the seven DOC cabins at Pureora village. One of the witnesses for Ngāti Huru is a director of this company.

21.4.7 Treaty analysis and findings

Clearly, Māori sought to participate in and benefit from the timber industry. Equally clear is the encouragement they received from the Crown to participate in it. However, for most Te Rohe Pōtae Māori, their involvement became almost non-existent as mill owners although there was some small success for Ngāti Tūwharetoa and Waikato-Tainui. The end result was that their participation became limited to entering timber agreements as land-owners or working as manual labourers.

Unfortunately, even where they could negotiate a timber agreement on their Māori land, the Crown did little to intervene to ensure that these deals were fair and reflective of the value of the timber obtained during the years 1890–1930. The short-term intervention under the Māori Land Claims Adjustment and Laws Amendment Act 1907 did not remain in effect long enough to be of any meaningful impact, except in relation to the few block applications successfully dealt

with by the Land Boards under this legislation. Even then, valuations were not adequately assessed.

Where the Crown purchased Māori land with timber resources during the critical period 1890–1910, the Crown and private timber companies were not required to pay for the full value of the timber. Even after this period where some value was attributed to the timber resource, values were not accurately or reliably assessed. The Crown allowed the industry to remain unregulated until the creation of the Forestry Service who only became active in providing appraisals of timber values for timber agreements after 1930. The Forest Service appraisal system provided an opportunity for better valuations to be obtained but the charge for these was high and the cost was ultimately the costs were transferred to the Māori owners of the land and not timber mill owners or foresters.

Furthermore, the Crown never sought Te Rohe Pōtae Māori views on whether stands of forest should be preserved (unless set aside as a reserve from sale) or cutting rights regulated. Nor did it consult with them regarding the impacts of large-scale deforestation, yet the evidence was that the Crown knew from as early as 1874 the following:

- The Crown knew that the removal of forests would accelerate soil erosion, and the debris that resulted would find its way into streams and rivers.
- The Crown knew that the removal of forests would increase run-off, and produce flooding.
- The Crown knew that the flows of streams and rivers would be less constant and that some springs would fail if forests were removed.
- The Crown knew that the water quality of streams, rivers, and lakes, would deteriorate if forests were removed.
- The Crown knew that the removal of forests could impact on climate, and the removal of trees from river banks would result in increases in water temperature.
- The Crown knew that lands were best protected if the headwaters of rivers were retained in forest.
- The Crown knew that riparian strips were especially important for the protection of streams, rivers, and lakes.  

We note Crown counsel in closings considered it would be unfair to expect ideas developing in the late 1800s to immediately influence Crown policy. However, the analysis and findings of scientists and officials did not change over the years and these were clear that there would be environmental effects from deforestation. The Crown chose not to intervene to address these effects. Counsel then claimed that more detailed information would be needed on the phases of deforestation, the areas cleared and their topography and proximity to waterways, the effects on biodiversity and sedimentation, and steps taken in mitigation. Such a detailed analysis is unnecessary in our view, as all that is needed is proof that there was no

566. Submission 3.4.310, pp 12–14.
consultation with Te Rohe Pōtae Māori on what the effects of large scale deforestation would be and that deforestation did in fact cause negative impacts on Te Rohe Pōtae Māori. The evidence before us is that it did. It was up to the Crown to refute such evidence. In the sample cases we have cited above it did not do so.

The Crown also acknowledged that under the Treaty, the principle of active protection 'may require it to take steps to protect Māori interests in New Zealand’s indigenous forestry'.\(^{567}\) In the case of Te Rohe Pōtae, however, the Crown denied that it breached Treaty principles in relation to indigenous forests, and in particular it rejected what it called the ‘alarmist contention’ that it ‘sponsored mass deforestation or otherwise promoted deforestation for the sake of it’.\(^{568}\) The Crown did not dispute that the forest resources of Te Rohe Pōtae were affected over time by human activity, but it said that such activity must be assessed in the context of New Zealand’s expanding population in the nineteenth and early twentieth centuries, and the legitimate needs of settlement, economic development, and employment.

While we agree that increased human settlement and activity would inevitably have contributed to some environmental change, the scale of that change in Te Rohe Pōtae meant that the primary impact of the loss of Te Nehenehenui and other important forests fell on Te Rohe Pōtae Māori. Some form of regulation was needed but the Crown continued in policy and through active incentives to pursue the development of a pastoral economy. This policy driver was pursued without:

- any effective timber industry regulation over the period 1890 to 1922;
- any adequate regard to Treaty principles, particularly the principles of partnership, reciprocity, mutual benefit and the duty of active protection;
- any consideration given to the spiritual, historical and culture importance of the forest;
- any reliable means of assessing the real value of Māori interests in timber until the 1930, resulting in it paying far less for timber than it should have when purchasing Māori land; and
- without any meaningful consultation with Māori.

Crown counsel also cited initiatives the Crown has taken over time to protect indigenous forests. On a national scale, measures for forest protection encompass the creation of State Forests and the State Forest Service, restrictions on the export of native timber, and legislating to end unsustainable indigenous logging in 1993. We consider that all this came a little too late to be of any real significance for Te Rohe Pōtae Māori, given that by this stage so much of the land had been alienated without timber valuations, or the land was subject to timber agreements that did not provided for independent valuations. Reserves and conservation parks were created without any regard to Māori interests in these lands or their values associated with these forests. As Crown counsel acknowledged, at no time did its framework for managing indigenous forests provide for substantive consultation, let alone management input from Te Rohe Pōtae Māori. Their participation was limited to that of forestry workers or affected landowners, further aggravating

\(^{567}\) Statement 1.3.1, p 365.
\(^{568}\) Submission 3.4.310, p 12.
their vulnerability to changes in Crown policy developed with no regard to Treaty principles. A case on point is the opening up of State Forests, the proclaiming of the state forest parks under the Forests Act 1949, and the transfer of the management and administration of the parks and other reserves to DOC, all done without involving Te Rohe Pōtae Māori at the iwi or hapū level as the Māpara Wildlife Reserve case study demonstrates and without taking into consideration the continuing relationship that Māori have sought to retain with the limited parts of their forest that they still have in their ownership, as the Ngāti Huru example demonstrates.

Since DOC was established it claims to have engaged with Māori in the district and that it considers it has established good working relationships with Te Rohe Pōtae Māori. Some of the Crown’s actions include making funding available for the preservation of indigenous forests on Māori and private land. We consider that its engagement policies are impressive for those iwi who have Treaty settlements. However, for those without Treaty settlements its policies have been implemented in an ad hoc manner, leading even Ngāti Maniapoto to express concerns. In addition, engagement is different to meeting Treaty obligations and as we found above, its Treaty policies outlined in its Conservation General Policy are outdated. The result is that while DOC seeks engagement with Te Rohe Pōtae Māori on matters it prioritises, there is no significant commitment to the principle of partnership either through co-management arrangements or otherwise at the regional level. This is in part because of the fact DOC considers it cannot delegate its functions. We note, however, that it has a range of concession options available that coupled with section 4 could lead to some innovation – the Kohia Limited arrangements are a step in the right direction. However, that example stands alone against a history of failing to address co-management options unless achieved as a result of a Treaty settlement.

The evidence also demonstrated that DOC is still building its knowledge of the various hapū in the district, where they are located, their history, their tikanga, and their traditional and cultural associations with the remnants of the indigenous forests lands that it administers. This was still an issue in 2014, even after 25 years in charge of conservation in the district. By comparison, the late Judge Ambler noted in his questioning of DOC that the Tribunal had been in the district only for 14 weeks, and it had a pretty clear idea of who Te Rohe Pōtae hapū and iwi were. Dealing with Māori land-owners should also be relatively straightforward as the blocks with stands of forest associated with conservation areas are well known.

At the local level, all of DOC’s policies and engagements with Māori (other than settled iwi or hapū) are reactive, ad hoc and dependent on who the various staff and offices in the region identify as potential partners in conservation programmes.

Thus, we find:

- that the Crown has by omission, in legislation, and by its actions, failed to act in a manner consistent with the principles of the Treaty of Waitangi with...
respect to the traditional forest lands of those iwi and hapū who have not achieved settlement of the Treaty claims in Te Rohe Pōtae, namely under article 2 – the principle of partnership, the principle of reciprocity underpinned by the exchange of kāwanatanga for the guarantee of rangatiratanga, the principle of mutual benefit, and the duty of active protection of their rangatiratanga and of their taonga. In part this is a problem with the legislation and the fact that it provides no guidance to DOC, other than section 4 of the Conservation Act 1987, on how it must administer and interpret the legislation consistently with Treaty principles. What is needed is an amendment to section 6 of that Act, as we noted earlier.

21.5 Land Use and the Environment in Te Rohe Pōtae

Much of the land in Te Rohe Pōtae remained under the mana whakahaere of the tribes of the region until the lifting of the aukati in the 1880s. In parts 1–3 of this report, the Tribunal demonstrated how the mana whakahaere of Te Rohe Pōtae Māori gave way under the pace of land alienation and the Crown assumption of control over the district. This occurred initially through Crown purchasing and the operation of the Native Land Court. Then Māori land was purchased or leased to Pākehā through the Crown or the Māori Land Boards (post 1905), and later the Māori Trustee.

This section discusses land use in Te Rohe Pōtae after the lifting of the aukati, and the ways in which Crown regulations around the development and use of land impacted the mana whakahaere Te Rohe Pōtae Māori were able to exercise. In particular, it gives an overview of land use and regulations in relation to the development of land for farmland; mining operations; and drainage schemes.

21.5.1 Development for farmland in Te Rohe Pōtae

First, forest lands were burnt to create farmland. Te Rohe Pōtae was the last of a series of densely forested North Island areas to be opened to settlement, using methods pioneered in the Manawatū, Wairarapa, and Taranaki in the 1870s and 1880s. As Rollo Arnold’s description indicates, fire was a key ingredient in this process:

Bush clearing began with underscrubbing, the cutting of all undergrowth and creepers with bill-hooks and light axes, work with which women and children often helped. Properly done, this formed the tinder for the burn . . . Next the standing bush was felled and left to dry. Underscrubbing and felling were done during winter and spring, stopping in time to allow the last timber felled to dry before the burn.570

Pastoral farming (including dairy farming) became the main form of agriculture. Problems with soil fertility in some parts of the district hindered farming

progress, then the First World War, the Great Depression and the Second World War also impacted on this fledgling industry. However, agricultural farming continued and remains the main industry outside of forestry, mining, and tourism in the district.

Farming operations have been both private and public in nature until at least the late 1970s with the Department of Lands and Survey administering farms comprising thousands of acres in Waitomo, Ōtorohanga, and Te Kūiti and managing smaller operations in Raglan and Waipā. In addition, the Board of Māori Affairs were managing the part 24 Māori Land Development Schemes, as we discussed in chapter 17. While there were success stories, in other cases where farmers had cleared land and burned steep hillsides and due to the fact that they could not sustain grass, there was a reversion to scrub. In the southern and eastern areas of Te Rohe Pōtae, Alexander notes: ‘Where forest had been logged for its timber trees, there was cutover bush dominated by second tier trees. Such areas were infested with goats, possums and other noxious animals.’ Such land became the focus for the exotic forestry initiatives discussed above.

Finally, the area is largely rural but there has been some urban development at Raglan, Kāwhia, Ōtorohanga, Te Kūiti, Kāwhia, and Mōkau.

21.5.1.1 The regulation of land use for farmland, 1880s–1991

Agriculture production is a major feature of the history of land use in New Zealand. As the Central North Island Tribunal noted:

Governments identified some kind of settled agriculture or farming as a preferred form of land use from the earliest period of colonisation. Māori were encouraged to participate in this for the benefit of their communities. In the first decades after the signing of the Treaty of Waitangi, many iwi and hapu began to engage in new forms of agriculture and farming encouraged by missionaries, successive governors, and Government officials. They achieved some early success in trading and exporting large quantities of agricultural produce, especially wheat, fruit, and vegetables. They also entered allied enterprises such as coastal shipping and milling. However, these opportunities declined in the mid-to-late 1850s, with warfare causing further economic dislocation in the 1860s. The focus of economic opportunity had also begun to shift to extensive pastoralism, initially utilising areas of open tussock and natural grasslands. By the 1880s, farming in New Zealand had become characterised by the growth of large estates, on the one hand, and struggling small farmers relying on a mix of seasonal work and small-scale agriculture, on the other.

This changed with advances in refrigeration technology in the 1880s. These enabled small farmers to produce dairy products and meat to be chilled or frozen for export, predominantly to Britain. It was the catalyst for the development of the modern farm industry. More marginal lands, including those in the North Island, were now

---

potentially able to be improved and developed for economically viable farming. This new farming industry developed very rapidly from the 1890s to the 1920s, contributing significantly to national economic growth. Governments were quick to recognise the potential economic, social, and political benefits of this new farm development and responded with significant encouragement and interventions, including measures to enable landowners of limited means to participate. This assistance became targeted to more specific groups by the 1920s, such as returned servicemen. Attention also began to turn to state development of more difficult lands for farming by this time, especially Crown lands. This was extended to marginal and undeveloped Māori land from 1929, beginning in the Rotorua district. The intention was that the State would develop the land, farm it until development costs were repaid, and then return it to Māori owners as working farms.574

Further Crown initiatives included subsidised loans for farmers (some of which required them to clear a certain amount of bush each year), support for drainage schemes, and, not least, financing the building of roads and railways.575 As Dr Cant noted:

The Crown appointed rangers to monitor and report on the progress of settlers who took up Crown lands. The monitoring was to ensure that the farmers were in occupation, the forests were cleared, improvements made, pastures were seeded, and farms stocked.576

Thus, by the twentieth century the notion of the family farm underpinned the settlement policies of the Crown. According to Alexander the Crown 'encouraged the development of farming or exotic forestry, frowned on noxious weeds, and disliked the concept of land not being used for this form of productive activity'.577 Hearn notes that the small-farm settlement policies encouraged farmers towards pastoral production so as to take full advantage of the opportunities created by the advent of marine refrigeration in 1882. This also led to a continuous effort to intensify production.578 Despite this rise in production, the Crown’s policies left agricultural farming relatively unregulated as far as environmental effects are concerned. The Crown and Pākehā saw the conversion of ‘wastelands’ into productive farmland as a measure of progress and paid little attention to the effects of this transformation on the health of the environment or the cultural way of life of Te Rohe Pōtae Māori.

The first major statutes that impacted on farming include the Town Planning Act 1926 which provided regulatory controls over land use. This was followed

574. Waitangi Tribunal, He Maunga Rongo, vol 3, p 918.
575. Document A76(a), pp 7–8 (close settlement initiatives); doc A64, p 105 (deferred payment schemes).
by the Soil Conservation and Rivers Control Act 1941, which had the following objectives:

(a) the promotion of soil conservation:
(b) the prevention and mitigation of soil erosion:
(c) the prevention of damage by floods:
(d) the utilisation of lands in such a manner as will tend towards the attainment of the said objects.

This statute implemented a subsidy system to help farmers conserve the soil.

Ironically, and in the long run, it is the growth of agriculture, coupled with deforestation, that had the most impact on the natural environment of Te Rohe Pōtæ. While forestry, mining, quarrying, industrial processes, and the development of towns have all left their mark, none of these match the replacement of native forests, wetlands and other indigenous plants with imported pasture, or what historians have called a ‘grasslands revolution’.  

David Alexander summarised the transformation as follows:

From a largely forested environment in 1840, the landscape of Te Rohe Pōtæ has been transformed to become dominated by grassland on the flat valley floors and most of the middle valley slopes, with forest surviving only on upper slopes and in more isolated locations. That forest has become diminished in ecological quality by being cutover and by the depredations of noxious pests. The clearing of the bush has led to soil erosion that has clogged the waterways and harbours with silts and sediments, fundamentally altering their ecological characteristics.

The Crown was well aware by the 1930s that the conversion of forest to farmland in hill country areas created problems. Pastures were reverting, stock numbers were dropping, farmers were poverty stricken, and fertilizer was unaffordable. However, the Crown's existing agricultural production policy never ceased. This remained its concern through until at least the end of the 1970s. During this time Crown funds 'supported the application of fertilizer, recovery of reverted pastures, clearing of additional forest, and the draining of swamps'. Erosion continued and large quantities of fertilizer, pesticides, and insecticides, were applied to Te Rohe Pōtæ lands. Nutrients and pollutants found their way into the waters, in lesser quantities before 1950, and in greater quantities from the 1950s to the 1980s. The Crown was aware of the environmental risks but gave priority to the expansion of livestock numbers through until the 1980s.

579. See, for example, Tom Brooking and Eric Pawson, eds, Seeds of Empire: The Environmental Transformation of New Zealand (London: IB Tauris, 2010).
The Town and Country Planning Act 1953 and its district schemes only had limited impact on rural land use in Te Rohe Pōtae. The first environmental provisions in statute did not get incorporated into this legislation until the Town and Country Amendment Act 1973. It required that matters of national importance had to be included in district schemes and these were specified as:

- the preservation of the natural character of the coastal environment and of the margins of lakes and rivers and the protection of them from unnecessary subdivision and development;
- the avoidance of encroachment of urban development on, and the protection of, land having a high actual or potential value for the production of food; and
- the preservation of sporadic urban subdivision and development in rural areas.

Its effect was limited in Te Rohe Pōtae due to the drop in the population in the district from the 1960s. Rural zoning permitted farming or any kind or forestry and the construction of associated buildings. As Alexander notes:

> Of more direct impact on the environment was the continued subsidisation of the farming industry, exemplified by the Livestock Incentive Scheme and the Land Development Encouragement Loans of the late 1970s and early 1980s. In Te Rohe Potae district, this resulted in more cutover forest and scrubland converted to grassland than would have occurred without the subsidies.

A debate in the 1970s on land use in the district, was sparked by the proposal by New Zealand Forest Products Limited to plant exotic forest in the south-eastern portion of the district. Galvanised by this proposal and a Commissioner for the Environment’s audit, the Crown moved to undertake the King Country Regional Land Use study in 1976. This was a whole-of-Government exercise, coordinated by the Department of Lands and Survey, and its aim was to produce ‘an idealised pattern of land use, optimising the best uses of land’. The stage 1 assessment covered the entire Te Rohe Pōtae identifying lands of high wild-life protection, recreation or soil conservation significance so as to exclude them from consideration for productive land use purposes. After identifying lands of high productive agricultural value, lands with forestry potential were also defined. Alongside this work a King Country Land Use Advisory Committee was established. There was no place on the Committee set aside specifically to represent Māori landowners or iwi, although two of the committee members were Māori, namely Brian Jones and Gordon Forbes. This Committee produced its own report. Dominated by farming...

---

interests, their report favoured maintaining the status quo of a farming-dominated economy.\footnote{Document A148, p 115.} By comparison, the main finding of the whole-of-Government King Country Regional Land Use study was ‘that 60,000 hectares of land suitable for exotic forestry could be identified without encroaching on lands of high suitability for agriculture or high suitability for a wide range of protection needs such as soil and water, wildlife and recreation’.\footnote{Document A148, p 116.} It also recommended the permanent establishment of a King Country Regional Land Use Advisory Committee.

The Taumarunui County Council split its rural area into four zones defining them by land use suitability.\footnote{Document A148, p 117.} One of the zones covering one-third of its country area (Rural 2) was identified as being of high productivity for farming and therefore a predominant use (permitted as of right without conditions) while pine plantations were declared conditional uses (generally permitted but requiring Council approval).\footnote{Document A148, p 117.} To implement the proposals the district planning and zoning provisions under the Town and Country Planning Act was utilised.\footnote{Document A148, p 117.} Objections against this zoning scheme to the Planning Tribunal failed.\footnote{Document A148, p 118.} The Waitomo District Council then undertook a similar planning exercise.\footnote{Document A148, pp 118, 129.} Thus the land use study impacted on land use decisions in Te Rohe Pōtae by prioritising agricultural farming.\footnote{Document A148, p 121.}

As an aside, the Minister of Māori Affairs at the time noted that 97,370 hectares out of the total 437,600 hectares in the land use study was Māori land. As a result he wanted a representative from Māori Affairs and a representative from a body he described as the Tainui Māori Land Committee, to takes places on the Regional Land Use Advisory Committee.\footnote{Minister of Māori Affairs to the Minister of Lands, 26 September 1978 (doc A148(a), vol 1, p 87).} Notably, Sir Hepi Te Heuheu would later sit on this Committee.\footnote{Document A25, p 184.} As would Gordon Forbes and a representative from the Department of Māori Affairs.\footnote{Document A148, pp 120–121.} Brian Jones also continued to be involved representing the Regional Development Council.\footnote{Document A148, pp 120–121.} The Regional Land Use Advisory Committee only had a few meetings before being wound up in the early 1980s.\footnote{Document A148, p 121.} The main work on land use, as usual, continued to be directed by local authorities.

\subsection*{21.5.1.2 Impact of the regulation of land use for farmland on Te Rohe Pōtae Māori}

The Crown policies concerning land use had a major impact on Te Rohe Pōtae Māori. We have discussed the impact of deforestation above and the loss of value
associated with timber and then the role Māori played as manual workers in the indigenous forest industry.

Even though their forest was disappearing at an alarming rate, and as discussed in parts 2 and 3 of this report, finance to develop Māori land was limited. Likewise, there were limited opportunities to use the land for any other purpose but pastoral farming. Owners also faced the continual threat of losing land to the Land Boards, or for non-payment of rates, or for weed and other noxious plants infestations, or for transfer into the Māori Land Development Schemes. Pastoral farming was generally the only option left to them until the 1960s when exotic forestry became a real option. As seen above, even that use of land was hindered when local authorities made forestry a permitted but controlled or discretionary use.

Indigenous forest removal, and the limited exotic forest replacement, had flow-on effects on the region’s waterways, and therefore on tuna, whitebait and other freshwater fisheries, a matter of particular concern to claimants in this inquiry. Swamp drainage and the removal of forest cover altered the course and flow patterns of rivers and streams. As a result, waterways like the Mangapu river, once a waka route and portage through to Mōkau, are no longer navigable, while others remain extant, but are clogged with silt and weeds. This has also produced more extreme variations in water flow, magnifying both the severity of flooding and the effects of drought. Freshwater quality is lower, due to greater erosion and increased nutrient flows from agricultural by-products and the application of fertilizer, and the rapid rise in siltation has also had a downstream effect on harbour ecosystems. All of this has impacted on freshwater species once so abundant in this district and upon which Te Rohe Pōtae Māori drew sustenance, a matter we discuss further in chapter 22.

21.5.1.2.1 The town and country planning legislation of the 1970s
The town and country planning legislation of the 1970s, while of limited impact on Māori farming land operations, did operate to hinder other development options for Māori. That is because their ability to pursue such options hinged upon the zoning of their land. This particularly impacted on plans for forestry and subdivisions, and papakāinga developments or whānau housing on their land. The problem was that in certain zones, other forms of land use were restricted.

An example, concerns the Waitomo County Council district planning scheme. In 1971, the Council consulted the Crown on its draft district scheme and the Department of Lands and Survey took the opportunity to promote the need to increase coastal reserves on the West Coast identified during a survey of the region. In support of such an approach was the 1973 amendment of the Town and Country Planning Act and the first of the matters of national importance.

included in the legislation, namely: ‘the preservation of the natural character of the coastal environment, and of the margins of lakes and rivers, and the protection of them from unnecessary subdivision and development.’

When the district scheme was publicly notified in May 1973, it included designations for some coastal reserves to be taken as a public work. Māori land trustees affected at Waikawau and Kiritehere both objected to the proposed designations. For the trustees of the Māori land at Waikawau, they further objected to the scheme due to its impact on their proposed subdivision plans. The Trust was seeking a coastal zoning which would allow for a holiday home sub-division development and associated provision of an esplanade reserve. Overall, the trustees’ view was that any planning for the future development and use of Waikawau should account for the trustees’ ancestral connections to the land and ‘their natural desire to use part of this land for their own purposes.’

Having promoted the designations which would lead to taking their lands, the Crown cross-objected to the Waikawau Trust proposals for coastal zoning for subdivision. In addition, it argued that the size of the areas for reserve designations were not large enough. The Waitomo County Council found against the Waikawau Māori land trustees, stating ‘the said lands are ideally suited for public use and recreation for the future, and not suitable for the purposes of subdivision.’ The latter unsuccessfully appealed to the Town and Country Planning Appeal Board in May 1974. The Board opined:

we have concluded that it would be good planning to zone the subject land Coastal, and that its zoning as Rural is correct . . . Development of that land in a manner permitted by Coastal zoning would be to urbanise half the beach and substantially rob it of its openness and natural character, qualities which make it attractive in the first place. Present topography and land cover would be disturbed and altered, and we find that problems of erosion and sand-drift would become likely.

In terms of the designation of the reserves the Board further found:

we hold that [Waitomo County Council] has adequate justification for requiring the subject land to be designated as a proposed reserve. In coming to this conclusion we

613. Submission in Chief on behalf of the appellants, no date, Town and Country Planning Appeal Board files for Appeal No 172/74 (doc A148(a), vol 1, p 427).
have taken into account the particular character and quality of the land and its significance in relation to the beach and the coastline. 

We also hold that the designation is reasonably required to give notice of the proposed work to the public, and that it is just that the statutory provisions and the ordinances placing a limitation on private works pending the acquisition of the subject land for its intended purpose should be made to apply. 618

The Waitomo County Council also heard from the Kiritehere Māori land trustees. They wanted to set aside a half an acre as a recreation and camping reserve for their owners and then set aside an area for subdivision. The trustees argued that ‘no public benefit will be achieved commensurate with the loss to the beneficial owners’ if the land was taken. 619 Agreement was achieved between the parties to reduce the size of the reserve designation and the agreement was recorded by the District Commissioner of Works in a letter to the Council and given effect to in its final decision. 620 The reserve designation was reduced and the purpose of the proposed reserve was for ‘public access, recreation, and prevention of erosion and disturbance of sand dunes’. 619

21.5.1.2.2 THE PROTECTION OF IMPORTANT SITES AND OTHER TAONGA

The tension between the demands of private property owners for the development of land (other than for farming purposes), or for the acquisition of land for reserves and Māori aspirations for the protection of important taonga sites is demonstrated by reference to three case studies. Each underscores the limited options available to them to pursue the protection of such sites and the vigilance and sheer effort needed for maintaining their responsibilities as kaitiaki for these sites.

21.5.1.2.2.1 Te Naunau

The Town and Country Planning legislation prior to the 1970s was demonstrably unable to protect wāhi tapu sites. Situated at the vicinity of the Mōkau River mouth, for example, is the site of Te Naunau, an important urupā and wāhi tapu for Te Rohe Pōtæ Māori. In 1921, Te Rohe Pōtæ Māori requested that the Crown protect Te Naunau as a burial ground, though the Crown denied their appeal. In 1923, Māori also lodged an application with the Native Land Court to investigate title of the spit, however, the Court would not accept their application, stating that the spit was ‘clearly Cr [Crown] land’. 622 Nonetheless, Te Rohe Pōtæ Māori believed that the whole spit was an urupā and used it as such. 623 They threatened to tear down the first holiday home built on the spit and it was subsequently moved

---

further north.\textsuperscript{624} However, throughout the 1940s individuals continued to erect dwellings on the spit without the Council’s permission.\textsuperscript{625} It does not appear that the Council attempted to remove these dwellings and in 1949 a Field Inspector for the Commissioner of Crown Lands prepared a report on the possibility of subdividing the spit for private sale.\textsuperscript{626} The Commissioner noted in his report that the urupā was considerably larger than they initially realised but also stressed the desirability of opening up the land for subdivision.\textsuperscript{627}

The following year, the Surveyor-General recommended that a topographical survey be carried out to prepare the spit for subdivision. Te Naunau was not mentioned in his recommendations.\textsuperscript{628} Te Rohe Pōtae Māori began formally raising their concerns regarding the subdivision and likely development of the spit in early 1951, when the plans were publicised.\textsuperscript{629} Up until this point, it seems that the Crown was not aware of how broad Māori interests in the spit were and as a result a surveyor was sent to investigate the number and location of burials in the area.\textsuperscript{630} Upon investigation, burials were discovered dispersed across the spit, a number of which from the previous 40 years but others were noted by the surveyor as ‘hurried burials during or after wars and are very old’.\textsuperscript{631} While acknowledging that it was ‘quite apparent that the whole sandspit was recognised as a burial ground’ the Surveyor asserted that plans for the subdivision should only take into account the most recent burials, which were closest to the centre of the spit. The Commissioner of Crown Lands agreed that a reserve in the centre of the spit was probably necessary and requested that the local constable prevent any further burials on the spit until the urupā’s boundaries had been defined.\textsuperscript{632} In response to the request, the Director-General of Lands wrote back:

\begin{quote}
May I suggest please that the term ‘unauthorized burials’ be used as sparingly as possible. Burials have apparently taken place over many years in accordance with the customs of the Māori race, and people whose ancestors and relatives rest there would not like to regard the burials as unauthorised.\textsuperscript{633}
\end{quote}

In July 1951, two Te Rohe Pōtae kuia met with a Crown field inspector at Mōkau. There, they stressed that Te Naunau ‘has been, and is still considered a native burial ground’ and reiterated that burials had occurred at locations across the

\textsuperscript{624. Document A149, p 40.}
\textsuperscript{625. Document A149, p 41.}
\textsuperscript{626. Document A149, p 42.}
\textsuperscript{627. Document A149, p 43.}
\textsuperscript{628. Document A149, p 46.}
\textsuperscript{629. Document A149, p 47.}
\textsuperscript{630. Document A149, p 48.}
\textsuperscript{631. Staff Surveyor to the Commissioner of Crown Lands, Hamilton, 20 June 1951 (doc A149, p 48).}
\textsuperscript{632. Commissioner of Crown Lands, Hamilton, to the Mōkau Police Department, 3 July 1951 (doc A149, p 49).}
\textsuperscript{633. Director-General of Lands to the Commissioner of Crown Lands, Hamilton, 13 July 1951 (doc A149, p 49).}
entirety of the spit. However, they were not able to give the specific locations of any burials and as such the Inspector recommended that the Crown formally notify its intent to develop the spit, at which point Te Rohe Pōtæ Māori could lodge a complaint for the Native Land Court to hear and resolve. In August Newton Taylor, a Pākehā businessman, wrote to the Director-General of Lands in Wellington on behalf of some Te Rohe Pōtæ Māori noting that they believed Te Naunau had always been theirs:

Te Naunau has been a burial ground from the time the Tainui canoe landed there and that tangis were held at the Kauri Pah just along the river bank, and that the burials took place at Te Naunau. In the olden days it was the only burial ground. . . . I feel certain from exhaustive enquiries that I have made, the Māori Owners understood that Te Naunau was one of the areas excluded from the original purchase [in 1854]. [Emphasis in original.]

Taylor requested that the entire spit be set aside as a reserve or memorial for Te Rohe Pōtæ Māori, who were willing to ‘subscribe an amount of money towards the cost of planting trees and erection of some suitable memorial.’ However, the Commissioner of Crown Lands noted that there remained ‘considerable doubt as to who was buried and when and where’ and continued to assert that it would be possible to subdivide the spit while setting aside confirmed burial sites. With mounting pressure on both sides, the Minister of Māori Affairs and the Minister of Lands agreed in early 1953 to set aside sections of the spit under the Native Land Act 1951 as a Māori burial ground. They agreed that half an acre in the middle of the spit and another half an acre on the harbour-facing side of the spit, opposite the original location of the Tainui anchor stone, would be set aside. The Māori Land Court heard the case in Ōtorohanga in May that year under Judge Ernest Mansfield Beechey.

At the hearing, the Crown presented a number of old surveys detailing the land that the Crown had purchased in 1854 and the reserves that had been set aside at the time. Te Naunau was not included in the reserves presented. The Crown further noted that, following extensive research, there was no historical references stating that the entire spit was a Māori burial ground. The Crown thus argued that the two sections agreed by the Ministers in early 1953 would suffice and that the

---

636. Newton Taylor to the Director-General of Lands, 27 August 1951 (doc A149, p 51).
637. Newton Taylor to the Director-General of Lands, 27 August 1951 (doc A149, p 51).
remains of Jessie Matatu, an infant buried outside the sections, could be exhumed and reinterred at one of them. 643 Te Rohe Pōtae Māori responded that, in contrast to their earlier claims, they did ‘not contest that it is Crown land, [but asked] that it be set aside for a burial ground.’ 644 They also identified a small area at the northern end of the spit that they would not challenge being developed for holidays homes. 645 Despite their concessions, Te Rohe Pōtae Māori maintained that they had always understood that the whole spit was an urupā. 646

Judge Beechey determined that there was not enough evidence to set aside the entire spit as a Māori burial ground. He adjourned the hearings until August 1953 and instructed Māori to dig over the spit to ascertain if there were burials in locations other than those within the two reserved sections. 647 During the hearing, Māori had expressed their reluctance to digging up the remains of the deceased and by the end of June no digging had occurred. 648 Claimants noted that the ‘order that Te Naunau be “dug up” to identify the burial sites shows a lack of understanding of basic tikanga.’ 649 Hearings resumed on the 14th of August, by which point no digging had occurred. The Crown thus requested that the Court only reserve the two half-acre sections detailed earlier that year. A Solicitor representing Te Rohe Pōtae Māori stated that they still asserted that the whole spit was a burial ground and requested more time to ‘raise money to put a bull-dozer over the ground.’ 650 The Judge declined their request and instructed that the two sections previously described be set aside, noting that a further order could be issued if other burial grounds were later discovered. 651 Reflecting on this history, Marama Waho noted:

... Te Naunau is also known as the sandspit or the point. In the photograph there, Te Naunau is pretty much bang in the centre of that photograph. Yes. The whole of that point where you see baches and houses on there, the whole of that point is Te Naunau. You look there now and you see baches and houses. This is a painful mamae for our whānau because Te Naunau before the houses were there, before the baches were there and even still today, Te Naunau is our ancestral urupā. Our whanau, along with many other whanau, are buried there. Our tūpuna, Te Ripo, is there. Our tūpuna, Te Arawaka, is there. Our tūpuna, Teremai, is there. Others of our whānau, our tūpuna, are there. They are still there. This is a picture of our great grandmother, Granny Tere-mai. She married our great grandfather, Te Ripo Te Huia. Te Ripo Te Huia was a son of Te Rira Te Huia. It is my understanding that our great grandmother,
Teremai-nga-hau-whāriki Te Ripo, was the last person to be buried at Te Naunau in the 1950s. Our grandfather, Harry O’Brien, went to her tangi. My mother was a schoolgirl then. Granddad was supposed to pick her up to take her to the tangi, but he forgot. Mum says that she was standing at the pilot station and she saw this car full of Māori’s go past her and one of them was her father. When Granddad was elderly, we asked him to show us where Granny Teremai was buried. He took us down to a place where there used to be two pine trees. There is only one there today. There, where those pine trees were on the sea-side of Te Naunau, was where Granddad said that Granny Teremai was buried. She was buried alongside the others of our whānau who lie there. Granny Teremai was the last of our whānau to be buried there in the 1950s.

It was around that time that the people of Mōkau went to the Māori Land Court to fight for Te Naunau. Granny Teremai lived long enough to give evidence to the Court to tell of her whanau who are buried there, of her husband, Te Ripo, of her husband’s brother, Te Arawaka, and of her children, Kuini, Toihana and Te Ōriwā who were buried there at that time. Granny Teremai was in her 60s at that time. After she and others of Mōkau gave evidence about Te Naunau, the Court sitting was adjourned, apparently to give the Māori people more time to identify exactly where their people were buried. The Court wanted to ring fence those areas. During the time that the Court was adjourned, Granny Teremai died and was buried at Te Naunau. When the Court came back to sit about Te Naunau, it noted that our great grandmother had died and was buried there. The Court decided to section off two bits of Te Naunau as urupā. One bit was where our whānau was buried on the sea side. The other part was the river side. I do not know who else is buried in those parts, but we have always known that Te Naunau, the whole of Te Naunau, was and still is urupā.652

Following delays in getting the two burial reserves fenced off, the scheme to develop the spit was approved on 5 November 1954.653 The Waitomo County Council then approved the scheme on the provision that sections at the northern end of the spit were sold first, ‘[a]s the area is subject to sand drift,’ suggesting that they were aware that the spit was susceptible to erosion.654 The Department of Lands and Survey began accepting applications to purchase new sections from September 1957 but by April 1962 owners were complaining that severe erosion was occurring on the spit. This formed a major point of contention between local and central government departments as it was unclear whose responsibility it was to address the issue. By 1965, 11 sections had been revested in the Crown and the original owners received compensation the following year. Erosion issues and debates about which department should assume responsibility to address them, however, continued to plague section owners well into the twenty-first century.655

21.5.1.2.2.2 Maukutea

This taonga site is at Aotea Harbour and is of significant cultural importance:

Our kaumātua told us that there were certain wāhi tapu in Maukutea that you were not to go near and were to stay away. These included taniwha holes, of which there were a few in Aotea. We were told to be careful and not to be silly around these taniwha holes. There are two main taniwha in Aotea; Whaiaroa and Whatihua. Whaiaroa is a pure white albino and Whatihua was normal. Whaiaroa stays in Lake Parangi but comes out and goes to the Hawaiki-Iti area. We dared not go swimming in Lake Parangi.

Te Wehi attacked Horoure (located at Maukutea) and wiped everyone out. . . . Those who died were buried at that place [Maukutea] . . .

Uncle John told me that Whakaoterangi, the wife of Hoturoa (captain of the Tainui waka), planted taro seeds at Hawaiki-Iti where they are still growing now. . . . The seeds that were planted a thousand years ago are still thriving in that particular area. The seeds thrive because the conditions suit and because the area is respected by iwi and hapū and those who know the significance of these areas.

Also, the korotangi was found in the Hawaiki-Iti and Maukutea area. The korotangi was brought over on the Tainui waka. It was on the front of the waka to guide Hoturoa and his people for a safe journey. A detailed recount of the korotangi is described in the Ngāti Te Wehi Oral and Traditional report.

When a description of the korotangi was described to Tawhiao he knew exactly what it was. Tawhiao immediately proceeded to ask for the korotangi back. The farmer [who found it] never gave it back. It was subsequently donated to the predecessor to what is now the Te Papa Museum. However, as a result of the 1995 Raupatu Settlement, the Government handed back the korotangi to Dame Te Atairangikaaahu. Dame Te Atairangikaaahu brought it back for the kaumatua for a day in Kāwhia. It now resides in Turongo and Mahinarangi Meeting House at Turangawaewae Marae in Ngāruawahia.

Both of these things, the planting of the taro and the finding of the korotangi are located close to each other, about 800 metres apart, in the Maukutea area. A photo of the area where the korotangi was found is attached and marked ‘N’. This highlights the connection between the different sites in the area and how important the entire area is to Ngāti Te Wehi.

There is also a significant pā site near Maukutea named Horoure. The key Ngāti Te Wehi link to this pā is Te Wehi and Ngāti Reko. Today the Horoure pā is Department of Conservation land.

These sorts of areas are dotted throughout the Aotea harbour. For us, they are like a time capsule. It gives us our history and it ties us to the land which our tūpuna settled. For me, it is an important link to the past which helps us move into the future. \(^{656}\)

---

The site was privately owned. The first resource consents under the RMA for this development were filed in 1998. Applications were made to Environment Waikato and the Otorohanga District Council (ODC) for water and subdivision consents.

The applications to Environment Waikato for received water and discharge permit were filed on 14 August 1998. Under section 87(f) Environment Waikato were required to produce a report on the effects of the application. No site inspection was conducted. No consultation was undertaken with iwi or marae in the district, although one letter from an individual was produced. The report advised the two consents should be granted as they were deemed to comply with the regional policy statement and plan and the purpose and principles of the RMA. The application to the ODC was for 84 lots for residential purposes, three lots to vest in the ODC as a road, one lot for rural residential purposes and a balance area consisting of 5 lots.

Māori sites were in the development area as identified in 1995, and as identified by the DOC regional archaeologist when he inspected the site on 21 May 1998. He identified and assessed their archaeological importance over the course of a four hour visit, identifying one major pā site located on the eastern side of the subdivision. He did not think this site would be affected by the development. Two other ‘minor sites’ were identified on the property, one a midden already disturbed (R15/422) and the other comprised three habitation terraces with a midden (R15/413). The first site he considered had little archaeological importance. However, the second site was notable because if the site was destroyed ‘the integrity of Puraho Pā’ within a historic reserve would be affected.

Despite the clear importance of the site from a cultural perspective, the process for consultation adopted by the ODC was to only send letters to potentially affected parties and iwi. Davis Apiti wrote a letter on behalf of the Ōkapu Marae opposing the application for resource consent. However, the subdivision consents (classified as a discretionary activity) were granted on 18 December 1998 with conditions imposed. One of those conditions was that any newly discovered archaeological sites were to be preserved until work was permitted by the New Zealand Historic Places Trust and if any work had the potential to endanger any unmapped sites the work had to cease. Immediately then the Historic Places Trust, the New Zealand Archaeological Association and the Tainui Māori Trust Board

657. Document A76, p 73.
660. Document A76, p 77.
661. Document A76, p 77.
663. Document A76, p 78.
664. Document A76, p 78.
665. Document A76, p 78.
666. Document A76, pp 78–79.
668. Document A76, p 78.
669. Document A76, p 78.
had to be informed.\textsuperscript{670} It was also stipulated that no work could be undertaken within 10 metres of the archaeological sites already identified on the subdivision.\textsuperscript{671} It is clear that the consultation undertaken by both Environment Waikato and the ODC was inadequate.

After being advised by local people of damage to the sites within the subdivision, on 20 November 2003, Te Awe Davis of the Historic Places Trust visited the site. From that date it became clear that the company responsible for the subdivision had continued work despite disturbing archaeological sites in breach of their resource consents. The company was threatened with a prosecution under section 99 of the Historic Places Trust Act 1993.\textsuperscript{672} A decision was made to fence off the sites, but work continued.\textsuperscript{673}

Tangata whenua were upset about the damage and about the failure to consult them regarding these sites or the decisions made by the Historic Places Trust.\textsuperscript{674} Matters came to a head between the developers and representatives of the tangata whenua by 2004.\textsuperscript{675} A claim was filed with the Waitangi Tribunal as a result on behalf of Ngāti Te Wehi and Moana Rāhui o Aotea alleging the Crown’s legislative failure to actively protect the taonga and wāhi tapu within the development site without sufficient consultation with them.\textsuperscript{676} Meanwhile a consultant was hired to consult with tangata whenua.\textsuperscript{677} A hui was held on 17 January 2004 over the Aotea subdivision.\textsuperscript{678} At the hui concern was raised about the protection of historical sites, discharges affecting fishery health, pollution. In the end the people still objected to the development and this was notified by Motakotako Marae in a statement in February 2004.\textsuperscript{679}

Not long after that on 9 February 2004, an application was made to the Historic Places Trust to damage sites R15/422, R15/765, R15/764, EFI, KSP1 and KSP2 under section 11 of the Historic Places Trust Act 1993.\textsuperscript{680} That section also required that ‘an assessment of any archaeological, Māori, or other relevant values and the effect of the proposal on those values’ be filed with the application. To undertake such an assessment of Māori values, the developer in this case claimed that it was being undertaken in conjunction with their iwi consultant and the Aotea Iwi Committee appointed at the hui held on 17 January 2004. In fact, the resolution of the hui was to take the proposal of forming such a committee back to their marae and hapū where representatives would be chosen to represent them.\textsuperscript{681}

\begin{flushleft}
670. Document A76, p 78.
671. Document A76, p 78.
674. Document A76, p 85.
676. Document A76, p 86.
680. Document A76, p 89.
681. Document A76, p 89.
\end{flushleft}
The developer nominated an archaeologist to undertake any work that may be required prior to the granting of the authority, or as a condition to it. He undertook a report on the archaeological values of the subdivision area. This included an evaluation of the importance of the sites discovered, an estimate of the degree of damage which would occur during the development. He described the site as containing significant archaeological information noting that as well as middens, the site could also contain archaeological features representing houses, other structures, cooking sheds, store houses, drying racks, and food storage pits. At the time of report 25 per cent of the site had been destroyed and the estimate for the completion of the development was that 80 per cent of the site would be destroyed.

A meeting was held at Maketū marae with representatives of the Historic Places Trust on 28 February 2004 to discuss the application. It seems that their view of the hui and at site visit was that the adverse effects of the development could be mitigated. The advice to the developer from the Historic Places Trust was that the Trust was satisfied that consultation had been undertaken as consultation did not give Māori a veto on the works. From the Trust's perspective, and while Māori views varied, all iwi and hapū agreed that the archaeological values of the site were important. There was no recognition that the report of the archaeologist for the developer, did not use Māori names for the site (except pā sites), or assess values, spiritual, or traditional associations with the development area. This was raised with the Historic Place Trust. The response to this criticism was that report contained ‘tangible, scientific and archaeological views only . . . the Māori spiritual and traditional values of the archaeological sites are determined by iwi/hapū/whanau only not the archaeologists, HPT, developer or anyone else.’ He advised that consultation was adequate and that the information provided did not support preservation of the archaeological sites within the development area. Ngāti Te Wehi and Moana Rahui o Aotearoa made the point in reply that consultation was inadequate (one hui), that the consultant to the developer was not tangata whenua and that the developer had made no attempt to consult with them directly. The application by the developer was granted on 31 May 2004 subject to conditions.

---

682. Document A76, p 90.
683. Document A76, p 90.
684. Document A76, p 90.
685. Document A76, p 90.
690. Dave Robson (NZHPT) to Edwards, 20 May 2004 (doc A76, p 93).
691. Document A76, p 93.
693. Document A76, p 94.
Appeals against this decision had to be filed in the Environment Court and served on the Historic Places Trust within 15 days.\(^{694}\) Ngāti Te Wehi only received notice of the decision on 16 June 2004.\(^ {695}\) An appeal was filed on 5 July 2004, amended on 12 July 2004.\(^ {696}\) The basis of the appeal was insufficient consultation contrary to section 11 of the Historic Places Act 1993. The matter appears to have been resolved through mediation.\(^ {697}\)

Then in 2007, a further application to undertake earthworks in a high erosion area was made by the developer to Environment Waikato.\(^ {698}\) In the application the developer recognised the potential to disturb archaeological sites, wāhi tapu and other taonga important to Māori.\(^ {699}\) The application cited and referenced people and events from 2004 as the basis of consultation.\(^ {700}\) The application was notified to Ōkapu Marae, DOC, and later to Ngā Tai o Kāwhia.\(^ {701}\)

A hearing was held by a hearing committee of Environment Waikato on 23–24 January 2008. There was an adjournment during which Environment Waikato staff identified further Māori parties affected by the development and a mediation between Ngāti Te Wehi and the developer took place.\(^ {702}\) The final hearing took place in April 2008.\(^ {703}\) The hearing committee granted the consent stating that the mauri of the site was recognised but in the absence of specific evidence, the purpose of the RMA could be met by ensuring opportunity for involvement of tangata whenua in the earthworks. The committee considered that part 2 matters of the RMA and section 104 of the RMA could be addressed by granting the consent subject to conditions.\(^ {704}\) The consent was granted on 20 May 2008.\(^ {705}\)

For Ngāti Te Wehi the outcome of the 2008 process was described by Davis Apiti as follows:

the consultation process was more extensive this time around, [but] insufficient consideration was given to our cultural values and cultural sites of significance. It was demeaning for us to know that our wairua and mana whenua had not been protected. It seemed that the entire Court process was a waste of time as we ended up back in a position where our wāhi tapu were at risk.

The end result was the destruction of the sacred site of Maukutea, a place which was once a historically and culturally significant place, given that the subdivision

\[ \text{References:} \]
\begin{itemize}
  \item \(^ {694}\) Document A76, p 95.
  \item \(^ {695}\) Document A76, p 95.
  \item \(^ {696}\) Document A76, p 96.
  \item \(^ {697}\) Document N41, p 14.
  \item \(^ {698}\) Document A76, p 97.
  \item \(^ {699}\) Document A76, p 99.
  \item \(^ {700}\) Document A76, p 100.
  \item \(^ {701}\) Document A76, p 100.
  \item \(^ {702}\) Document A76, pp 100–101.
  \item \(^ {703}\) Document A76, p 103.
  \item \(^ {704}\) Document A76, p 105.
  \item \(^ {705}\) Document A76, p 105.
\end{itemize}
The experience of Ngāti Te Wehi is similar to that experienced by Ngāti Maniapoto with respect to the following site.

21.5.1.2.2.3 Te Ana-uriuri
In late 1880s, after the railway had reached Te Kūiti, Pākehā farming interests from outside Te Rohe Pōtae began calling for the Government to secure limestone deposits near Te Kūiti. The first limestone quarry in the Waitomo district was established on the Te Kumi block after an agreement with the Māori landowners in 1895. Then quarrying during the 1930s started on the Pukeroa Hangatiki blocks.

Te Ana-uriuri (also spelt Te Anaureure and known as Maniapoto’s Cave) is located on a Māori land block named Pukeroa Hangatiki A55 formed by consolidation order on 10 November 1936. The cave is of significance to all of Ngāti Maniapoto. It was described in evidence by Dan Te Kanawa as ‘the most significant historical place remaining in its original form that relates to the life of the Eponymous ancestor Maniapoto...[it] is of great significance to all hapu and Iwi of Ngāti Maniapoto’. Liane Rāmari Green, too, emphasised that the waters running through the cave, Waihīrere, were full of eels, and that gave the cave its status as a taonga not only to her own hapū, Ngāti Pēhi, but to ‘the whole of Ngāti Maniapoto’.

The background to the quarrying on this land has been detailed by Cleaver, who advised quarrying of limestone has taken place on Māori-owned lands Pukeroa Hangatiki A55, A56, and A58. He reported:

Quarrying operations, undertaken by a succession of Pakeha owned companies, began during the 1930s and continued until at least 1980. The Māori owners of the lands entered into leases that provided for royalties to be paid for the limestone extracted. It appears that the deposit was of considerable value, with significant quantities of the limestone processed for industrial purposes. It is also notable that an important historical site, Maniapoto’s Cave, was located on the land and suffered damage as a result of quarrying operations.

Quarrying of the Pukeroa Hangitiki lands began during the 1930s, when the Maniapoto Lime Company seems to have secured a license to quarry limestone from at least one of the subdivisions. (Incorporated in 1929, this company had a nominal capital value of £20,000. At the time of incorporation, shares were owned by more than 50 individuals, who mostly resided in the main centres, particularly Auckland.) It appears that the Maniapoto Lime Company did not quarry the land itself, but...
instead sub leased the license to another company, Superfine Lime, which paid royalties to Maniapoto Lime. As detailed in Table 15, Superfine Lime was operational by 1938. By 1961 . . . the company had become a major supplier of limestone for industrial purposes, producing about 35 percent of national production for this purpose.

The Maniapoto Lime Company's rights to quarry limestone may have been confined to Pukeroa Hangatiki A55, an area of 11 acres. By 1963, the Company seems to have been failing to meet the terms of its lease. On 11 February 1964, the Court confirmed a resolution to appoint certain owners of Pukeroa Hangatiki A55 to act as trustees to take action against the company for defaults on its lease of the block. On the same day, the company notified the Companies Office that it was in liquidation.

By the time these steps were being taken, Superfine Lime had been purchased by Beros Brothers, which had secured a fresh license over Pukeroa Hangatiki A55 in the name of Te Kūiti Fertilizer Limited, another company owned by Beros Brothers. On 3 April 1963, a meeting of assembled owners had passed a resolution to grant Te Kūiti Fertilizer a temporary license to quarry limestone on Pukeroa Hangatiki A55 for three years from 1 February 1963. The license provided for a royalty of 2s per ton, with a minimum annual royalty set at £1000. It appears that Te Kūiti Fertilizer had begun quarrying under the license on 1 February 1963. When the Court heard an application to confirm the resolution on 15 May 1963, it was reported that the company had already extracted some 10,865 tons of limestone, upon which royalties of £1086 were payable.

Two issues concerning the company’s operation were raised at the Court hearing. First, the Court heard that the company required access over Pukeroa Hangatiki A56, but had yet to secure an agreement with the owners of this land. Secondly, one of the owners made serious complaints about damage to a cave known as Maniapoto’s Cave. Haeraiti told the Court that the cave had been ‘damaged beyond our imagination’, causing a ‘very grave disturbance of a very historic spot’. Haeraiti stated that the company would have to restrict activities around the cave, and the Court’s order of confirmation according excluded the cave from the license.

It appears that around the time Te Kūiti Fertilizer secured rights over Pukeroa A55, it also acquired a license to quarry limestone from Māori-owned Pukeroa Hangatiki A58, which contained about 78 acres. This is evident because on 20 December 1963, Te Kūiti Fertiliser secured access rights over Pukeroa Hangatiki A56 in order to carry out quarrying operations on Pukeroa Hangatiki A55 and A58. Research has not established the provisions of the grant of access rights, but a further order on 30 July 1965 extended the rights to 1 October 1978.711

While the owners of Pukeroa Hangatiki A55 had approved the grant of a licence to Te Kūiti Fertilisers to quarry limestone from their land,712 they obviously did not expect damage to be done to Maniapoto’s cave, as the licence appears to have had a clause protecting the area directly around the cave. However, the company

sought to have the clause revoked.\footnote{Document A150, p 173.} This galvanised the owners into applying to the Māori Land Court to have the area around and including the cave set aside as a Māori reservation.\footnote{Transcript 4.1.21, p 751 (Liane Green, hearing week 12, Oparure Marae, 4–9 May 2014); doc A150, p 173.} The Court recommended the setting aside of 2 acres on the Pukeroa Hangatiki A55 block as a Māori reservation under section 439 of the Māori Affairs Act 1953 due to its historical interest to Ngāti Maniapoto.\footnote{Document A150, pp 173–174.} The reservation was gazetted in June 1972.\footnote{‘Setting Apart Māori Freehold Lands as Māori Reservations’, 28 June 1972, \textit{New Zealand Gazette}, 1972, no 53, p 1342 (doc A150, p 174).} This really was the only way to protect the cave at this time.

In the same year, 1972, New Zealand Forest Products Ltd (Kinleith) applied for the right to discharge waste from a limestone washing plant into a tributary of the Mangapu River under the Water and Soil Conservation Act 1967. Run off from their settling ponds escaped into the river and into Te Ana-uriuri cave.\footnote{Document A150, p 174.} A local Inspector of Health granted a temporary right for 12 months ‘for the removal of suspended material from the discharge’.\footnote{Document A150, p 175.} There was no legal requirement to engage in consultation with the owners of Pukeroa Hangatiki A55 block and there is no evidence that this was done.

In 1973, New Zealand Forest Products Ltd applied for and was granted a water-right (No 2060) to install a permanent outflow ‘from the cave on property A58’, namely Te Ana-uriuri.\footnote{Document A150, p 175.} The water-right authorised the discharge of ‘non-polluted water from Ponds to natural water’ via the cave even though it was not correctly identified, a fact that would have been apparent had there been a proper inspection.\footnote{Document A150, p 175.} Then in 1984, New Zealand Forest Products Ltd applied for and were granted a further water right to discharge waste-water through the cave at a rate of 1136 litres per day by the Waikato Valley Authority.\footnote{Document A150, p 175.} Again, there was no legal requirement to engage in consultation with the owners of Pukeroa Hangatiki A55 block and there is no evidence that this was done. By the time an inspection was carried out by the Waikato Valley Authority (discussed in detail in chapter 22 of this report on Waterways) it is clear that the inspector knew the cave was Maniapoto’s cave and that the water in the cave was ‘turbid’.\footnote{Document A150, p 178.}

Then Dan Te Kanawa, as the Planning Manager for the Maniapoto Trust Board, applied to the Historic Places Trust for registration of several historic sites including Maniapoto’s Cave in 1991. The Māori Heritage Committee met on 3 May 1991 to consider the application. While they noted that ‘Most of the original limestone cliff where the cave is situated has been quarried, but the operation was halted ten metres from the west wall of the cave’, and that quarrying operations had
impinged upon the Māori reservation area, the application was approved.\textsuperscript{723} The Committee then informed the Waitomo District Council that it was required to take protection and preservation of the site into account in its district planning.\textsuperscript{724} The Committee also registered the Te Ana-uriuri site as a category 1 historic place.

Meanwhile, and after several transactions, Carter Holt Forest Products purchased New Zealand Forest Products Ltd and one of its companies (New Zealand Forest Products Pulp and Paper Ltd) applied for new resource consents in April 1994.\textsuperscript{725} By this time the \textit{RMA 1991} and the \textit{New Zealand Historic Places Trust Act 1993} were in force. In considering the consents, the Waikato Regional Council noted that the company application was deficient because of lack of approval of iwi. An Environmental Effects Assessment was also needed.\textsuperscript{726} The application for the consents was declined. The consents expired in 1995 but the company continued to operate.\textsuperscript{727}

It was not until August 1997, that Carter Holt Harvey applied for six separate consents for its quarry operations. These would allow the company to dam an unnamed tributary of the Mangaokewa, to use a maximum of 1,225 cubic metres of water per day, to discharge 1,200 cubic metres of treated wastewater per day onto land, to discharge a maximum of 1,600 cubic metres of stormwater onto land, to discharge wastewater treatment pond sludge onto land and to discharge dust into air.\textsuperscript{728} The company requested that the application be non-notified so that the public and interested parties would not be informed, as the potential adverse effects were ‘minor’.\textsuperscript{729} The company relied on a letter from an adjacent landowner of Pukeroa Hangatiki A58. They did not have the approval of the trustees of the Pukeroa Hangatiki A55 ahu whenua trustees or the trustees of the Māori Reservation – the area where the cave was located.\textsuperscript{730}

The Waikato Regional Council sought clarification about iwi consultation and the discharges through the cave. It also conducted a site inspection in September 1997, noting that the ‘discharge passing through the cave and the stream was only partially treated and could potentially be silting up the cave and the stream.’\textsuperscript{731} Thus, despite the \textit{RMA} and registration under the Historic Places Trust, the cave had clearly been desecrated and all without the consent of Ngāti Maniapoto or the Pukeroa Hangatiki A55 landowners or the part Pukeroa Hangatiki A55 Māori Reservation Trustees.

In January 1998 the Waikato Regional Council circulated consent notices to a trustee of Pukeroa Hangatiki A55 and their lawyer. A public notice was published

\textsuperscript{723} Document A150, p.180.
\textsuperscript{724} Document A150, p.180.
\textsuperscript{725} Document A150, p.179.
\textsuperscript{726} Document A150, p.181.
\textsuperscript{727} Document A150, pp.182–183.
\textsuperscript{728} Document A150, p.185.
\textsuperscript{729} Document A150, p.185.
\textsuperscript{730} Document A150, p.185.
\textsuperscript{731} Document A150, p.186.
In the Waikato News. In February 1998, Carter Holt Harvey sold Te Kumi Quarry to Supreme Lime Ltd and withdrew its applications for resource consents, these were reapplied for by Supreme Lime. As no objections were filed to the consents by the deadline of 23 February, Waikato Regional Council approved all six consents for a period of 15 years (to expire in 2013). A further consent for discharge to air was applied for in September 1999, the company was told to consult with the Maniapoto Trust Board and adjacent landowners. Again, the trustees of Pukeroa Hangatiki A55 ahu whenua trustees or the trustees of the Māori Reservation – the area where the cave was located were not consulted and again the consent was granted.

Another round of consenting (this time involving another company – Perry Lime Ltd) occurred in 2002 and 2005 but not all were granted. The final round of consent applications and approvals occurred in 2011 due to fact some consents were due to expire. The company seeking the consents sought non-notification repeating that the proposals would not result in any significant adverse environmental effects. Included in the application was an assessment of heritage and archaeological sites. That assessment noted Maniapoto’s cave and two other sites: namely a pit and a pit/terrace. Consultation and approval was sought from the Maniapoto Māori Trust Board and the Pukeroa Hangatiki A55 ahu whenua trustees or the trustees of the Māori Reservation on both these occasions. The consents were granted. However, the historical effects of quarrying on the stream and flooding were noted and the implicit agreement with Perry Resources (the new name of the company) that they would take every precaution not to pollute the waterways.

In 2013, Liane Rāmari Green and her kin reaffirmed their recognition of the taonga tuku iho that is Te Ana-uriuri, and again went to great lengths in an attempt to protect it from further harm, as they had done since the 1880s:

Otitā, i te tau 2013 i karangatia tōku tukana a Tony Green ki ngā tāngata tiaki te taiao, ga tanagata mai tāwāhi kia haere mai te tirotiro haere ki te āhuahanga o tēnei taonga Te Anaureure. I to rātou taenga atu ki reira ohorere ai o rātou ake whakaaro. I kōrero rātou e pā ana ki te wāhi tū ai tēnei. Tū ana me tana kotahi ki tēnei taha whenua kē. I rere haere te karanga me ngā mihi, ngā kōrero e pā ana ki te taonga tino whakahirahira. Te kōrero tuku iho, he wāhi tēnei i noho a Maniapoto. Nā runga tēnei nā anei a rātou kōrero tūtohutanga kia tū hoki tēnei taonga mō ngā whakatupuranga. Me whakatawhiti ake kia rima rau mita te itinga te roanga i rāwekeweke, i

732. Document A150, p.188.
In 2013, my kin, Tony Green, called upon geologists from overseas to come to look at the state of our treasure down Anaureure. When they came to that place, they were surprised and they spoke of this solitude that the cave stood. And so, the call was sent out and the welcome was made and words were bestowed upon this significant taonga. According to our ancestors, this was the abode of Maniapoto, the ancestor, and they agreed and decreed that this treasure be held fast for the generations. They decreed that any takings be 500 metres distant from the cave and any destruction be left at that distance lest this treasure be destroyed or trampled.

The willow trees on the sides of the Waihīrere Creek were cut and indigenous trees were planted and they grew vigorously. To assist the revival of the eco-system within the waters, and to bind once again and close the fissures within the cave, and the possum claw plants was grown on top of the cave so that the holes would be closed, and there would be no light within the caves.

And so they rubbed and they blocked up the outer walls so that this taonga would be strengthened and stand for perpetuity.

21.5.2 Mining in Te Rohe Pōtæe
The impact of the Public Works legislation and its use for taking land for quarry purposes has been discussed in chapter 20. The first part of this section reviews the legislation regarding mining and quarrying and touches upon the nature of these industries in Te Rohe Pōtæe. The next section focuses on the largest mining operation for ironsand in New Zealand. The importance of this case study is that it demonstrates the interaction of the various environmental statutes that were enacted by the Crown to manage mining, land use, and water utilisation and the impact of these statutes on Māori landowners.

21.5.2.1 The regulation of mining and quarrying in the inquiry district
Under common law, minerals beneath the surface generally belonged to the owner of the land, and when the land was conveyed, so were the minerals, unless explicitly separated in the instrument of conveyance. The only exception to this

---

740. Transcript 4.1.21, pp752–753 (Liane Green, hearing week 12, Oparure Marae, 4–9 May 2014).
was gold and silver, which belonged to the Crown. Under the Petroleum Act 1937, all petroleum also was deemed to be the property of the Crown.\textsuperscript{741}

There has always been a history of mining and quarrying in New Zealand for argillite, obsidian, and pounamu among other minerals. Mining by Pākehā commenced in this country with the discovery of iron and gold during the mid-19th Century. The discovery of coal deposits led to the enactment of legislation including the Coal Mines Acts of 1886, 1891, 1901 and its various amendments until the consolidation in the Coal Mines Act 1925. By about 1870, most New Zealand coalfields (including in Te Rohe Pōtae) appear to have been located.\textsuperscript{742}

\begin{itemize}
\item \textsuperscript{741} Document A25, p 195.
\item \textsuperscript{742} Document A25, p 196.
\end{itemize}
Cleaver’s map shows that the following coalfields lie either wholly or partly within the inquiry district: Whatawhata, Kāwhia, Tihiroa, Te Kūiti, Mangapehi, Aria, Mōkau, Waitewhena, and Ohura-Tangarakau.

Geologically, the Whatawhata, Kāwhia, Tihiroa, and Mangapehi Coalfields lie within a group of coalfields known as the Waikato Coal Region, which also includes – outside the inquiry district – the significant Huntly Coalfield. The Aria, Mōkau, Waitewhena, and Ohura-Tangarakau Coalfields lie within the Taranaki Coal Region. Cleaver notes:

Coal mining in the inquiry district has been undertaken on a small scale and the amount of coal extracted has comprised a very small proportion of national production. The total amount of coal produced from within the inquiry district appears to have been only about 5 million tons, much of which was sold locally. Mining in the inquiry district spanned a period of about 115 years, beginning in the Mōkau district in around 1884, and ending in about 2000 near Pirongia. It seems that no coal mining has been undertaken in the inquiry district during the past decade, in spite of the growth in the demand for coal that has seen New Zealand’s coal production increase markedly.

He also notes that coal mining appears to have been carried out almost exclusively by ‘Pakeha-owned companies and the state, which were able to access the funds that were necessary to establish mining operations.’ Māori involvement in the industry was limited to receiving rentals and royalties. As with limestone quarrying, there was also some opportunity for obtaining employment as miners.

In the first decade of the twentieth century, mining was regulated by the Mining Act 1908 and later consolidated by the Mining Act 1926. Section 30 of the 1926 legislation provided that, on or after the investigation of the title or on the partition of Māori land, the Native Land Court could (on the application of the Governor-General) declare that land open for prospecting, even if there was no consent from the owners. Alternatively, the court could make an order ceding the land to the Crown for mining purposes on such conditions agreed upon between the Governor-General and a majority of the Māori owners. In the latter case, the land was deemed to be native-ceded land. Notice was to be given in the Kahiti or Gazette. The powers conferred upon the court could, at any time, be exercised with respect to land reserved under any Act for the use or benefit of landless Māori. Under section 31, the legislation noted that in many cases Māori, when ceding land to the Crown for mining purposes, reserved areas used or intended to be used by them as sites for residences, cultivations, burial-grounds, or otherwise, were also opened up to mining as this was deemed ‘expedient.’ This could happen unless ‘the
use for which the land was reserved’ was prejudicially affected. Then under section 32, all Native-ceded lands were declared to be open for mining under the Act in the same manner as Crown lands, subject to certain provisos. Only if the land was not ceded were all fees, royalties, and rents received payable to the owners. It was an offence to carry out mining on any ‘ceded land’ without an authorisation under the legislation.\(^\text{749}\) Thus, for those applications filed under section 30(1)(a), the court could issue a prospecting order without knowledge of the affected owners. Alternatively, it could issue a section 30(1)(b) order ‘ceding’ the land to the Crown but subject to an agreement with the owners.\(^\text{750}\) The 1926 Act was repealed by the Mining Act 1971 and this retained similar provisions dealing with Māori land.

Mining encompassed quarrying for certain minerals. With the passage of the Stone Quarries Act 1910, opencast coal mines were brought under legislation that applied to quarries. Under the Coal Mines and Stone Quarries Acts, coal mines and quarries were subject to annual inspection. The reports of the inspectors, published each year in the Mines Department report, provide valuable details of mining operations in the Te Rohe Pōtae inquiry district.\(^\text{751}\) Quarrying then became governed by the Quarries Act 1944. This legislation defined a quarry as any place where people work in excavating any kind of material from the earth; and included works, machinery, and plant used in connection with quarrying operations in a quarry.\(^\text{752}\) The legislation provided for the appointment of inspectors, safety matters and procedures to follow in the event of accidents.\(^\text{753}\) The administration of mining was carried out by the Minister of Mines under the Mines Department. The 1971 Act transferred the granting of mining privileges to the Minister under a discretionary permit system. At that time, mining applications could also involve the Minister of Works and Development, the Minister of Internal Affairs and the Minister of Lands, for coordination purposes. The Minister of Energy absorbed the functions of the Minister of Mines under the Ministry of Energy Act 1977.

At common law, ironsands belonged to the owner of the land upon which the sands were/are located. While the Crown has not asserted ownership of ironsands, it did enact the Iron and Steel Industry Act 1937. The Act provided for the appointment of three commissioners under section 3, who were to undertake mining operations and establish works to produce steel. Other than the commissioners, under section 4 no person or authority was entitled to mine for iron ore on any lands in New Zealand. After a brief interlude from 1956 to 1959, when the Government repealed the Act having decided the iron and steel industry should be run by private entities, a new Iron and Steel Industry Act was passed in 1959. The Act implemented a regime that allowed for lands required for ironsands mining to be taken under the public works regime, and created a state-owned New

\(^{749}\) Mining Act 1926, s 35.  
\(^{750}\) Document A148, p 448.  
\(^{751}\) Document A25, p196.  
\(^{752}\) Quarries Act 1944, s2.  
\(^{753}\) Quarries Act 1944.
Zealand Steel Investigating Company, which had exclusive rights to prospect for and mine ironsands within defined areas.\textsuperscript{754}

Since 1991, and very broadly, mining has been regulated under the Crown Minerals Act 1991 (\textit{CMA}), the \textit{RMA} and the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012. The \textit{RMA} governs land use and the grant of water consents relating to mining. Rights to mine must first be secured by private agreement with landowners. District plans under the \textit{RMA} dictate where mining can take place. Some mining activities are managed through zoning and performance standards as permitted or controlled or non-complying activities. In some plans special purpose zones are established where existing mining takes place in which mining is permitted subject to performance standards, although there are issues with the effectiveness of some of these zones.

The main issue concerning mining relates to whether Māori owners received royalties for coal, limestone, and ironsands extracted from their lands. The evidence was that it appears that ‘there has been considerable variation as to the extent to which these payments have constituted a significant income. The level of income has, obviously, been tied to the value of the royalty and the amount of material being extracted.’\textsuperscript{755} That is because early leases provided rights to extract coal and limestone from Māori land generally seem to have been for long periods and do not seem to have included provisions that enabled royalty rates to be reviewed.\textsuperscript{756} It is also evident that the royalty rates were sometimes at a level that provided a low rate of return for the owners. The Land Board administered many of these arrangements in the first two decades of the twentieth century, and it ‘appears to have been prepared to accept such terms without thoroughly examining the extent to which they were reasonable.’\textsuperscript{757} By the middle of the twentieth century, however, there was a change and the evidence concerning the ‘quarrying of limestone on subdivisions of Pukeroa Hangatiki block indicates that mineral licenses were for shorter terms and that, for a time at least, national resource price indexes were referred to when royalty rates were set.’\textsuperscript{758} The mining of ironsands in the district is illustrative of the benefit of this approach.

\textit{21.5.2.1.1 TAHĀROA TAONGA}

This area just south of Kāwhia is adorned by five taonga lakes: Tahāroa, Numiti, Rotoroa, Rototapu, and Harihari.\textsuperscript{759} These lakes have always been and remain taonga of Ngāti Mahuta and are very significant to their cultural identity. The lakes, ‘including the water itself, the kai obtained from the lakes, the wildlife in and around the land, and the surrounding waahi tapu are situated within . . . about 643 acres . . . of land’ on a Māori land block known as Taharoa A7A2A.\textsuperscript{760}

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{754} Document A25, pp 249, 251.
\item \textsuperscript{755} Document A25, p 264.
\item \textsuperscript{756} Document A25, p 264.
\item \textsuperscript{757} Document A25, p 264.
\item \textsuperscript{758} Document A25, p 264.
\item \textsuperscript{759} Document J13 (Trustees Tahāroa Trust), pp 1–2.
\item \textsuperscript{760} Document J13, pp 1–2.
\end{itemize}
\end{footnotesize}
The governors of these taonga, the Tahāroa Lake Trustees explained the history of these lakes as follows:

The original name of our biggest lake is Te Tahaaroa. This means the long calabash that Rua-puu-tahanga carried with her at all times when visiting the Tahaaroa and Aotea region.

The traditional koorero behind this name relates to the two infamous brothers, Turongo and Whatihua. Turongo had met and fallen for Rua-puu-tahanga who was from Taranaki. There are various versions of this koorero but for current purposes this was a situation where the brothers were in competition for the love of Rua-puu-tahanga and Turongo had built a house at Kaawhia to impress the people of Taranaki who were visiting with Rua-puu-tahanga. Whatihua, who was also in love with Rua-puu-tahanga, decided to deceive his brother and built a larger house which ultimately impressed Rua-puu-tahanga more. Whatihua, through his deception, won the heart of Rua-puu-tahanga and they both went to live at Aotea.

The creation of the Tahaaroa Lakes system relates to the cracking of Rua-puutahanga's calabash that in turn, created the lakes that we have today.

The origins of this story highlight the strong Tainui links to our area and the involvement of key tuupuna, such as Turongo and Whatihua. This is important because it dictates how we view these lakes today, as well as our responsibilities as trustees not only to Ngaati Mahuta but to the wider Tainui confederation.

The kaitiaki for Lake Tahaaroa is Whaiora.

All five lakes have been significantly important to our survival at Tahaaroa both in terms of our cultural identity but also because of the resources that it provides for our people, including wairua, waiora and kaiora.761

Thus, the lakes and the areas that surround have been used since ancient times by the people of the Tainui confederation.

21.5.2.1.2 TAHĀROA IRONSANDS

Ironsands contain an iron ore called titanomagnetite, which makes up between 30 to 40 per cent of the Tahāroa ironsands. Mining of ironsands has also been undertaken on a significant scale at two other locations in New Zealand. At Waikato North Head, ironsands have been mined since the early 1970s for use as the primary ingredient in the production of steel at New Zealand Steel Mining’s Glenbrook mill. Ironsands have also been mined near Waipipi in South Taranaki.762 As with coal and limestone:

early European travellers noted the existence of sands containing iron ore along the King Country coast and, more generally, the wider presence of these sands along the west coast of the North Island. In 1939, Ernst Dieffenbach, hired by the New Zealand

Company to describe New Zealand’s natural resources, recognised ‘black titanic iron-sand’ on beaches along the Taranaki Coast. Samples of ironsand were soon sent overseas for analysis, something that appears to have been done on more than one occasion in the nineteenth century. Further, more detailed surveying of ironsand deposits was also undertaken by the Geological Survey, with some of the results published in the Mines Department annual report. In 1922, for example, a report on a geological survey of the Kawhia subdivisions noted that:

The beach and sand dunes of the district, the latter occurring in large quantity, contain a considerable portion of ironsand. In places wind and wave action have produced small deposits of almost pure blacksand. The average sand, no doubt, would yield a concentrate with a high iron content.

In 1949, the Geological Survey surveyed the Taharoa ironsands more closely as part of a reconnaissance survey of a number of ironsand deposits lying between New Plymouth and Kaipara Harbour. During this survey, several holes were bored and the sand was collected.\(^\text{763}\)

In 1956, a syndicate of people approached the Mines Department and the Department of Māori Affairs to discuss obtaining prospecting rights at Tahāroa for iron-sand mining. Māori Affairs was involved because the proposal related to Māori land. The Secretary of Māori Affairs was wholeheartedly in support of this proposal seeing it as a matter of ‘tremendous importance to the future of New Zealand’\(^\text{764}\). He instructed his District Office to ‘give every assistance they are able to the Syndicate and its solicitors and agents, and make available all their local knowledge.’\(^\text{765}\) An application was made to the Māori Land Court one year later by the Minister of Mines by and on behalf of the Governor-General under section 30(1)(a) of the Mining Act 1926. The application was for the Court to declare Māori land open for prospecting.\(^\text{766}\) In the addition, the Syndicate filed an application seeking a mining prospecting warrant.\(^\text{767}\) In April 1957, a further application under section 30(1)(b) of the Mining Act 1926 was made, in the alternative to the first application, to allow the Crown to issue the prospecting warrant. This application was also published in the Kahiti.\(^\text{768}\) The area for which the prospecting warrant was sought covered 6,500 acres.\(^\text{769}\)

An information meeting for the owners was held at Maketū Pā in March 1957. There were 40 people present and three Māori Affairs Officials. Those present were reassured by the District Officer that there would be ‘economic benefits from the mining of ironsands, ownership of the sand areas would not be disturbed, burial

\(^{763}\) Document A25, p 247.
\(^{764}\) Secretary for Māori Affairs to District Officer Auckland, 28 March 1956 (doc A148(a), vol 4, p 325).
\(^{765}\) Secretary for Māori Affairs to District Officer Auckland, 28 March 1956 (doc A148(a), vol 4, p 325).
\(^{766}\) Document A148, p 483.
\(^{767}\) Document A148, p 483.
\(^{768}\) Document A148, pp 486–487.
\(^{769}\) Document A148, p 486.
grounds would be excluded from the areas to be mined and farm land would be protected.”

During the hui the many burial sites in the area was raised. The Syndicates spokesman made it clear that these sites and reserves would be protected once pointed out by the elders.

The Court sat at Kāwhia on 15 May 1957. The Mines Department had clearly seen the mines proposal before Court and indicated their support for it. The obvious preference in the Syndicates proposal was for a cession order to be granted under section 30(1)(b).

The matter was adjourned so that an agreement could be entered into between the Crown and the Māori land-owners to the cession.

Before the matter went back to Court the Syndicate collapsed and became two competing companies.

The owners moved to becoming a Māori Land Incorporation involving the cancellation of various partition orders at Tahāroa and an amalgamation into a single block under a committee of management. At an owners meeting held in November 1957 this was unanimously agreed to. An application to summons a meeting of owners was made. The Judge and the Registrar advised the owners that their proposal would be difficult to bring to a conclusion. The approach recommended was to seek cancellation of several partitions and form one common amalgamated block, call a meeting and then debate whether to incorporate. A retired Māori Affairs Official (Mr M V Bell) was commissioned to undertake the reports associated with this approach.

Mr Bell discussed his reports with the Mines Department in Wellington, which wanted the lakes described above included in the new title. The Under-Secretary for Mines wrote to the registrar of the Māori Land Court and the Māori Affairs District Officer on 26 August 1958 stating “The Department and the Minister [of Mines] are very pleased with the work that Mr Bell and your Department are doing to arrive at a satisfactory Ironsands title. The progress made to date is heartening.” Indeed, Mr Bell was so competent that he was able to complete the following tasks to further the objective of creating one ironsand title:

- preparing and assisting owners complete 400 succession applications and then arranging with Court staff the drawing of these orders;
- walking and riding the land with the owners to negotiate a suitable boundary for the ironsand title so it did not include their farm lands;
- preparing and assisting owners complete 26 partition applications that contained dunes and farmland; and

778. Under-Secretary for Mines to registrar and district officer, Department of Māori Affairs, Auckland, 26 August 1958 (doc A148(a), vol 4, p 382).
B D O’Shea’s Submission to the Goldfields and Mines Committee, 1959

Mr Chairman.

1. The Chairman of the Committee of Management of Taharoa C Block Incorporation has instructed me to appear on their behalf before your Committee and make such submissions as I think fit. Having acted as counsel and solicitor for the owners for 2½ years, I know something of their feelings about ironsands development, and the Chairman has informed me that he has confidence in my ability to express the owners’ views.

2. The Committee of Management has not had time to meet to consider this Bill.

3. In principle the Committee of Management considers that the present Mining Act 1926 is unsuitable for the control and development of an iron and steel industry, and suitable special legislation is both necessary and desirable.

4. The owners of the ironsands deposits at Taharoa which, it is submitted, is at present the most substantial and likely area for development, have for the past 3 or 4 years watched with interest the plans being made by private persons and companies. For their own part the owners have at all times expressed a willingness to assist and co-operate in the advancement of the plans.

5. As evidence of their awareness of the importance of the proposals made over the past 3 or 4 years, the owners have come from many different parts of New Zealand to attend Court hearings, meetings of assembled owners and Committee meetings; they have unanimously resolved to incorporate as a corporate body (known as Taharoa C Block Incorporated) under the provisions of the Māori Affairs Act 1953; and the Committee of Management has resolved that a suitable Deed of Cession be drafted to give to the Crown prospecting rights on reasonable conditions.

6. The Committee of Management believes that the investigations and development of the iron and steel industry should be under the control of the Government. If the setting up of the industry is to be in the hands of registered companies, their full resources both financial and technical should be made known to, and satisfy, the Government and the owners of the areas to be worked.

7. It would appear certain that there is room for only one organisation for the industry, and that a monopoly will be created. Therefore to protect the interests of the owners of the deposits and the ultimate consumer, substantial control must be exercised at all times by the Government.

8. The Bill itself provides for compensation for the taking of land, and to this there is no objection.

9. The Bill (Clause 9) provides for the payment of royalties with an objectionable reference to 9d per ton maximum. I submit that the words ‘not exceeding ninepence for every ton of ironsands mined from the land’ should be deleted. Why should there be any maximum? No minimum is mentioned. In fairness the
future royalties should not be tied to any minimum or maximum by unilateral arrangement. It is not right that future royalties should be pegged to some figure which may be quite out of proportion in the years to come. The Taharoa people want only a fair royalty for the asset which they own, and which they are willing to put into the national economy.

10. The Committee of Management wants all sacred places at Taharoa treated with respect. There are numerous cemeteries there. Treating with respect means really that earth-moving equipment should not encroach on known cemeteries without prior satisfactory arrangements being made, and if earth-moving operations reveal unknown cemeteries such operations shall cease until satisfactory arrangements have been made.

11. I place on record that the Māoris of Taharoa claim the foreshore between the Tasman Sea and the lands now known as Taharoa C Block. An investigation of title will be instituted if necessary.

12. Taharoa is a remote district west of the Waikato with poor access, no electricity supply, and consequently lacking in the usual advantages of urban and rural New Zealand. Their ironsands are their great asset and the Taharoa people expect a fair return for them.

assisting prepare an application for a combined partition for the amalgamation of 19 titles to create one large block for the ironsands title.\textsuperscript{779}

The court granted the order for the new title on 17 October 1958 for Taharoa C covering 3,256 acres with 547 owners.\textsuperscript{780} On the same day, the five lakes were placed in their own separate title (Taharoa A7A2 of 646 acres with 360 owners) and then vested in trustees as a section 438 Māori Affairs Act 1953 trust. An incorporation was constituted over Taharoa C in April 1959. This followed a meeting of owners held in March in Kāwhia called to pass a resolution that the owners be incorporated with objectives that gave the committee the ability to negotiate different arrangements for mining purposes including a deed of cession for mining purposes. At the first annual meeting of the owners 11 members of a Committee of Management were nominated for appointment and those appointments were confirmed by the Court. Throughout this entire process, the cost of £1,512 for this extraordinary effort was met by the Department of Māori Affairs.\textsuperscript{781}

\begin{itemize}
\item[1. \textsuperscript{779}] B D O’Shea, submission to Goldfields and Mines Committee, 7 October 1959 (doc A148(a), vol 4, pp 15–16).
\item[780.] Document A148, p 493.
\item[781.] Taharoa C (17 October 1958) 37 Mercer minute book 361 (37 Mercer 374) (doc 148(a), vol 4, p 518); see also doc 148(a)
\item[781.] Document A148, p 495.
\end{itemize}
However, on the eve of concluding an agreement the Mines Department, the findings of an Interdepartmental Committee on Iron Steel released its report recommending that the Government prohibit the prospecting or mining of ironsand.\textsuperscript{782} Policy work was initiated for new legislation. During this period of policy development, relevant Ministers of the Crown were made aware that iron-sand bearing land was only owned by the Crown or Māori.\textsuperscript{783} Officials from the Industries of Commerce Department and the Ministry of Mines in 1959 resolved to send any draft legislation to the Māori Affairs Department ‘for comment on the question of Māoris’ feelings’.\textsuperscript{784} The draft was also to be sent to anyone the Government considered should be consulted (such as ‘Taharoa Māoris’ or other Māori groups).\textsuperscript{785} The Minister of Industries and Commerce was advised that the proposals would give statutory powers to prospect and mine ironsand deposits instead of having to negotiate with individual landowners. It was also suggested that the legislation fix rent for any mining right at 2.6d per acre per year, and that royalties should be fixed with seven yearly reviews. The advice noted that this may lead to criticism from the owners of Tahāroa but that this could be resolved by prior discussions.\textsuperscript{786} The advice continued:

The amounts of rent and royalty payable might also be criticised, but as there is no precedent as a guide to the reasonableness or otherwise of the amounts suggested by the Mines Department, other than tentative discussions between the Mines Department and the Maoris of Taharoa, no firm basis for demanding a higher rate would exist.\textsuperscript{787}

The Minister agreed to the consultation, stating ‘but this will have to quick’.\textsuperscript{788} When briefed before taking the matter to Cabinet, the Minister of Mines was told, inter alia, that the legislation would avoid having to directly negotiate with the owners of Tahāroa or any other Māori landowners in the future.\textsuperscript{789} Cabinet approved the drafting of legislation.\textsuperscript{790} Māori Affairs, however, were clearly worried about the reaction of the Taharoa C owners and were concerned to see that they got notice of any select committee process.\textsuperscript{791} Their solicitor was notified on the day of the Bills introduction on 2 October 1959 and he had to present a submission on behalf of Tahāroa C before the Goldfields and Goldmines Select Committee on the 7 October 1959.\textsuperscript{792}

\textsuperscript{782} Document A148, pp 498–499.
\textsuperscript{783} Document A148, pp 499–502.
\textsuperscript{784} File note, 13 August 1959 (doc A148(a), vol 4, p 11).
\textsuperscript{785} Document A148, p 503.
\textsuperscript{786} Secretary of Industries and Commerce to Minister of Industries and Commerce, 14 August 1959, pp 1–2 (doc A148(a), vol 4, pp 12–13).
\textsuperscript{787} Ibid, p 2 (p 13).
\textsuperscript{788} Document A148, p 504.
\textsuperscript{789} Document A148, pp 504–505.
\textsuperscript{790} Document A148, p 505.
\textsuperscript{791} Document A148, pp 505–506.
\textsuperscript{792} Document A148, p 506.
Map 21.3: Ironsand mining at Tahāroa

Source: Document A148, p 482.
Thus, the Committee of Management supported the Crown taking control of prospecting and mining the ironsands at Taharoa, ‘where this would protect the interests of the owners of the deposits.’\textsuperscript{793} They also wanted their sacred places at Tahāroa respected as there were numerous cemeteries there and how these sites were to be respected was described.\textsuperscript{794} They were clearly not happy about the limits place on rent and royalties. There is no evidence that this submission caused any change to the Bill.\textsuperscript{795}

When the Iron and Steel Industry Act 1959 was later enacted, it was declared to be an Act to vest in the Crown the right to prospect for and mine ironsands in certain areas, to enable the Minister to grant certain powers, and to make provisions in respect of an iron and steel industry in New Zealand. Under section 3, it vested in the Crown the right to prospect and mine for ironsands in any ironsands area. Only the Minister, or a person authorised by the Minister, were able to prospect or mine for ironsands in any ironsands area. As a result of section 3(2), the Minister, without further authority, could carry on prospecting or mining operations in respect of ironsands in any ironsands area. Alternatively, the Minister under section 3(3) could give written authorisation to any person to ‘exercise any of the rights or powers conferred on him by subsection two . . . subject to such terms and conditions as he thinks fit.’ For this purpose, the Minister could, on behalf of the Crown, enter into agreements. Pursuant to section 4, ironsands were excluded from the operation of the Mining Act 1926, and so there was no necessity for a deed of cession from the Māori owners and any involvement of the Māori Land Court. There was, however, a time limit placed on the exercise of such powers. Land not taken under the legislation (or purchased or otherwise acquired by the Minister for the purposes of the Act) by 1 January 1968 would cease being subject to the Act.\textsuperscript{796} If no agreement could be reached, land could be taken in accordance with section 7. This power to take land was deemed to include taking any estate or interest in land or any right, easement, or profit en prendre in respect of any land. Such takings were to be done in accordance with the Public Works Act 1928 and compensation paid accordingly.\textsuperscript{797} Royalties were to be paid to every person holding an estate or interest in any land taken under the Act of such amount, not exceeding ninepence for every ton of ironsands mined from the land.\textsuperscript{798} Alexander noted that the circumstances surrounding this figure are not known.\textsuperscript{799}

Ironsands areas in the North and South Island were listed in the schedule to the legislation. In the North Island, there was only one area and it captured within it Taharoa C.

The actual area described in the schedule to the legislation was:

\textsuperscript{793} Document A148, p 508.
\textsuperscript{794} Document A148, pp 506–508.
\textsuperscript{795} Document A148, p 508.
\textsuperscript{796} Iron and Steel Industry Act 1959, s 3(4).
\textsuperscript{797} Iron and Steel Industry Act 1959, ss 7(3), 8.
\textsuperscript{798} Iron and Steel Industry Act 1959, s 9.
\textsuperscript{799} Document A148, p 509.
All that area in the North Island contained in a strip of land 3 miles wide measured inland from mean high-water mark and extending along the coastline of the sea and of its bays, inlets, and creeks from the South Head of the Kaipara Harbour to the northern bank of the Whangaehu River, together with all tidal lands contiguous to that land.

The introduction of the legislation raised the issue of what to do with the applications under the Mining Act 1926 still before the Māori Land Court. They were eventually dismissed in March 1964. The Proprietors of Tahāroa C Incorporation lapsed and was dissolved in October 1967.

The next step was the establishment of the New Zealand Steel Investigating Company Limited. It applied for a Crown written authority for prospecting the coastline between Awakino River and Albatross Point. The Minister of Mines was advised by officials to approve the application in a briefing note in January 1962 in which he was advised that as 'the company is a Crown company, no rent has been provided for in the authority. This area includes the Taharoa Block, which is in Māori ownership.' He was advised further about the history of applications before the Māori Land Court. The Minister gave his approval and the company continued its work. In 1965, the time constraint in the legislation was repealed by the Iron and Steel Industry Amendment Act of that year. The drilling results revealed 'greater reserves of ironsand concentrates at Taharoa than previously estimated.' Cleaver identifies the next steps as follows:

On 19 September 1968, the owners agreed to the drilling at a meeting held with representatives of New Zealand Steel at a meeting held at Kawhia. Suggesting that the owners were generally supportive of the development of a mining operation from which they would benefit, elder Tai Te Uira stated that: 'We at Taharoa have waited so long that the sand is drifting on to our homes. Today we see a new group, a New Zealand company; today we will agree to allow you to go in there for the benefit of your company and the benefit of our people.'

Drilling began on 24 September 1968 and had been completed in mid-February 1969. This drilling was more intensive than any previously undertaken, and it was at this time that it was established that the titanomagnetite resource at Taharoa amounted to some 300 million tons. As well as proving the resource, New Zealand Steel also undertook market investigations and examined processes relating to how the iron ore might be transported. By 1969, slurry pumping techniques had advanced so that ore could be loaded through a pipeline to carriers moored offshore. In January

---

1970, New Zealand Steel began talks with Japanese steel companies that were interested in obtaining the Taharoa iron ore for their production operations.  

A new company (New Zealand Steel Mining Limited) was established. It applied for consents to progress its mining operations. These included:

- **Written authorisation (mining agreement) for ironsand mining under section 3 of the Iron and Steel Industry Act 1959:** Crown law provided advice including possible terms for an agreement, and a draft agreement was sent to other government departments for comment. The Nature Conservation Council was consulted and it advised the Minister of Lands that it was concerned about archaeological sites, effects on the water-table including the construction of a dam at Lake Tahāroa and the use of freshwater for the separation of sand and other purposes, wildlife, coastal stability and the fact that the land was Māori land. The ironsands agreement was approved by the Minister of Mines in March 1972 for a term of 15 years. The agreement was confined to the Tahāroa c block. Conditions were limited with respect to the environment but included complying with the Water and Soil Conservation Act 1967, protecting wāhi tapu, and carrying out site restoration work following mining. In addition, the company was to consult with the Wildlife division of Internal Affairs Department on the impact on fauna, and it was to ‘do all things necessary to prevent sand from mining operations moving eastwards into the lakes situated along the eastern boundary of the said land’. In addition, the company was not to ‘unduly interfere with existing streams, and will endeavour at all times to ensure that such streams are kept open.’ There is no evidence that the Crown consulted with iwi and hapū or any adjacent Māori landowners, including the Proprietors of Tahāroa c Incorporation. However, the Crown did have a copy of the lease with the incorporation. Variations to the mining agreement were successfully negotiated in 1975–77 for 20 years. Renewal negotiations over the years 1990 to 1991 (including what seems to have been a whole-of-government response), were interrupted by the Crown enacting the Crown Minerals Act 1991 but renewal was granted for five years to 1997. The new mining agreement added several new conditions to the existing agreement, including the form of a Tahāroa Liaison Committee comprised of Crown agencies, the company and tangata whenua. It also required a plan be completed annually on the rehabilitation and revegetation of the mined land. From October 1997, the company’s rights to operate rested only

---

on their mining lease with the Tahāroa C Incorporation as well as any consents issued under relevant legislation, such as the RMA 1991.

A mining lease arrangement with the Proprietors of Tahāroa C Block Incorporation: A meeting of owners in January 1970 passed a resolution to become incorporated, and the incorporation, the Proprietors of Tahāroa C was constituted by the Māori Land Court in 1970 with objectives that included negotiating and entering arrangements with New Zealand Steel Mining and or the Minister of Mines for sale or leasing, and receiving royalties. During this time, the Crown remained silent and did not intervene in the royalty or rental aspects of the lease negotiations. The lease was signed in March 1971 for a 70-year term. The lease provided for the extraction and processing of ironsand, and the diversion of water-courses. While the prior consent of the Incorporation was required to divert a watercourse, this could not be ‘unreasonably withheld’. It also provided for the payment of royalties for the first five years at 15 cents per metric ton of ironsand concentrate for the first five million tons, and thereafter at 25 cents per metric ton if more than five million tons were taken. For the years 1977 to 1982, the royalty would be 25 cents per metric ton. After 1982, the royalty would be adjusted annually in line with the New Zealand consumer price index. The company was to pay advance royalties of $25,000 on signing and a further $25,000 one year later. Lease conditions included post-mining rehabilitation, and precautions to prevent damage to ‘historic places, burial grounds, relics, artefacts, fossils and other articles of antiquity’. The company was also required to comply with existing environmental status and to consult with the incorporation before interfering with any stream on the land. In addition, New Zealand Steel Mining was to sell 1.2 million shares to the Incorporation, giving it an ownership stake of around 5 per cent of the company, to pay any rates or taxes, and to use local labour in its mining operations wherever possible.

A licence to operate a port, issued by the Minister of Marine: Ironsand slurry was to be transported to ships waiting offshore via a pipeline. Despite advice that a specific seabed licence at minimal cost, the Crown declared Tahāroa a harbour under the Harbours Act 1950, bringing it under Marine Department control. Local Māori were not consulted over the Marine Department’s decision to charge a licence fee to cover the costs of administering the harbour. In 1972, this fee was already $6,000 annually.

An application for water rights under the Water and Soil Conservation Act 1967: At the time of the 1972 agreement, Tahāroa was not within any local authority catchment district. The company’s applications for water rights

---

were therefore made to central government. The company initially sought Crown permission to dam the Wainui stream to take water for its dredging and pumping operations. The government sought more information. A report obtained by the company reported that the Wainui Stream would not meet the mining operation's minimum water requirements in drought conditions. The company then sought rights to dam, excavate, and divert the Wainui stream channel, to lower the level of Lake Tahāroa, and to discharge wastewater off shore. The water rights were publicly notified in the New Zealand Herald. The Water Allocation Council granted the company's application for a 10-year term from January 1971. There is no indication that Crown officials consulted local iwi or hapū, the lake trustees, or the Proprietors of Tahāroa over the application, although there is no record of objections from these groups. There was also no consultation with local Māori when the company applied to extend the term of its water rights to 15 years

Compliance with the town and country planning requirements in the Waitomo County district planning scheme: In 1971, the Waitomo County Council included the sand-dunes at Tahāroa in its draft district plan as an area which could ‘in the distant future’ be suitable as a regional recreational and wildlife reserve. However, Crown officials took no action, noting the likely future impact of mining in the area. An attempt by New Zealand Steel Mining to have Tahāroa designated as a special Iron Sands Zone was, however, opposed by the Crown on the basis that it made no provision for the restoration of mining land or protect the ‘scenic environs’ of Lake Tahāroa. However the Crown was willing to agree to an amended plan presented by the company, and the Ironsands Zone was incorporated into the District Plan in 1973.

In 1976, New Zealand Steel Mining sought additional rights to cope with its expanding operations. These included extracting more water from the Wainui Stream, additional dredging of the stream, expanding its dam capacity, and discharging more water offshore. The Waikato Valley Authority (which had taken over responsibility for administering the water rights) publically notified the application in 1976. No objections were received, and the variation to water rights was granted in November that year. Alexander suggests that the company discussed its plans with the Taharoa C Incorporation before lodging its application

to vary its water rights, although he cites no specific evidence in support of this point.\(^{834}\)

The Lake Trustees in evidence told the Tribunal:

The increased demands for iron sand ore led to a need for a dam on the Wainui Stream which is connected to Lake Tahaaroa. We understand the Stream is owned by the Tahaaroa C Block Incorporation. This was to allow NZ Steel to use our water for their operation on the Tahaaroa C block.

Over the years, the construction of the dam on our Wainui Stream has remained an issue for many of our people. Kaumatua have always complained of never being asked about or agreeing to this dam being built.

In late 1977, the Tahaaroa Lakes Trust and NZ Steel met to discuss the proposal to modify the taking of water from the Tahaaroa Lake system and from the Wainui Stream, which was granted by the Waikato Valley Authority in December 1976.

The then trustees objected very clearly and expressed the strong demands of the Ngāti Mahuta people to ensure:

(a) That the water take and subsequent dam protected the fish stocks of the lake;
(b) That access to the takutai moana for the migratory patterns of the fish species was in place. This could be by way of a fish pass;
(c) That the Wainui Stream dam would not hinder the water quality to the Wainui Stream or to the lake;
(d) That NZ Steel investigate alternative sources of water supply for their operations so that the Wainui Stream and the lake would not be the sole source for many years;
(e) That the waterflow and levels of the lake remained adequate;
(f) That the water quality remained pure and as natural as possible;
(g) That the surrounding waahi tapu be protected from potential flooding; and
(h) That monitoring and restoration of fish stocks were put in place, to ensure the fish clear passage and access to the lake (during and after the dam was controlled by Tahaaroa C Block Incorporation).\(^{835}\)

In 1977, lawyers for the Tahāroa A7A2A – Lake Trustees complained to the Waikato Valley Authority that no specific notice was sent to them, even though their names and addresses were available in the Māori Land Court records.\(^{836}\) They also complained that publicly notifying in the New Zealand Herald, which was not readily available in Tahāroa, was unacceptable.\(^{837}\) The files of the authority record that an officer responded that its public notification was adequate.\(^{838}\) A file note records: ‘Rang Mr Phillips 29/11/77. Discussed general situation. Owners under

\(^{834}\) Document A148, p 542.


\(^{836}\) Document A148, p 542.

\(^{837}\) Document A148, p 543.

\(^{838}\) Document A148, p 543.
the impression that they owned the water. Main problem lack of precise knowledge of land boundaries. No further action required in the meantime.\textsuperscript{839} The Tribunal considers the ownership of water in chapter 22. Further water rights were issued in 1979 for a period of 10 years. These water rights were for the discharge of stormwater from buildings and hardstand areas into the Wainui Stream, discharging stormwater at another location into the stream, discharging tailings water, after passing through a settlement pond, and the discharge of stormwater.\textsuperscript{840} Applications for the renewal or replacement of the original water rights were then filed in September 1982.\textsuperscript{841} Public notification this time was by publication in the \textit{New Zealand Herald} and a letter to the Tahāroa Lake Trustees.\textsuperscript{842}

Phillip Te Uira (kaumātua and chair of the trust at that time) and the Trustees, through their lawyers, responded that they believed that the granting of such rights would prejudice their interests as trustees and custodian of the lakes. They considered that the applicants should look at other possible sources of water supply.\textsuperscript{843} The staff report to the Standing Tribunal of the Authority stated that their water resources officer considered there was no reason why the rights could not be granted, provided the recommendations of the biologist used for these applications were followed.\textsuperscript{844} The biologist referred to Lake Tahāroa as a traditional Māori fishery for eels and mullet, and he recommended that ‘a correctly operating fish pass’ was essential to the reinstatement of the fishery. The hearing committee also heard from the Lake Trustees through their lawyer. It seems that the trustees had met with the company three days earlier and they accepted that it was not practical for the company to look at an alternative supply of water, other than the Wainui Stream. They wanted, however, the consents to be granted for a reduced five-year term, and at the time the consents expired for the lake to be restored to its natural state.\textsuperscript{845} The Trustees recounted what they understood happened on this occasion:

the Trust and NZ Steel discussed who would be responsible for the cost of removing the dam when/if the lease and rights to mine Tahaaroa c Block expired. NZ Steel proposed to put in place a bond which would cover any removal costs, which was approved by Waikato Valley Authority.

It is our recollection that in response to our submissions/concerns, the Ministry of Agriculture and Fisheries (‘MAF’) noted that in 1977 there was no record of any formal written commitment to inspect or monitor any baseline data for the fish pass.

\textsuperscript{839} File note 29 November 1977, on Chief Executive Waikato Valley Authority to Phillips and Powell, Barristers and Solicitors, Otorohanga, 24 November 1977 (doc A148(a), vol 4, p 625).
\textsuperscript{840} Document A148, pp 543–544.
\textsuperscript{841} Document A148, p 544.
\textsuperscript{842} Document A148, p 545.
\textsuperscript{843} Phillips and Powell. Barristers and Solicitors, Otorohanga to Secretary Waikakato Valley Authority, 2 November 1982 (doc A148(a), vol 4, p 668).
\textsuperscript{844} Document A148, p 546.
\textsuperscript{845} Document A148, pp 546–547.
MAF also stated that the fish pass regulations were only for waters containing trout or salmon (or where these fish were likely to be introduced) and therefore did not apply to Lake Tahaaroa.\textsuperscript{846}

What was disturbing from the Ngaati Mahuta perspective was that the reply from MAF was simply that MAF would keep an eye on the fish pass and not regularly monitor it, as we had requested.

The Chair of the Trust and kaumatua Phillip Taipua Te Uira, said back then that MAF was giving a too simple answer to a broad and complex issue which was simply inadequate and did not take into account Ngaati Mahuta’s concerns. The solicitors acting for the Trust approached the Waikato Valley Authority about this issue [fisheries].

After some discussions, in 1983 the Authority expressed ‘sympathy’ with the Trust’s concerns and noted that in order to ensure that the issue was properly taken care of, a legislation change was required. However, as this was unlikely to occur, NZ Steel stepped in and offered to give a bond to carry out whatever restoration work would be required at the expiration of the mining rights . . .

In our informal discussions with NZ Steel, we were advised of the future of the iron sand recovery programme and the reasons why they required water from our lakes. The Trust ultimately accepted that at that stage, alternative sources of water supply for mining operations were not practicable however, we were reasonably clear that we wanted the decision to take water reviewed in the near future, ie in five years-time.\textsuperscript{847}

In its report back to the Authority, the Standing Tribunal noted that the lake was a ‘wildlife area and gamebird habitat of some note, and once supported a locally significant freshwater fishery’. This is important as it notes that the lake was no longer a ‘locally significant freshwater fishery’. The Standing Tribunal also noted that the dam was a barrier to migratory fishes. It also advised that the company had operated a fish pass in the past and expressed its commitment to continue to improve it.\textsuperscript{848} The Standing Tribunal recommended that the rights be granted but only for a five-year period proposed by the Lake Trustees. It further recommended conditions be attached to the consents, including:

[the] immediate upgrading of the steel pipe section of the fish pass, operation and maintenance of the fish pass to the satisfaction of the Waikato Valley Authority, a minimum flow of 29 litres per second through the fish pass, no drawdown of Lake Taharoa below RL 8.53 metres, and preparation of a water management budget within one year.\textsuperscript{849}

\textsuperscript{846} Regulation 3 of the Fish Pass Regulations 1947 applied only to ‘any dam or weir in any river, stream or waters in which salmon or trout exist, or have been liberated’.
\textsuperscript{847} Document J13, pp 7, 10.
\textsuperscript{848} Document A148, p 547.
\textsuperscript{849} Document A148, p 548.
The recommendations were accepted by the authority.\textsuperscript{850} A further water right applied for in 1985 for the maintenance of the storage pond on the Wainui Stream required the building of a control dam at the lake outlet (about 100 metres upstream from the existing dam) and was granted, with no objections received.\textsuperscript{851} The works associated with this right were predicted to have detrimental impacts on fisheries.\textsuperscript{852} There was no consultation with iwi or hapū.

Prior to the water rights granted in 1983 expiring, New Zealand Steel Mining applied for fresh-water rights in 1987 to the newly constituted Waikato Regional Water Board. When the applications were publicly notified (again in the New Zealand Herald), the only submission received was from the Department of Conservation.\textsuperscript{853} No objection was received from the Tahāroa Māori community and there is no evidence of any specific consultation with them. By this time staff reports on the applications referred to the impact of the works on Lake Tahāroa and its fisheries, noting the dam had a considerable influence on the ecology of the lake and the Wainui Stream.\textsuperscript{854} The construction of the dam was preventing free access for mullet to and from the like, inhibited the migration of whitebait and caused the loss of two kilometres of stream habitat.\textsuperscript{855} While there were improvements made to the fish pass, it was still a barrier to mullet.\textsuperscript{856} The rights were granted in August 1988, for further term of 10 years.\textsuperscript{857} Again, iwi and hapū were not consulted.

\textbf{21.5.2.1.3 THE IMPACT OF THE RESOURCE MANAGEMENT ACT 1991}

After the enactment of the \textit{RMA 1991}, the company made an application for a consent to discharge tailings and process water on to land in September 1994. Both the Tahāroa Incorporation and the Lake Trustees were consulted by the company. The Lake trustees gave approval so long as the lakes were protected and there were conditions to ensure the company monitored this. The resource consent was processed as a non-notified consent.\textsuperscript{858} There was no consultation with iwi or hapū. The choice to proceed as non-notified meant that section 93 of the \textit{RMA} was avoided. That provision provided that once a consent authority was satisfied that it has received adequate information regarding an application for consent, it was required to ensure that notice of every application for a resource consent was served on the owners or occupiers of the land, on the Minister of Conservation if the application relates to land which adjoins any coastal marine area, on the Historic Places Trust if the application related to land subject to a heritage order or otherwise identified in the plan as having heritage value, on any persons who

\begin{footnotes}
\footnote{850. Document A148, p 548.}
\footnote{851. Document A148, pp 548–549.}
\footnote{852. Document A148, p 549.}
\footnote{853. Document A148, p 550.}
\footnote{854. Document A148, p 550.}
\footnote{855. Document A148, p 550.}
\footnote{856. Document A148, pp 551–552.}
\footnote{857. Document A148, pp 556–560.}
\end{footnotes}
are, in its opinion, were directly affected by the application, including adjacent owners and occupiers of land, where appropriate and on such local authorities, iwi authorities, and other persons or authorities as it considers appropriate.\textsuperscript{859}

Then as the water rights granted in 1988 were due to expire in 1998, the company engaged in community consultation at Tahāroa in May 1997 where concerns were raised about the level of Lake Tahāroa, the effectiveness of the fish pass and flooding around the lake.\textsuperscript{860} Then a Lake Consultation Group was constituted with representatives from the Incorporation, the Lake Trustees, DOC, the Waikato Regional Council and the company.\textsuperscript{861} There was also a meeting in 1997 between the Lake Trustees and the Council. The trustees indicated that they were not opposed to the company operation particularly as it provided employment to the community, but improvements were sought for the mullet migration, the ponding of water on the dunes, the increase in weed growth in the lake, the variations in lake level, the discharges from boat-loading at sea, the old structures on the beach, and the restoration of the site following of the removal of the dam.\textsuperscript{862}

Due to provisions in the RMA (sections 92 and 124) the completion of hearing these consent applications were postponed and then events took over as the company decided to move its mining operations from south of the Wainui Stream north. It applied for new consents in 2000 to progress its plans in this regard.\textsuperscript{863} There was consent from the community given at a hui held at Āruka Marae prior to the consents being applied for.\textsuperscript{864} It is unclear from the evidence how representative this hui was. When the consents were notified, there were six submissions received, including from the Lake Trustees. However, the company abandoned these applications once costs associated were identified.\textsuperscript{865} Revised applications were publicly notified in May 2003. Four submissions were filed including one from the Tukotahi Tuteao Trust and Taharoa Lake Trustees.\textsuperscript{866} Concerns held and expressed at prehearing conferences related to the still badly performing fish pass, and its impact on fish populations in the Lake Tahāroa.\textsuperscript{867} No hearing was subsequently necessary, and the consents were granted. These 12 consents were granted for terms expiring on 31 December 2020.\textsuperscript{868} There were amendments to these consents in 2006, 2011, and 2013.\textsuperscript{869}

\textsuperscript{859} Section 93 was repealed, on 1 October 2009, by section 76 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009.

\textsuperscript{860} Document A148, p 561.

\textsuperscript{861} Document A148, pp 561–562.

\textsuperscript{862} Document A148, p 562.

\textsuperscript{863} Document A148, pp 563–565.

\textsuperscript{864} Document A148, pp 565–566.

\textsuperscript{865} Document A148, p 566.

\textsuperscript{866} Document A148, p 567.

\textsuperscript{867} Document A148, p 568.

\textsuperscript{868} Document A148, pp 568–570.

\textsuperscript{869} Document A148, pp 570–571.
By the end of hearings iron sand mining was continuing at Tahāroa and was described by commentators on the industry in the manner repeated below:

Of the three geographical sections of the Taharoa deposit, the southern section was worked out by 2001. The central section is currently being mined by NZ Steel and the northern section towards Kawhia Harbour remains to be mined. Annandale says the first of three development stages to the expansion at Taharoa has now been completed.

The second stage of development at Taharoa will involve redefining the iron sand resource to increase production to 2.7 million tonnes of concentrate a year. In addition to the previous wet mining from a floating dredge, dry mining techniques will be used because of changes in the geology.

The transport of iron sand will still be by slurry concentrate pumped out to moored ore carriers at the ‘port’ of Taharoa, which consists of single buoy mooring three kilometres offshore connected by pipeline to the mine plant onshore. This mooring was moved out a further 500 metres in 2012 to allow a deeper berthing for bigger iron ore ships up to 175,000 dead weight tonnes.

A new dedicated vessel the Taharoa Destiny, the only ship in the world capable of loading and dewatering a slurry cargo according to Bluescope Steel, began operation in May 2012.

The keel for a second iron sand concentrate ship is being laid down now and should arrive at Taharoa about April next year.

Stage three of the Taharoa project will be more complex as about 40 percent of the northern iron sand resource lies below mean sea level and below the level of Lake Taharoa, which lies inland from the iron sand deposits. A suitable dredge will be required to extract this deposit and resource definition indicates lower grades of titanomagnetite will be encountered.870

21.5.2.1.4 IMPACTS OF MINING AT TAHĀROA

It is clear that from the start of the project the community of Tahāroa were concerned to share in the benefits of mining iron sand on their land whilst providing for the protection of their taonga sites, including their lakes and fisheries during the mining operations on the Tahāroa c. One of the long-lasting effects of iron sand mining on their land has been the economic benefit it has provided for the people. Cleaver notes that:

As provided in the lease agreement, the level of royalties paid to the Taharoa c Incorporation has been, following the first ten years of operation, subject to annual adjustment in accordance with the CPI. In 1988, the Incorporation was being paid 87.5 cents per ton of concentrate. The royalties received by the Incorporation at this time equated to about 10 percent of New Zealand Steel Mining’s annual revenue.

Though research has not quantified the Incorporation’s total earnings from royalties, it is evident that it has earned a significant amount of money since mining operations began. One source states that the Incorporation has built up assets valued in excess of $50 million and has been able to profitably invest in farms and businesses. As noted . . . the Incorporation became interested in exotic afforestation in the early 1970s and has planted 1000 hectares in *pinus radiata.*

**21.5.2.1.4.1 Impact on significant sites**

An old Māori land survey plan from 1911 depicts two areas of ‘native burial grounds’ within the boundaries of Tahāroa c and they were named Whārangi and Tauwhare. Later plans from the 1932 and 1970 show two urupā named Karaka and Tauwhare − later named in 1970 as Te Kepuna and Tauwhare. In 1970, an archaeologist from the New Zealand Historic Places Trust and two members of the Auckland Archaeological Society visited Tahāroa. They walked over 30 miles across the sand dunes identifying and assessing the archaeological significance of numerous sites. The Historic Places Trust archaeologist reported that the ‘sand dune country was part of a ‘larger prehistoric scene,’ with many large pā sites located on the hills to the east. There were 21 sites, 12 on the sand dunes and nine inland. It was reported that, wherever there was movement of sand, ‘occupation debris’ – stones, shells, and obsidian flakes – and many artefacts were revealed. There were three sites to the south of the Wainui Stream and two to the south of Mitiwai Stream that were identified as key sites. He recommended that New Zealand Steel Mining Limited finance a full field survey of the area and that ‘a programme of salvage archaeology’ be presented to the company. He also provided the results of his assessment to New Zealand Steel Mining and to the chairman of the Proprietors of Tahāroa c Incorporation.

As noted above, when the lease with the owners of land was negotiated, provision was made dealing with such sites, relics and artefacts. However, when the Crown negotiated the mining agreement with the company, they required a clause that would allow the Inspector of Quarries in Huntly to be notified for instructions on how to proceed, in the absence of instructions from the Proprietors of Taharoa c. The Incorporation and the company agreed on a number of wāhi tapu sites (cultural reserves) that would not be mined. Then the Crown enacted the New Zealand Historic Places Trust Amendment Act 1975 and the Antiquities Act 1975.

---

A full field survey was not financed or undertaken until 1978. It identified 128 sites on Tahāroa C block, and it was noted that were likely to be more. By this time some of the sites identified in 1970 had been destroyed by ironsand mining.

After the enactment of the RMA a further archaeological report was completed by a professional archaeologist in 1994. He relied upon the 1978 field study, as he was denied access to Taharoa C. He completed his report based upon aerial photos of the land. He contended that of 115 sites identified in 1978, 63 were under pine plantation, 8 had been destroyed by mining, 5 were threatened by mining and 39 appeared safe for the time being. Of those with importance ratings, 4 of the 8 destroyed by mining were considered significant. It was contended that with mining expanding, more than 100 of the known sites could be destroyed. While many were insignificant sites, ‘some of them could yield important information about and cultural treasures from the moahunting period.’

When New Zealand Steel Mining applied for new consents in 2000 to move its operations, the New Zealand Historic Places Trust relied on section 93(1)(c) of the RMA to be involved in the resource consent process. That provision provided that once a consent authority was satisfied that it has received adequate information regarding an application for consent, it was required to ensure that notice of every application for a resource consent was served on, inter-alia, the Historic Places Trust if the application related to land subject to a heritage order or otherwise identified in the plan as having heritage value. It lodged a submission opposing the granting of the consents. It seems that the people of Tahāroa C were very ‘disturbed and dismayed’ at the submission of the Historic Places Trust, noting it was cutting across their arrangements with the company. Protocols between the company and the Incorporation (dating to 1998) did not require notification to the Historic Places Trust. The problem was that the mining lease and the protocols had to be consistent with the New Zealand Historic Places Trust Act 1993. That provided that all archaeological sites older than 1900 were protected by the legislation and an authority to complete work was required from the Historic Place Trust.

The applications filed by New Zealand Steel Mining for consents were subsequently withdrawn but the Historic Places Trust was still able to exercise authority over the land when the Proprietors of Tahāroa C Incorporation needed consent to remove pines north of Wainui Stream in preparation for mining. Conditions were imposed on their consent requiring they undertake an archaeological study.
to identify any sites of spiritual and archaeological significance to Māori. That report had to be submitted to the Waikato Regional Council with procedures for the management of any archaeological sites but could be modified by mutual agreement of the Council. They also had to be undertaken in accordance with any other statutory approvals required under the Historic Places Trust. The initial archaeological survey was conducted in July 2000. The second followed the harvest of trees. The assessment completed in 2002, identified six sites that authorities from the Historic Places Act would be needed for over the period 2001–22. Protocols between the company and the owners were redrafted and approved in 2001. These required notification to the New Zealand Historic Places Trust in the event of finding human remains or items of cultural significance, although they had more interest in archaeological sites and taonga which had to be recorded.

When New Zealand Steel Mining applied for their consents in 2006, the protocols and 2002 archaeological survey were used to justify the consents, but a condition imposed was that on the discovery of such sites or taonga, notice to Waikato Regional Council, iwi and the Historic Places Trust was required. Furthermore, works could only recommence with written approval of the Council subject to inter-alia tangata whenua interests and values, the consent holder’s interests, and any archaeological or scientific evidence. Finally an archaeological management plan to deal with this land was produced in 2008.

21.5.2.1.4.2 Impact on fisheries
As Alexander notes from the enactment of the RMA, the Waikato Regional Council allowed the mining company to continue operating under expired water rights issued under the Water and Soil Conservation Act 1967 from 1998 to 2006. Anecdotal evidence prior to the dam being installed at Lake Tahāroa indicated that the lake was an excellent fishery for eels, mullet, smelt, bullies and shrimps, kokopu, with white bait runs in the Wainui Stream estuary. The lake was also a nursery where fish grew to maturity.

The evidence was that the dam built by the company interrupted the migration of eels, mullet and smelt. Senior officials of Ministry of Agriculture and Fisheries remained relatively indifferent to the problem of the fish pass when they visited in 1977, noting that while it had been built it was not required by the Fish Pass Regulations 1947. While admitting that the dam would interfere with the ability of fish to get to the lake for spawning, MAF scientific advice was that ‘the failure

of mullet to reach the lake does affect a food source for the local Māori’ but that given its plentiful nature around northern New Zealand, the ‘loss of the spawners of Lake Tahāroa from the overall spawning population is of little consequence.’

He also doubted that the fish pass was working. In August 1977, a ranger from the Acclimatisation Society visited the area and, in a follow up report, advised that there had been reports of hundreds of dead glass eels found below the dam. He considered this could be due to low water levels (causing oxygen depletion) ‘or the release of something toxic in the discharge.’ There was also a visible amount of suspended solids in the discharge, and he considered this was forming a barrier to the seasonal migration of fish, whitebait, mullet, and eels. It was recorded that the locals noted a drastic decline since the installation of the dam. They were also concerned over the gradual decline in the quality of their marine fishery in the Tahāroa Harbour as well as the fishery provided by the Wainui Stream. The same ranger returned to the lake in December 1977 due to a report of a further fish kill. There he found young eels, whitebait, shrimps, bullies, and possibly young mullet in a pool at the bottom of the fish ladder of the fish pass. He considered that the cause of death was oxygen depletion and excessive water temperature. The shrimps, for example, were scarlet in colour, indicating that they had been cooked. He gave an estimate of thousands of fish killed, with shrimp being the largest percentage. A survey completed the following year identified that there was a lack of replenishment of the mullet fishery in the lake. The Waikato Valley Authority was made aware of all these reports.

Then pressure was placed on the company to upgrade the fish pass in 1982. Investigations indicated that it would not be possible for mullet to use the fish pass even with reasonable modifications. By 1985, it was too late as MAF scientists found that the ‘mullet fishery had disappeared, the eel fishery was unaffected, and the whitebait fishery had been reduced from 3 kilometres of fishable water to barely 200 metres.’ Further modifications to the fish pass did take place after some negotiation involving the Lake Trustees, the MAF and the company. However, it was not possible to design something that could improve passage for mullet.

By 1993, the eel fishery in the lake was also under pressure. NIWA conducted a survey and found that both the eel and mullet fisheries on the lake had collapsed. There was also an absence of inanga, bullies, mullet, and smelt in the lake.

---

There were some older tuna, who with no other food, may have cannibalised younger eels, although the overall decline of tuna in New Zealand could also have contributed to the decline in the lake.\footnote{912} A survey was also completed for Lakes Harihari, Rototapu and Numiti and the results reflected similar data as for Lake Tahāroa.\footnote{913} These lakes were physically connected to Lake Tahāroa. The solution was to ensure ‘elver recruitment to this lake system, within ten years [or] the eel population would be reduced to a much lower density’.\footnote{914} The Lake Trustees did not pursue this advice or recommendation to restock, but further modification to the weir work was completed to push flow towards the fish ladder at the pass with the addition of gabion baskets in 1995.\footnote{915} There was also a restocking of mullet in the lake. On 5 April 2006, the company also agreed to contribute to an eel restoration project, that it would pay compensation to the Lake Trust for its members being unable to use traditional fishing equipment at an historic tuna fishing site on the Wainui Stream that was flooded when the level of the lake was raised, and that it would pay for expenses incurred during the consultation over the resource consents.\footnote{916}

In 2007, the Ministry of Fisheries suddenly took an interest in the state of the eel fishery and a survey was completed with the result showing ‘a crisis point for the customary eel fisheries for Taharoa’.\footnote{917} There was also criticism of the fish pass installed in the 1970s, despite the modifications and a recommendation that a fish lift be installed.\footnote{918}

A new fish pass was completed in July 2010, and surveys in 2010–12 indicated the pass was being navigated by most species and possibly mullet – all pointing to some success with the new pass.\footnote{919}

\subsection*{21.5.2.1.4.3 Water pollution}

Issues identified with water pollution were recorded in 1977 by the ranger of the Auckland Acclimatisation Society. The issue must have been reported to the Minister of Māori Affairs because he was due to visit Tahāroa in September 1977 to discuss pollution in Wainui Creek and the sea and its effects on fisheries.\footnote{920} In May 1992, there was an incident when sediment water escaped the water pond and leaked into the lake.\footnote{921} There was another spill of process water in June 1992, which scoured out a channel some 50–80 metres long down to the sea. Another spill of process water occurred in January 1993, when a dam holding recycled water...
failed and water scoured through the clay barrier adjacent to Lake Rotoroa. The scientific effects of these spills is not known.

To explain the involvement of the Lake Trust during this period (which was significant), the Lake Trustees advised the Waitangi Tribunal:

Although an agreement was reached after significant effort, it did not cover off all of our concerns, including the monitoring of the fish. While NZ Steel were monitoring the fish at the dam, limited resources were put into sporadic monitoring of the fish population in the lakes. The problem with not consistently monitoring the fish numbers in the lakes is that we have no way of ensuring that the population is kept plentiful and capable of re-population.

The key point is that we really do not have control over the resource consent processes. Also, as we lack the resources we cannot continue to monitor the impact of NZ Steel’s operations under their resource consents on our lake system and the species that live within it. This impacts on our obligations under the Trust Order and, more importantly, our obligations to Ngaati Mahuta and to future generations of our people.

In conclusion, as is apparent from our evidence, the Trust (as representatives for Ngaati Mahuta) is losing control over the lakes and the surrounding whenua in spite of strong efforts to retain control for the last 50 years. We have been fighting the same battle with NZ Steel and Environment Waikato for a generation and continue to do so to this day.

The Tahaaroa Lake System is a crucial part of our cultural identity, both because of the long, inter-generational connection to this place, as well as our people’s reliance on the lakes for wairua, waiora and kaiora.

21.5.3 Drainage for land utilisation

While, as noted, chapter 22 specifically addresses waterways and water bodies, the impact of drainage schemes is a discreet area of water policy discussed here due to its relevance to land use and regulation.

For Te Rohe Pōt ae Māori, the region’s swamplands were highly valued as sources of birds, fish and plants. In particular, wetlands were a prime habitat for tuna, the kai rangatira for a number of hapū. At the beginning of the nineteenth century, Te Rohe Pōt ae was a ‘great area of forest, plain, hill and swamp’ with the biggest wetland – the Ouruwhero/Te Kawa Swamp – stretching out over 6,000 acres below the Kakepuku and Kawa mountains. These wetlands were key features of the ancestral landscape as they provided food, transportation and safety for many people for many generations. For inland hapū in particular, the wetlands were a source of trade and mana. In contrast, wetlands were virtually valueless to the Crown and

925. Document A76, p 222.
Pākehā who viewed them as impediments to agricultural production. Swamps were considered wastelands, described as virtually worthless.

21.5.3.1 The regulation of drainage works

During the years following the opening of the aukati, county councils were authorised by legislation to declare parts of their county to be drainage districts, undertake drainage works, and charge rates to the owners or occupiers of the land in proportion to the benefit they would obtain from the land. The importance of this regime was that it set in place a process for declaring areas to be subject to drainage works, the methods for undertaking such works and the rating of land-owners who ‘benefited’ from such works.

In the late nineteenth and early twentieth centuries, the Crown assumed more and more control over drainage works through a succession of statutes commencing with the Land Drainage Acts 1893, the Land Drainage Act 1904 and the Land Drainage Act 1908.

The first of these statutes, the Land Drainage Act 1893, under section 4, made clear that the legislation applied ‘to all Native lands within the colony in the same manner as it applies to lands other than Native lands’. That land could be taken under the Public Works legislation. Alternatively, it was rateable for the purposes of the legislation subject to any statutory exemptions, although the amount paid in terms of rates varied to those of other land-owners. Under section 5, the Governor could by order in council, could on petition from most of the ratepayers in a district, constitute and ‘declare any part of the colony to be a district for the purposes’ of the legislation. At that point the rating legislation applied to the district. The Governor also appointed Boards of Trustees consisting of no less than five members under section 8, who were then subject to triennial elections. These boards were deemed to be local authorities or local bodies under section 7. The task of maintaining a rate payers roll was the job of the returning officer appointed under the legislation.

To transform New Zealand, the Crown demonstrated its commitment to facilitating drainage schemes in the early twentieth century, passing legislation in the 1900s to enable these. Officially known as ‘land improvement’ schemes, this legislation was designed to more efficiently drain vast areas of the country’s remaining swamps. It is within this context that the major drainage schemes of the Te Rohe Pōtae area were conducted.

The Land Drainage Act 1904 extended the powers of drainage boards to include the powers of county councils, including to subdivide districts under section 16, while maintaining the application of the legislation to Māori land under section 82. If the Māori land was eligible for rates, rates could be imposed for the cost of

927. Document A76, p 222.
928. Counties Act 1886.
the work undertaken by the boards.\textsuperscript{930} Essentially the statute empowered drain-
age boards to undertake more comprehensive schemes than had previously been possible as the boards (who were elected by ratepayers) had substantial powers to manage works, acquire land and raise funds to pay for schemes. There were two main ways that funds were raised: government grants and rating those who were thought to benefit from the scheme.\textsuperscript{931} The legislation consolidated the Crown’s approach to swamp drainage as public works.\textsuperscript{932} The 1908 Act continued the scheme for compensation for landowners of land affected by the drainage works, but, as Park explains, compensation only took into account the value of ‘productive’ land and the loss of swamps and waterways were not typically assessed for valuation purposes.\textsuperscript{933}

The first major drainage scheme was established in Te Rohe Pōtae in 1908 – namely, Te Kawa. Then the northern part of the district saw the establishment of several drainage boards in the second and third decades of the twentieth century. This is reflected in the fact that eight drainage boards were established in the Waipā Valley during that period: namely, the Waipā in 1920, the Mangawhero in 1923, the Orahiri and Awatane in 1924, the Mangapu in 1925, Mangaorongo in 1938, and the Waitomo and Kio Kio (dates uncertain).\textsuperscript{934}

While a lot of drainage activity was concentrated in the first part of the twentieth century, the schemes were generally long-term ventures which continued into the 1960s and 1970s.\textsuperscript{935} Although we do not have detailed information about the extent each of the schemes operating in the Te Rohe Pōtae district, the schemes generally saw heightened activity in the 1930s when relief work was being undertaken, and again after World War II when higher prices for agricultural produce increased the demand for agricultural land.\textsuperscript{936}

Specifically, we know that there were at least 20 drainage boards operating in the Waikato district when the Soil Conservation and Rivers Control National Council proposed to establish a Waikato Catchment board in the 1940s. The proposed purpose of the catchment board was to coordinate the works of the drainage boards, to sponsor additional work, and to ensure that this work was ‘carried out for the improvement of the District as a whole, without damage by way of flooding to other areas.’\textsuperscript{937}

The emphasis on drainage schemes to bring more and more marginal land into production continued with the establishment of the Waikato Valley Authority in the 1950s. In discussions surrounding the establishment of the Authority in 1954,
surveys of the district's needs were conducted which revealed that there were still
tens of thousands of acres of swamp in the Waipā, Ōtorohanga, Waitomo and
Raglan County Council areas which had schemes that were ‘fairly well developed’
but for which smaller additional works were planned. In particular, 50,000 acres
of swampland in the Waipā area was earmarked as needing minor work which
they estimated would cost the authority £60,000. 938 Numerous drainage schemes
continued to be subsidised by the Crown well into the 1970s. 939

At the same time that the environmental movement was gaining traction in the
1960s and 70s, acclimatisation society members became increasingly concerned
with the quality of fish habitats, and in which they fished. Along with environ-
mental campaigners, anglers were amongst the first Pākehā who spoke out against
pollution and other physical changes to New Zealand's waterways. 940 Indeed, it
was the Auckland Acclimatisation Society that won the first court case recognising
intrinsic interests in water were equal to development interests. 941 The case con-
cerned the application of two farmers who applied for a water right to drain parts
of the Whangamarino Swamp on their farms. The issue was whether the economic
benefit of converting the land outweighed the desirability of preserving the wet-
land. Although the Planning Tribunal and the High Court had initially concluded
the wording of the Water and Soil Conservation Act 1967 deemed land drainage
to be more important than the protection of wildlife or fisheries (in contrast to the
requirement for soil use to be ‘promoted’, the Act only required the protection of
wildlife or fisheries to be ‘considered’ or ‘taken into account’), the Court of Appeal
overturned this decision in 1985 and ruled that the Act had no inbuilt preference
for either farming or conservation interests, and ultimately the proposal was
turned down. 942

However, for Te Rohe Pōtae Māori and their taonga wetlands this all came a
little too late as so many of their swamps and wetlands had been drained by this
stage. Such damage is also lamentable for the high degree of ecological degrada-
tion and biotic loss sustained. Because the efforts to drain New Zealand's wetlands
were so comprehensive, New Zealand retains only 15 per cent of the wetlands that
existed before European settlement. This is one of the most dramatic losses known
anywhere in the world. 943

---

938. ‘Proposed Waikato Valley Authority – Distribution of Administrative Cost to Local
Authorities’, no date, attached to Commissioner of Works to Minister of Works, 27 September 1954
(doc A148(a), vol 2, pp 49–55); ‘Waikato Valley Authority – County Problems’, no date, attached to
942. Planning Tribunal decision, 18 July 1983. 9 NZTPA 299; High Court decision, 25 September
1984. 10 NZTPA p 225.
21.5.3.2 Impacts of the regulation of drainage schemes on Te Rohe Pōtae Māori

The drainage of the swamps and other wetlands of Te Rohe Pōtae has been a key feature of environmental change in Te Rohe Pōtae following colonisation.\(^{944}\) Of course, Te Rohe Pōtae Māori participated in drainage schemes were needed. As mentioned above, at least one drainage schemes were requested and supported by Māori landowners for the economic benefits that the agricultural land would bring them. For example, in 1904, the Māori owners of the Parawai/Te Maika township undertook to drain the swamp that the town was proposed to be built on. The difference is that they expected to control both the process of drainage and economic outcomes. As we reviewed in chapter 15 on Native Townships, that did not happen.

In other cases, like that of the Te Kawa Drainage Scheme, Māori landowners were so perturbed by the actions of the Te Kawa Drainage Board which threatened to, and eventually did, lessen their supply of tuna and damage their pā tuna, that they sought to injunct the works in the Supreme Court of New Zealand in 1911. It is important to note that, although the Te Kawa case which follows below is mainly concerned with how the drainage affected the Māori landowners of Kakepuku 8C, the scheme affected many other blocks. The case study demonstrates the inability of the Māori landowners of the Te Kawa swamp to control the degree of environmental change on their land once it had been placed under the control of the Land Boards discussed in part III of this report.

The regulation of drainage schemes in Te Rohe Pōtae usually followed a drive for such schemes in order to pursue the development of agricultural farming or urban development. Invariably, what Pākehā wanted trumped the wishes of Māori landowners and drainage occurred whether Māori landowners wanted it or not.\(^{945}\) The legislation made no provision for the mana whakahaere of the local iwi or hapū of an area, their values and tikanga, and it made no provision for Māori participation other than as affected landowners. Consequently, the ability of iwi and hapū to influence outcomes was limited. Add to the fact that much of their land was administered by the Land Boards, land development scheme boards, or the Māori trustee during the first half or longer of the twentieth century as discussed in part III, then even their options as land-owners to influence outcomes were also reduced. As a result, Māori landowners with land within scheme boundaries did not have many opportunities to assert different values over their wetlands to drainage boards, although some tried.\(^{946}\)

In cases other than the Te Kawa case, Te Rohe Pōtae Māori responses to the loss of wetlands were more muted. As Belgrave et al discuss, this was partly due to the limited legal avenues available to Māori whose land was alienated, and partly due to the fact that urbanisation and the declining reliance on seasonal employment meant that collective harvesting at a hapū level declined at the same time.

\(^{944}\) Document A76, p 219.
\(^{945}\) Document A148, p 204.
\(^{946}\) Document A76, p 223.
that many of the schemes were at their height. Additionally, the lack of protest in some cases was because there was a complete lack of consultation. Some examples that were raised in evidence on wetlands that were drained include:

- Paretao, which was a swampy lake in the Kāwhia region. It was set aside as a tribal reserve by the Native Land Court in the 1890s. It was fed by puna, and renowned for its tuna. It was drained because it was considered a ‘health hazard’.

- Ōweka, another swampy lake in the middle of the Kāwhia M and Kawhia P blocks was drained around the same time as Paretao. The lake was traditionally used by Ngāti Hikairo and was described by them as ‘a small but deep lagoon having several mahinga kai on its shores’.

- The Hauhungaroa wetland, located at the base of Pureora Mountain, was significant to Te Ihingarangi. The wetlands were right at the top of the Waimihia catchment. Like other swamps, the Hauhungaroa wetland was home to many tuna. According to Rangi Harry Kereopa, ‘when the government took over managing the Hauhungaroa ranges, they dried the wetlands out’. According to him, it was drained for farming.

Ultimately, wetlands were the least protected feature of the ancestral landscape and great effort was undertaken to transform them into arable farming land. The overwhelming picture that emerges is one where Māori lost vast tracts of wetland which had been their mahinga kai without adequate consultation or compensation, and in many cases despite their protest. The Government’s policy ‘was that if swampy, low-lying land could be drained, it should be drained’ and the Crown would facilitate the process.

21.5.3.3 Ou.ruwhero and Kakepuku – Te Kawa

The drainage of Ou.ruwhero is illustrative of the impact of the drainage legislation on Te Rohe Pōtē Māori. The Ou.ruwhero wetland (also known as the Kawa Swamp) constituted 6,000 acres of wetland. It stretched between Te Awamutu and Ōtorohanga. Laying beneath the twin mountains of Kakepuku and Kawa, the wetland was highly prized by Māori as a rich source of tuna and was home to a large annual gathering to celebrate the tuna heke (migration of eels). The people would camp and utilise the hapū pā tuna.
The Kakepuku area was a highly prized area. When negotiations were taking place with the Crown in February 1882, Rewi Maniapoto stated that the aukati area, which included Kakepuku, should be preserved in perpetuity for tangata whenua to own and manage (see chapter 7, section 7.4.4.1).

The importance of the swamp as a mahinga kai was also acknowledged during discussions over the route of the railway. Cleaver and Sarich note:

In January 1885, after the central route had been selected and steps towards construction advanced, [Engineer-in-charge of Railways John] Rochfort telegraphed the Public Works Department (possibly at the request of Māori), advising that some eel weirs in the Kawa swamp would be injured by the construction works. Rochfort stated that there were many eel weirs in the swamp, which the local Māori set much value upon and depended upon for food. He suggested that action should be taken to shift the weirs to a suitable location. Wilkinson was requested to look into the issue, and on 15 January 1885 reported that he had met with Rochfort and Māori at Te Kawa Swamp and that a satisfactory arrangement had been reached. In order to prevent eel weirs being destroyed or becoming useless, two additional drains would be provided.

The potential impact of the railway on mahinga kai was raised at the meeting held at Kihikihi on 4 February 1885. One speaker, Hopa Te Rangianini, questioned how the railway would affect waterways and his ability to harvest eels. Referring possibly to Te Kawa swamp, Te Rangianini stated that the railway was to pass over a swamp from which he took eels, his principal food source in summer. He suggested that a viaduct could be built over the swamp, instead of filling it.

In response to concerns about the impact that the railway would have on waterways, Ballance agreed that watercourses should not be interfered with and stated that bridges and culverts would be built for the sake of the line itself.

Ballance's statement that waterways would not be interfered with was soon proved incorrect. The formation of the railway across the Te Kawa swamp in 1886 involved considerable modification of the existing environment, something that Rochfort's communications in January 1885 had pointed towards. An embankment 60 chains in length was formed across the swamp, using some 125,000 cubic yards of earth. The extent to which this embankment affected the habitat of the eels that lived in the swamp is unclear, though culverts appear to have been placed in the embankment, possibly in accordance with the discussions that had taken place between Rochfort, Wilkinson, and local Māori. In 1890, the owners of Ouruwhero block (in which the Te Kawa swamp was located) discussed the matter of eel weirs with a representative of the Public Works Department, a Mr Cheeseman, who was making arrangements to compensate the owners of lands taken for the railway. The owners asked Cheeseman

---

958. Document A76, p 221.
959. 'The Native Minister in Waikato', New Zealand Herald, 23 February 1882, p 2; doc A41, p 22.
to ask the Railway Department to permit the use of eel weirs in culverts on the condition that the weirs would not affect the flow of water.\textsuperscript{961}

However, and despite protests, the Kakepuna block was surveyed in the 1880s and by the turn of the twentieth century, the Te Kawa lands had passed through the Native Land Court.\textsuperscript{962} By 1908 most of the land had passed into European ownership.\textsuperscript{963} Māori continued to own parts of the swampland.\textsuperscript{964} Three blocks which were not leased were Kakepuku 8A (0.69 hectares), Kakepuku 8B (1.38 hectares) and Kakepuku 8C (2.78 hectares), which were designated in 1906 as eel reserves for hapū to use their pā tuna.\textsuperscript{965} However they were not viable tuna reserves in the long-term, for without controlling the watershed, the Māori owners were unable to guarantee the survival of the wetlands. In the end, the loss of the swamps that feed the reserves, rendered the reserves useless as a tuna fishery.\textsuperscript{966}

As early as 1905, the settler JW Walsh was attempting to lease the entire area, but was not successful in securing the agreement of the Māori owners until 1907 (the success, it was reported, was largely due to the help of the native land agent Pepene Eketone).\textsuperscript{967} In December 1907, a meeting of Pākehā chaired by JW Walsh and convened by John Ormsby discussed draining the swamp. It was agreed among them that a drainage board would be beneficial to the district as a whole and that steps should be taken to get the district defined under the Drainage Act 1904. Ormsby was nominated as the provisional secretary of the Board.\textsuperscript{968} As a project of significant scope, the potential scheme was reported in the \textit{King Country Chronicle}. In December 1907, its celebratory statement belied a number of the attitudes underpinning colonisation:

The negotiations for the leasing from the Natives of Kawa Swamp, and the project for turning the great natural resources of the land to material use, have at last been concluded, and it is gratifying to learn that immediate steps are to be taken . . . in the direction of draining the area involved. The benefit to the district will be widespread, and [the settlers have taken a] definite and decided step in the march of progress. All those concerned in the project are to be congratulated on their action, and there seems to be every prospect of a huge area of land, that has for generations existed as an unprofitable waste, being turned to its legitimate use. The earth and the fulness thereof are only possible to those who strive and are prepared to persist. The bringing

\textsuperscript{961} Document A20, pp 112–114.

\textsuperscript{962} Document A76, p 222.

\textsuperscript{963} Document A76, pp 221–222.

\textsuperscript{964} Document A76, pp 221–222; submission 3,4,198, p 84; submission 1,2,130, p 71. Belgrave and the claimants actually state that most of the land was in European ownership however, at this stage most of the land that was included in the drainage scheme was actually leased (see doc A24 (Luiten), pp 94–95; 'Kawa Drainage Scheme', \textit{King Country Chronicle}, 13 December 1907, p 2).

\textsuperscript{965} Document A76, p 222; doc A60, p 212.

\textsuperscript{966} Document A76, p 222; submission 1,2,130, p 71.

\textsuperscript{967} Document A24, pp 94–95; 'Kawa Drainage Scheme', \textit{King Country Chronicle}, 13 December 1907, p 2.

\textsuperscript{968} Document A24, pp 94–95.
in of every additional acre of new country means advancement, and the greater the difficulties that are overcome, the more deserving are those concerned of the hearty assistance and congratulation of their fellow settlers.969

The different values that Māori placed on the swamp were considered, and dismissed, in the same paper. The author reasoned that, although the swamp’s eels had hitherto been a major food supply for Māori, the ‘advancement of civilization into the Rohe Potae’ had changed the way in which Māori were procuring food and they judged their eel weirs were ‘now but little used’.970 When Mr W Coffin, a settler in attendance at the meeting, raised the matter of the ‘eel ponds, at the outlet of the Swamp’ he was advised to discuss this with the owners.971 Indeed, evidence provided by Ngāti Unu and Ngāti Kahu witnesses highlighted that,

Even as they anticipated the eradication of the Te Kawa swamp in the first decade of the twentieth century, settler newspapers acknowledged that ‘from the earliest times in local history, portions of it have contributed largely to the Māori food supply in the shape of toothsome eels’.972

Based on the evidence in this inquiry, it is not known whether Coffin did approach the owners. Nonetheless, in the end, the farming aspirations of Pākehā won the backing of parliament and the Kawa Drainage Scheme was proclaimed by the Governor-General on 8 July 1908 after he received a petition from the majority of ratepayers in the Waitomo and West Taupo counties.973 The Māori landowners of the Ouruwhero and Kakepuku blocks were not consulted in either the petition or the proclamation of the scheme, though John Ormsby was involved in the election of the board of trustees and later served as the clerk of the Kawa Drainage Board.974 Belgrave notes that Ormsby was appointed the returning officer and that he was at that stage ‘the preeminent tribal voice of Ngāti Maniapoto, replacing Wahanui and Rewi Maniapoto as the major negotiator with the Crown over the opening up of the Rohe Potae’.975

However, and as we saw in part III of this report, the involvement and participation of one person (even a rangatira) could not commit an entire iwi, hapū or indeed a block of Māori land-owners to such proposals. Not surprisingly, therefore, on 23 October 1908 the Minister for Native Affairs received a letter of protest from Ngawaero Te Koro, Te Waru Amotahi, Wiri Herangi and nine others seeking compensation for the damage that the scheme would have on their eel fisheries and eel weirs. They stated that the loss of the weirs would deprive them of a food source

969. 'Kawa Drainage Scheme', King Country Chronicle, 13 December 1907, p2; doc A24, pp 94–95.
970. 'Kawa Drainage Scheme', King Country Chronicle, 13 December 1907, p2; doc A24, pp 94–95.
975. Document A76, p 223.
they used ‘year after year’ and which was the ‘main supply of food when the blight’
destroyed their crops. They complained that they were in danger of having their
rights ‘wrenched from [them] by the Pakeha breaking down and doing away with
[their] eel weirs without paying compensation’ and explained that when they had
agreed to lease the land to JW Walsh, they had done so on the understanding that
they would be compensated for any loss. They stated that Walsh had not followed
through on his word and was, instead, relying on the powers of the Drainage Act
to advance the scheme. The owners asked the Minister to prevent the Drainage
Board from ‘getting the power and the money to do this work’ until they were able
to come to an agreement with them. They added, ‘we know that the provisions of
the Treaty of Waitangi remain in force in these matters’ and requested £2,000 in
compensation.976

When the Native Under-Secretary asked for more information from the
Maniapoto–Tūwharetoa Land Board, the president (Judge James Wakelin Browne)
sided with the Kawa Drainage Board, stating that the Māori landowners had been
aware of the lessees’ intention to drain the land when they entered into the agree-
ment. Indeed, Browne was less than sympathetic to the concerns of the owners
and argued that it was not until Walsh was committed to the lease that the owners
applied to the Native Land Court to partition out the parts of the swamp that con-
tained the weir and refused to lease or sell to Walsh ‘except at an exorbitant price.’
Browne concluded that, since the formation of the drainage board, the owners
were ‘alarmed’, because they saw that, ‘instead of getting the outrageous price they
asked, there is a chance that they will be paid only what is fair value for the weir’.
He also argued that the swamp was ‘of no value to the Native owners’ in its present
state and that Walsh was leasing it at a fair rental. He added that Walsh had plans
to spend thousands of pounds in drainage, and although the outlet drain could be
taken in another direction, the natural outlet was the eel weir and any deviation
would ‘entail a very large expenditure’.978

Upon receiving this advice, the Native Department replied to the owners that
the Crown could not intervene in the matter and recommended that they seek
legal advice.979 A similar response was given in April 1909, when a Pākehā resident
at Te Kawa complained to his member of Parliament that the eel weirs were affect-
ing water flow from the swamp and asked for advice and support in petitioning
Parliament to remove them. The matter was referred to the Minister for Native
Affairs, who replied that, although the matter formed ‘a considerable bone of con-
tention between the Natives and other residents in the locality’, it did not appear
to be ‘a case in which the Government can take any action’.980 The simple reason
for the response in both these cases was because the Land Board was operating
as the decision maker as explained in part 111 of this report. Both examples also

demonstrate that the Crown knew that Māori were very upset about the scheme and its impact on their taonga and things were about to get worse for them.

On 13 November 1909, the Kawa Drainage Board notified the Māori owners of Kakepuku 8C that they intended to construct a drain 20ft wide and 10–15ft deep through the block in one month’s time. The owners objected via their legal counsel on the grounds that:

- the land had been used as an eel pā from time immemorial;
- the pā was of great value and importance to Ngāti Ngāwaero;
- the drain would destroy the weirs and the use of the land as an eel pā;
- they could not be ‘adequately compensated for such destruction’;
- it ‘would be inequitable to the objectors’ if the drain was permitted; and
- the construction of the drain would infringe on the rights of the owners to maintain the land as an eel pā.  

The objection was heard in the Supreme Court on 6 May 1910. The Court found against the owners on the grounds that their rights could be compensated in money and ‘should not be allowed to stand in the way of draining a large area of country’.

Rejected by the Supreme Court, the owners then turned their attention to the question of compensation – as provided for under section 29 of the Land Drainage Act 1908. On 18 May 1910, the owners’ lawyer Harry Bamford claimed that the drainage scheme would ‘substantially put an end to the supply of eels in the stream . . . and [would] seriously affect the riparian rights of the plaintiffs’. He sought £1,500 in compensation for the owners from the Kawa Drainage Board. The drainage board’s lawyer replied on 24 June 1910 that the claim for compensation was unreasonable, and if they were found to be entitled to any sum then that sum would be small. Among the reasons listed were that there would still be an ‘ample’ supply of eels after the drain was constructed and the eel pā was of diminishing value to the plaintiffs as the ‘younger natives of the district do not take the same interest in [them] as did their predecessors’. Additionally, the drainage board claimed the scheme would be advantageous to the plaintiffs as they would receive rent from the drained lands (and no rent could be paid until the lands were drained) which referred to a clause in the lease that required the lessee to ‘effect improvements to the value of at least five shillings per acre during the first seven years of his lease’ which he claimed would be impossible without draining the land. Bamford countered reliance on this clause, noting that it had been added by the Land Board after the Māori owners had signed the lease. The Court adjourned the case to allow the parties to reach an agreement, but this appears to have been in vain as

983. Hone Te Anga and Others v Kawa Drainage Board [1914] 33 NZLR 1139; doc A64(c)(i); Defendant Statement of Defence, 24 June 1910 and Sworn statement of George Sedgwick Kent, 24 June 1910 (doc A150, pp 28–30).
the Kawa Drainage Board began the works shortly after and Māori efforts to gain an injunction in August 1911 were unsuccessful.\textsuperscript{984}

By 1914, the Board had largely completed its works and the course of the stream had been diverted. It was at this stage that the Supreme Court referred the matter to the Compensation Court. In its decision, the Supreme Court noted:

[Eel] appear to have entered the swamp in great numbers, and to have fattened there and flourished exceedingly, and were caught by the Māoris from time immemorial by means of eel pas and weirs . . . Until the title to the land was ascertained by the Native Land Court the eels obtained from the eel-pas appear to have been used for the common benefit of the Natives living in the district, and were a very material part of their general food-supply. Sometimes the catches were exceptionally heavy and the surplus eels were sent as presents to other tribes, sometimes to Natives residing at Rotorua, sometimes to those at the Thames, and presents in return of other kinds of fish were received from these Natives . . . The respondent Board has in the course of its drainage scheme [altered the Mangawhero Stream]. In doing so . . . it has prevented the Native owners from using the eel-pa, and this pa is now high and dry and useless. The swamp has been partially drained and the supply of eels has materially diminished. Eel-pas can no longer be constructed, and the facility of catching eels by means of weirs has been greatly restricted. The result of the drainage works will be that the swamp will eventually be drained and will cease to be, as in a great measure it has already ceased to be, a fattening-place for eels. Instead of being an eel-swamp, it will be most valuable dairy-farm land.\textsuperscript{985}

In referring the case to the Compensation Court, the Supreme Court outlined the limitations to the compensation it felt the owners were entitled. It ruled that the owners could be compensated given that they had property rights to the bed of the stream which had been ‘injuriously affected’ by the scheme, and that damage had been done to their pā tuna. However, the Court stipulated that no compensation was due for the diminishing size of the fishery because the drainage board was legally entitled to drain the swamp and alter the course of the waterway. In addition, the Court decided that an amount should be deducted to cover any appreciation because of the drainage scheme.\textsuperscript{986} Ultimately, the Compensation Court determined that, after betterment, the compensation due was £150.\textsuperscript{987}

Although there is no evidence on file that the owners were paid compensation, Belgrave et al are almost certain that the £150 was paid. However, they state that both parties were left to cover their costs and the legal expenses would have been considerable for a case that dragged on for five years in both the Supreme and

\textsuperscript{984} Document A150, pp 29–30.

\textsuperscript{985} Hone Te Anga and Others v Kawa Drainage Board [1914] 33 NZLR 1139, doc A64(c)(i), pp 1144–1146.

\textsuperscript{986} Hone Te Anga and Others v Kawa Drainage Board [1914] 33 NZLR 1139, doc A64(c)(i); pp 1144–1146; doc A64(b), pp 15–16; doc A150, p 30.

\textsuperscript{987} Document A150, p 30; doc A76, p 225; doc A64(b), pp 15–16.
Compensation Court.\textsuperscript{988} The Supreme Court's handling of the case shows that, although there was an awareness of the importance of the swamp, tuna, and pā to Māori, and they were due compensation for any loss of property, the conversion of the swamp into 'most valuable dairyfarm land’ was a matter of far more importance than those issues which concerned the Māori owners, namely the preservation of the tuna resource.\textsuperscript{989}

Although the establishment of the Scheme in 1907 was quickly followed by enough drainage work to redirect a stream and damage pā tuna, most of the work on Te Kawa actually occurred as part of the relief works programme in the 1930s and the board continued to undertake drainage work in its own name until the 1970s (after which its functions were absorbed into the Waipā and Otorohanga County Councils).\textsuperscript{990}

The impact of this drainage work is still felt by the hapū of this area today with the Tribunal being told:

\begin{quote}
The loss and degradation of the Te Kawa swamp, long since drained in the interest of farming, is still keenly felt by tangata whenua of the area.

It is important to note that the draining of the wetlands not only destroyed a plentiful food resource, it drained Te Kawa of her mauri, divorcing her relationship with Kakepuku.

The relationship between Kakepuku and Te Kawa was changed forever as our abundant wetlands that had supported many hapu and whanau for generations were depicted as a swamp and our life sustaining waters were drained . . .\textsuperscript{991}
\end{quote}

\textbf{21.5.4 Treaty analysis and findings}

Environmental decision making with respect to land use, mining and drainage demonstrate our previous findings in this chapter that until 1991 there was limited regard given to Treaty of Waitangi issues, Māori values, tikanga and mātauranga Māori. As a result, there has been massive environment change in the district with limited Te Rohe Pōtai Māori participation and with impacts that have fundamentally changed the nature of their relationship with their environment. For example, they were unable to express their kaitiakitanga, their tikanga and knowledge over sites and wetlands that they no longer owned or where these were destroyed.

The policies, actions, and legislation the Crown was responsible for enabled such destruction with resulting impacts on Te Rohe Pōtai Māori values, customs, and tikanga. For most of the nineteenth and twentieth centuries such areas were consistently undervalued by the Crown. Rather it vigorously pursued a policy of promoting drainage works around New Zealand (and in particular in Te Rohe Pōtai) reflecting its desire to change the environment as at 1880 to an agriculturally productive economy. The Crown enacted legislation to pursue this policy
elevating and enabling the aspirations of farming communities with respect to decisions made for drainage schemes. In this district this resulted in the loss of thousands of acres of wetlands and the Māori and ecological values and relationships with metaphysical beings such as taniwha associated with them.

The effect on Māori of the loss of the wetlands was, and continues to be, significant. As drainage progressed throughout the twentieth century, many of the food species harvested from wetlands were placed under environmental pressure.\footnote{992 Document A76, p 220.} The Te Kawa case study demonstrates how comprehensively drained the swamp was. Despite the efforts by the Māori landowners of Kakepuku C, enough drainage had been completed by 1914 such that the Mangawhero Stream (which feed into pā tuna on Kakepuku 8C) had been diverted and the owners were left with an eel weir that was unusable. For this loss and destruction, the owners were awarded £150 for the damages made to their eel weirs which was a figure less than 10 per cent of what they had originally sought in compensation. While the Wildlife Service urged the Crown to initiate policies and programmes to protect wetlands as early as the 1950s, it was not until the 1980s that policies were developed which aimed to preserve New Zealand’s remaining wetlands.\footnote{993 Geoff Park, Effective Exclusion? (Wai 262 ROI, doc K4), p 86.} All far too late for Te Rohe Pōtæ Māori in most parts of the district.

Where Māori continued to own land, their ability to protect taonga sites and other material taonga, waterways, and fisheries was also continually threatened by the Crown’s land use and planning policies and legislation. For example, the Crown actively intervened and restricted Māori property rights under the Mining Act 1926. Then when it looked like the Māori owners of Taharoa C were able to organise under that legislation to enter into a mining agreement with the Crown at a royalty rate that they wanted to set, it intervened by enacting the Iron and Steel Industry Act 1959. That legislation dictated the rate of royalty that could be paid to them as owners of the ironsand. Thus, their rights as owners to dictate price were undermined by the actions of the Crown in enacting such provisions. No other New Zealanders but Māori were affected in this manner as they were the only owners of land (outside of the Crown) with ironsand in the North Island. In these ways, the Crown prioritised the mining industry over the needs of Te Rohe Pōtæ Māori. The enactment of various legislations has authorised a range of people to assert control over Te Rohe Pōtæ taonga sites, material culture, and waterways without adequate corresponding consultation with tangata whenua.

The owners of Taharoa C were at least able to negotiate lease arrangements that expressed their desire to preserve their taonga sites and material culture and waterways as much as possible and they have also received real benefits from mining on their land.

After mining commenced, it is clear that the Proprietors of Taharoa C Incorporated worked well with New Zealand Steel Mining during the company’s mining operations, forging as they did lease requirements and policy around the protection of their taonga sites and material culture. The Crown also provided as
much assistance as it could to enable the industry in terms of the mining agreement and its renewals. When the Crown enacted the Antiquities Act 1975 and the Historic Places Amendment Act 1975 (making it unlawful to interfere with an archaeological site), knowing that the legislation could potentially impact the mining and lease agreement with the Proprietors of Taharoa C Incorporation, it did not consult them.

The enactment of the RMA, the Crown Minerals Act 1991, the Protected Objects Act 1975, and the New Zealand Historic Places Trust Acts 1980 and 1993, and the repeal of the Iron and Steel Industry Act 1959, also interrupted their ability to determine how their taonga sites and the material taonga discovered at such sites were to be managed. The legislation authorises a range of people, and without any corresponding consultation with the owners, to assert control over their taonga sites and material culture and waterways. However, the Tribunal acknowledges that the provisions of the Heritage New Zealand Pouhere Taonga Act 2014 may alleviate their concerns. We also see the value of cooperative efforts over the protection of these sites in high risk areas such as mines or quarries, so long as there is some balancing of authority under the RMA whereby Māori landowners have some real authority to make decisions about such taonga.

We now turn to the lakes at Tahāroa, where the issues are different, involving different landowners and the broader hapū of Ngāti Mahuta. During the period 1960–80, the Tahāroa Lake Trustees were not consulted at all regarding the diversion provisions in the mining agreement with the Crown, or regarding the impacts of the water rights and consents on the lakes at Tahāroa. During this critical period there were major impacts on the lakes and the Wainui Stream with resulting environmental effects on their fisheries. While consultation with the lake trustees improved in the 1980s and was more fulsome under the RMA, Lake Tahāroa and three associated lakes, Lakes Harihari, Rototapu, and Numiti continued to demonstrate fisheries decline, although with respect to tuna that may have been due to the overall decline of tuna nationwide. Crown agencies were late in assisting to monitor the situation with respect to the effects of these works on the stream and lakes and on the fisheries. From a Māori perspective, the lakes have also been desecrated by the mixing of waters entering Lake Tahāroa and Lake Rotoroa due to spillages from ponds associated with mining. Ngāti Mahuta and the lake trustees claim that laws and bylaws have compromised the degree of self-governance they are able to exercise over their lakes. We agree, as they have not been able to participate as partners in decisions made affecting them.

Improvements to land use planning under RMA due to part 2 requirements and the enactment of the New Zealand Historic Places Trust Act 1993 also came a little too late for other taonga sites of significance such as Maniapoto’s Cave. While the legislation led to greater participation from affected Māori post 1991, in practice that participation has been reduced to consultation and information sharing. In Te Rohe Pōtae, this practice is evident in the case studies reviewed after the year 2000. Where consultation and participation has occurred in relation to planning
and consents, Te Rohe Pōtae Māori consent was given with qualifications that they wanted respected. However, sites were and are still being disturbed, damaged or destroyed.

Importantly, consultation for the completion of a resource consent application is not mandatory either by an applicant or local authority. This provision in the RMA was enacted as late as 2005.994 Thus any consultation is usually only undertaken to advance a local or regional authority planning process or an applicant’s resource consent proposal, where they need to provide a cultural assessment of the sites or waterways subject to the application. Iwi rightly ask: What is the benefit to them of such a system, given the evidence is that decision makers rarely gave full consideration to Treaty of Waitangi principles, other than superficial tick box exercises around stating that they have complied with part 2 or section 8 of the RMA?

In addition, as with the land use studies above, the RMA cannot be used to require historical rectification of environmental effects. Therefore, the historical destruction of wāhi tapu, archaeological sites, the desecration of Maniapoto’s Cave and the historical effects of mining operations on the lakes at Tahāroa, are not matters that new consents can address. All that can be done is to make sure new resource consents (and associated conditions) are adhered to. Whether or not enforcement is undertaken depends on the views of the regional or local authority concerned or Heritage New Zealand, rather than Ngāti Te Wehi, Ngāti Maniapoto, Ngāti Mahuta or any other group affected.

The final issue, and the continuing one, is that ultimately Māori lack power under the RMA system. Māori cannot have veto over environmental decision making as that would be inconsistent with the principle of partnership. However, more than consultation under the RMA is needed to discharge the Crown's Treaty of Waitangi obligations. Iwi should be full participants as self-governing entities working in partnership with local and regional councils both in terms of planning and resource consents, including the appointment of hearing committees. The Crown has an obligation to make sure this is happening in all areas of land use decision making and heritage protection included under the RMA, and this must be done by legislative amendment and the allocation of resources for iwi and hapū. Numerous panels of the Waitangi Tribunal have recommended that the Crown must start with an amendment to section 8 of the RMA. The flora and fauna Tribunal focused upon what was needed in terms of planning as well.

For all these reasons, we find:

- That the Crown has acted in a manner inconsistent with Te Ōhākī Tapu and the principles of the Treaty of Waitangi. We find that this is the case with respect to its historic actions in Te Rohe Pōtae in the case studies identified above, as well as regarding its environmental land use policy and legislation 1900–91. This includes the manner in which effects on lakes, waterways and drainage are notified under a regime that does not have, even as a starting

point, the need to consult, let alone provide for decision making authority in partnership arrangements that enhance environmental management.

- That, while the RMA and the New Zealand Historic Places Trust Act 1993 have improved the situation, the statutes have not provided sufficient protection for important taonga sites and are in their present format therefore inconsistent with the principles of the Treaty with respect to the Crown's duty to actively protect taonga.

- That the Crown has acted inconsistently with the principles of partnership, reciprocity and mutual benefit derived from article 2, by breaching the principles of equality and the principle of redress for failure to properly compensate for Te Rohe Pōtae loss of mahinga kai, both principles being derived from article 3.

- That the Crown has acted in a manner inconsistent with the principle of good government for its continued failure to adhere to previous Waitangi Tribunal reports requiring that section 8 of the RMA 1991 be amended.

### 21.6 Prejudice

In this chapter we have demonstrated how the Crown in actively pursuing its policy priorities with respect to the environment in conjunction with local or regional authorities, acted in a manner inconsistent with the principles of the Treaty of Waitangi. The actions, policies and legislation it was and is responsible for causing prejudice to the claimants have stemmed from:

- A failure to require the fair payment of compensation for timber on Māori land during the era of deforestation (1890–1930) when the Crown and private interests purchased, leased or entered into timber agreements with Te Rohe Pōtae Māori.

- A failure to respect Māori landownership and the enactment of legislation that allowed reserves to be designated and acquired with or without owner consent.

- A failure to acknowledge, provide for and give effect to the principles of the Treaty of Waitangi in environmental policy and legislation until the 1980s.

- A failure to require decision makers take into account and provide for the rangatiratanga, kaitiakitanga, tikanga and mātauranga Māori of Te Rohe Pōtae Māori associated with forests, land, wetlands and taonga sites until the 1980s. Rangatiratanga, kaitiakitanga and tikanga (such as rāhui) are sourced from mātauranga Māori and its definitions of the values attributed to each. Values such as whanaungatanga, manaakitanga, utu, and tapu cumulatively define appropriate behaviour, and the consequences for not complying with the norms associated with this system of law in the environmental space include a loss of mana and ultimately well-being.

- A failure to require consultation with Te Rohe Pōtæ Māori (other than as affected landowners and in some cases not even then) over developments that would affect their waterways and other taonga even under the RMA.
A failure to provide for Te Rohe Pōtae iwi mana whakahaere and full participation as partners in environmental decision-making and taonga site protection under the Environment Act 1986, the Conservation Act 1987, the RMA and the Historic Places Trust Act 1993 other than for the Waipā River and through other treaty settlement arrangements.

The active undermining of Te Rohe Pōtae Māori property rights in ironsands through the enactment of the Iron and Steel Industry Act 1959 taking away their ability to set a market price for their ironsands. However, given the real benefits that have accrued to the owners from mining, the prejudice here has been mitigated for the owners of Tahāroa.

A general failure to assist Māori owners and the Lakes Trust monitor the operations of New Zealand Steel Mining Limited, including with respect to damage to Lake Tahāroa, the Wainui Stream, and associated taonga fisheries.

A failure to partner with Te Rohe Pōtae Māori to protect important taonga sites under the Historic Places Trust Act 1993 and material culture under the Protected Objects Act 1975.

A failure to address the loss of mahinga kai (particularly wetlands) and a failure to require full compensation for the loss of such places.

The loss of relationships with the metaphysical aspects of the environment including Patupaiarehe, taniwha and kaitiaki through denial of access.

The continued subjection of the claimants to the decision making of regional and local authorities who are not required by legislation to give effect to the principles of the Treaty of Waitangi in the administration of their powers and functions under the legislation and in planning and consenting procedures.

As a result, there has been massive environmental change in the district without Te Rohe Pōtae Māori having any meaningful control and authority over developments that have fundamentally changed the nature of their relationship with their environment. They have suffered financial loss and customary resource loss. They are no longer able to express their rangatiratanga, kaitiakitanga, their tikanga, and mātauranga Māori over sites and wetlands that they no longer own or where these have been destroyed. Even where they own them, such as the lakes (and fisheries) at Tahāroa or Maniapoto’s cave they have not been able to protect them from desecration or collapse.

In the summary of parts 1 and 2 of this report, the Tribunal acknowledged that the circumstances of the district have changed significantly since the 1880s. Te Rohe Pōtae Māori are no longer the owners of all the land in the district. They now hold a small proportion of that land, and a sizeable number of people now call the region home, as well as a range of local councils and Crown agencies that exercise specific functions in the district.

At the very least, to compensate for the prejudice that has been suffered from the Crown’s environmental management regime, we stated that any settlement legislation negotiated by the parties should explicitly recognise the rights of Te Rohe Pōtae Māori te tino rangatiratanga and mana whakahaere. In no other field of endeavour is this more needed than in the area of environmental management.
We also encourage the parties that in providing for the practical exercise of the tino rangatiratanga of Te Rohe Pōtae Māori communities, the negotiations between the parties and any settlement legislation should address how their right of mana whakahaere should be institutionalised. We return to the main recommendation we made with respect to this below.

21.7 Recommendations

The Tribunal recommends:

- That the Crown acts, in conjunction with Te Rohe Pōtae Māori or the mandated settling group or groups in question, to put in place means to give effect to their rangatiratanga in environmental management. For Ngāti Maniapoto or their mandated representatives, this will require the Crown to take into account and give practical effect to Te Ōhākī Tapu. How this might be achieved will be for the parties to decide in negotiations; however, the Tribunal considers that for the Crown to relieve the prejudice suffered by Te Rohe Pōtae Māori, the following minimum conditions must be met:
  - First, that the rangatiratanga of Te Rohe Pōtae Māori (or the settling group or groups in question) be enacted in legislation in a manner which recognises and affirms their rights of autonomy and self-determination within their rohe, and imposes a positive obligation on the Crown and all agencies acting under Crown statutory authority to give effect to those rights. For Ngāti Maniapoto or their mandated representatives, this will require legislation that recognises and affirms Te Ōhākī Tapu, and imposes an obligation on the Crown and its agencies and regional and local authorities to give effect to the right to mana whakahaere. The brief of evidence of Steven Wilson (Manahautū Whanake Taiao – Group Manager Environment for the Maniapoto Trust Board) dated 28 April 2014 could provide a sound basis for negotiations on this issue.
  - Secondly, subject to negotiations between the parties, that the legislation makes appropriate provision for the practical exercise of rangatiratanga by Te Rohe Pōtae Māori (or the settling group or groups in question) in environmental management. For Ngāti Maniapoto or their mandated representatives, this will require legislation that gives practical effect to Te Ōhākī Tapu, and provides for the practical exercise of mana whakahaere.
  - Thirdly, and for other iwi in the district, co-management regimes could be chosen from the existing suite of options under the RMA or through the enactment of legislation for a different form of co-management. The iwi concerned should have a real mandate to represent hapū, and whānau. They should also reflect this through constituting representative structures that elevate the voices of hapū and whānau in the decision-making process. These co-management bodies, and the

relationship they reflect, should be established on the basis that the environment is a taonga of Te Rohe Pōtae Māori. The Crown, as part of this recognition and the development of these co-management regimes, should proactively look to restore taonga sites where practicable. These sites should be identified in conjunction with Te Rohe Pōtae Māori and may include wetlands, forests, wāhi tapu, or any other sites of environmental or heritage value.

- Fourthly, that the Crown contracts an independent valuer to determine the value of the timber not paid for when it purchased the bulk of Ngāti Maniapoto land during the period 1890–1912 to aid the Treaty settlement process, if this has not already taken place.
- That section 8 be amended to require that nothing must be done under the RMA 1991 in a manner inconsistent with the principles of the Treaty of Waitangi. Alternatively, the Treaty principles should be integrated into the meaning of sustainable management in section 5 of the RMA.
- That section 6 of the Conservation Act 1987 be amended to make it clarify the full extent of DOC’s responsibility to adhere to and implement the principles of the Treaty of Waitangi with respect to functions under the Conservation Act 1987 and all the other statutes administered by the department.

21.8 Summary of Findings
Our key findings in this chapter have been:
- Rather than acknowledge Māori tino rangatiratanga and mana whakahaere, as promised in the Treaty and negotiated as part of Te Ōhākī Tapu and associated agreements, the Crown introduced discriminatory legislation to manage the environment, which allowed it to, amongst other things, take administrative control of the region.
- Te Rohe Pōtae Māori were subject to the authority of central, local and regional authorities who did not have to consider Treaty principles, provide for Māori co-management, engage and consult Māori, enable their participation in management or have regard to their customary values outside of possible granting of authorisations or permits for gathering, taking or catching species or for the protection of their archaeological sites. As a result, they were further separated from many of their important taonga sites and species and there was a corresponding loss of mātauranga Māori.
- The Town and Country Planning Act 1977 was the first statute to recognise that Māori continued to have a relationship with certain areas even where they no longer owned land. It would not be until the introduction of the Conservation Act 1987 and the Resource Management Act 1991 that the principles of the Treaty were considered to be relevant to environmental management, though these Acts still fail to fully address Te Rohe Pōtae Māori environmental concerns. The RMA, in particular, needs to be amended to ensure that the Crown’s Treaty obligations are met.
- Heritage protection legislation has been unable to prevent destruction or
modification of many sites of importance to Te Rohe Pōtae Māori. The new Heritage New Zealand Pouhere Taonga Act 2014 may improve the position, but its impact was not known at the time of hearing.

- The legislation and policy operation of the Ministry for the Environment and Department of Conservation do not adequately meet appropriate Treaty standards. Both ministries need to prioritise adequate consultation regarding, and participation in, environmental management, with a focus on ultimately working in partnership with Māori. The first step is to amend section 4 and 6 of the Conservation Act 1987 and update DOC’s Conservation General Policy 2005.

- Despite a clear desire to participate in and benefit from the timber industry, Te Rohe Pōtae Māori involvement was extremely limited and the agreements that were made were often unfair.

- The Crown allowed the industry to remain unregulated until the creation of the Forestry Service, who only became active in providing appraisals of timber values for timber agreements after 1930 (and then was a costly system for Māori landholders).

- While aware of the impacts of large-scale deforestation from as early as 1874, the Crown did not consult Te Rohe Pōtae Māori regarding preserving land (unless set aside as a reserve from sale) or regulating cutting rights. Reserves and conservation parks that were established were done so without any regard for Māori interests or associated values in these lands.

- Instead of pursuing some form of regulation of the timber industry, the Crown focused on developing a pastoral economy. This led to the destruction of great swathes of Te Nehenehenui, which impacted Te Rohe Pōtae Māori communities the hardest.

- Initiatives that the Crown has taken over time to protect indigenous forests (on a national scale) are too small and have come too late to be of any real significance to Te Rohe Pōtae Māori.

- While DOC seeks engagement with Te Rohe Pōtae Māori on matters it prioritises, there is no significant commitment to the principle of partnership either through co-management arrangements or otherwise at the regional level.

- The Crown has by omission, in legislation, and by its actions, failed to act in a manner consistent with the principles of the Treaty of Waitangi with respect to the traditional forests and lands of those iwi and hapū who have not achieved settlement of the Treaty claims in Te Rohe Pōtae, namely under article 2 – the principle of partnership, the principle of reciprocity underpinned by the exchange of kāwanatanga for the guarantee of rangatiratanga, the principle of mutual benefit, and the duty of active protection of their rangatiratanga and of their taonga. In part, this is a problem with the legislation and the fact that it provides no guidance to DOC, other than section 4, on how it must administer and interpret the legislation consistently with Treaty principles. What is needed is an amendment to section 6 as we have noted above.

- For most of the nineteenth and twentieth centuries, wetlands were
consistently undervalued by the Crown, which prioritised drainage works to promote an agriculturally productive economy, resulting in thousands of acres of wetlands being destroyed. The policies necessary to preserve the district's few remaining wetlands were not developed until the 1980s, far too late for most Te Rohe Pōtāe Māori.

- Where Māori continued to own land, their ability to protect taonga sites and other material taonga, waterways, and fisheries, was continually threatened by the Crown's land use and planning policies and legislation.
- The Crown similarly prioritised the mining industry over the needs of Te Rohe Pōtāe Māori. The enactment of various legislations has authorised a range of people to assert control over their taonga sites, material culture, and waterways without adequate corresponding consultation with tangata whenua.
- Some newer legislations, such as the Heritage New Zealand Pouhere Taonga Act 2014, have the potential to address environmental issues in the district, particularly regarding consultation, but they still do not go far enough. Under the RMA, for example, consultation for the completion of a resource consent application is not mandatory either by an applicant or local authority and this provision was enacted as late as 2005.
- Ultimately, Te Rohe Pōtāe Māori lack power under the RMA system – more than consultation alone is needed for the Crown to meet its Treaty of Waitangi obligations. Iwi should be full participants as self-governing entities working in partnership with local and regional councils both in terms of planning and resource consents, including the appointment of hearing committees. The Crown has an obligation to make sure this is happening in all areas of land use decision making and heritage protection included under the RMA and this must be done by legislative amendment and the allocation of resources for iwi and hapū.
- The Crown has acted in manner inconsistent with Te Ōhākī Tapu and the principles of the Treaty of Waitangi with respect to its historic actions in Te Rohe Pōtāe with respect to its environmental land use policy and legislation 1900–91.
- While the RMA and the New Zealand Historic Places Trust Act 1993 have improved the situation, the statutes have not provided sufficient protection for important taonga sites and are therefore inconsistent with the principles of the Treaty with respect to the Crown's duty to actively protect taonga.
- The Crown has acted inconsistently with the principles of partnership, reciprocity, and mutual benefit derived from article 2, by breaching the principles of equality and redress by failing to properly compensate for Te Rohe Pōtāe loss of mahinga kai.
- The Crown has acted in a manner inconsistent with the principle of good government for its continued failure to adhere to previous Waitangi Tribunal reports requiring that section 8 of the RMA 1991 be amended.
CHAPTER 21 APPENDIX

MAORI-OWNED TIMBER IN THE INQUIRY DISTRICT, 1910–21

The table on the following pages shows agreements involving Maori-owned timber in the Rohe Potae inquiry district between 1910 and 19–21.
<table>
<thead>
<tr>
<th>Date</th>
<th>Block</th>
<th>Details</th>
<th>Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>for timber to be cut at set royalty rates.</td>
<td></td>
</tr>
<tr>
<td>1 July 1911</td>
<td>Rangitoto Tuhua 25 section 5B</td>
<td>Lease, term 42 years from 1 July 1911. On 12 February 1934, the</td>
<td>F 1 365 18/3/38, ANZ Wellington.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Under Secretary of Native Affairs noted: 'The purchase money for the</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>timber calculated on the basis of the rental fixed under the lease for</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>the full term of 42 years would amount to £14,868.'</td>
<td></td>
</tr>
<tr>
<td>23 May 1912</td>
<td>Rangitoto Tuhua 2C</td>
<td>Confirmation of resolution passed by meeting of owners to sell timber</td>
<td>W-MDMLB minute book 8, p 219.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>to Combs for £242 (Government valuation of timber: £225).</td>
<td></td>
</tr>
<tr>
<td>27 November 1912</td>
<td>Rangitoto Tuhua 1</td>
<td>Confirmation of resolution passed by meeting of owners to sell timber</td>
<td>W-MDMLB minute book 9, p 132.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>to Combs £2,108 5s (Government valuation).</td>
<td></td>
</tr>
<tr>
<td>16 December 1912</td>
<td>Maraeroa c (13,727 acres)</td>
<td>Order in Council issued under section 280 of the Native Land Act 1909,</td>
<td>MA 1 104 5/10/129 part 2, ANZ</td>
</tr>
<tr>
<td></td>
<td></td>
<td>enabling Land Board to grant a timber license to Ellis and Burnand.</td>
<td>Wellington.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(Maraeroa c was vested in the Board.) Sale of timber to Ellis and</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Burnand for 1s per 100 superficial feet for totara, 5d for rimu and</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>matal, and 4d for all other timber.</td>
<td></td>
</tr>
<tr>
<td>14 September 1916</td>
<td>Hauturu East 2 section 381</td>
<td>Confirmation of sale of timber to Parkes Brothers for 1s per 100</td>
<td>W-MDMLB minute book 13, p 239.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>feet for all timber.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>interests of two owners.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Hauturu East 1E4B2B</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Date</td>
<td>Location/Reference</td>
<td>Details</td>
<td></td>
</tr>
<tr>
<td>-------------------</td>
<td>--------------------</td>
<td>---------</td>
<td></td>
</tr>
<tr>
<td>21 November 1917</td>
<td>Piha 2 section 6</td>
<td>Intention to confirm resolution of meeting of owners to sell timber to Parker Lamb for 1s per 100 feet.</td>
<td></td>
</tr>
<tr>
<td>22 November 1917</td>
<td>Pehitawa 2B5F</td>
<td>Intention to confirm sale of timber to Parkes Brothers in respect of interests of four owners. Government valuation of timber: £30. Royalty: one shilling per 100 feet, with Board requesting royalty for rimu and matai be raised to 1/4 per 100 feet.</td>
<td></td>
</tr>
<tr>
<td>23 November 1917</td>
<td>Pehitawa 2B4C</td>
<td>Intention to confirm sale of timber to Parkes Brothers in respect of interests of one owner. Board requests that royalty for rimu and matai be raised to 1/4 per 100 feet.</td>
<td></td>
</tr>
<tr>
<td>23 November 1917</td>
<td>Hauturu East 1E4B2A</td>
<td>Intention to confirm sale of timber to Parkes Brothers. Government valuation of timber: £216. Royalty: 1s per 100 feet, with Board requesting royalty for rimu and matai be raised to 1s 4d per 100 feet.</td>
<td></td>
</tr>
<tr>
<td>23 November 1917</td>
<td>Hauturu East 1E5C2B1 (part)</td>
<td>Intention to confirm sale of timber to Parkes Brothers. Royalty: 1s per 100 feet, with Board requesting royalty for rimu and matai be raised to 1s 4d per 100 feet.</td>
<td></td>
</tr>
<tr>
<td>20 March 1918</td>
<td>Hauturu East 1E5C2B3</td>
<td>Intention to confirm sale of timber to Parker Lamb.</td>
<td></td>
</tr>
<tr>
<td>20 March 1918</td>
<td>Hauturu East 1E4B2C2</td>
<td>Intention to confirm sale of timber to Parker Lamb.</td>
<td></td>
</tr>
<tr>
<td>20 March 1918</td>
<td>Hauturu East 1E4B2A</td>
<td>Intention to confirm sale of timber to Parker Lamb in respect of the interests of one owner. Confirmation certificate not to be endorsed until further valuation of timber.</td>
<td></td>
</tr>
<tr>
<td>Date</td>
<td>Block</td>
<td>Details</td>
<td>Reference</td>
</tr>
<tr>
<td>------------</td>
<td>----------------</td>
<td>--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>------------------------------------------------</td>
</tr>
<tr>
<td>19 August 1918</td>
<td>Pukenui 187B</td>
<td>Intention to confirm sale of timber to Hawkin in respect of the interests of all but one owner. Govt valuation: nil. Sale to be at value fixed by arbitration.</td>
<td>W-MDMLB minute book 15, p 12.</td>
</tr>
<tr>
<td>20 August 1918</td>
<td>Pukenui 187C</td>
<td>Intention to confirm sale of timber to Hawkin. Sale to be at value fixed by arbitration.</td>
<td>W-MDMLB minute book 15, p 20.</td>
</tr>
<tr>
<td>20 August 1918</td>
<td>Kinohaku East 1P29B1</td>
<td>Intention to confirm sale of timber to Hawken in respect of the interests of all but two owners. Sale to be at value fixed by arbitration.</td>
<td>W-MDMLB minute book 15, p 21.</td>
</tr>
<tr>
<td>20 August 1918</td>
<td>Kinohaku East 1P29B2</td>
<td>Intention to confirm sale of timber to Hawken in respect of the interests of four owners. Sale to be at value fixed by arbitration.</td>
<td>W-MDMLB minute book 15, p 23.</td>
</tr>
<tr>
<td>Date</td>
<td>Location</td>
<td>Description</td>
<td></td>
</tr>
<tr>
<td>-----------------</td>
<td>---------------------------------</td>
<td>-----------------------------------------------------------------------------</td>
<td></td>
</tr>
<tr>
<td>21 August 1918</td>
<td>Karu o Te Whenua 3D3AA</td>
<td>Intention to confirm sale of timber to Hawken. Government MDMLB minute 15, p 25.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Valuation: £50. Sale to be at value fixed by arbitration.</td>
<td></td>
</tr>
<tr>
<td>21 August 1918</td>
<td>Kinohaku East 2[?]B3</td>
<td>Intention to confirm sale of timber to Hawken in respect of three owners. Government valuation: £160.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Sale to be at value fixed by arbitration.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Valuation: £50. Sale to be at value fixed by arbitration.</td>
<td></td>
</tr>
<tr>
<td>21 August 1918</td>
<td>Pehitawa 2B4C</td>
<td>Intention to confirm sale of timber to Lamb in respect of one owner. Government valuation: £150.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Sale to be at value fixed by arbitration.</td>
<td></td>
</tr>
<tr>
<td>21 August 1918</td>
<td>Hauturu East 1E5C2B3</td>
<td>Intention to confirm sale of timber to Lamb. W-MDMLB minute 15, p 27.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Valuation: £90. Sale to be at value fixed by arbitration.</td>
<td></td>
</tr>
<tr>
<td>22 August 1918</td>
<td>Piha 1B3A1</td>
<td>Intention to confirm sale of timber to Lamb. W-MDMLB minute 15, p 39.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Sale to be at value fixed by arbitration.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Valuation: £175. Sale to be at value fixed by arbitration.</td>
<td></td>
</tr>
<tr>
<td>22 August 1918</td>
<td>Pukeora Hangatiki 4C2D2</td>
<td>Intention to confirm resolution to meeting of owners to sell timber to Parker Lamb at ‘usual prices’. Sale to be at value fixed by arbitration.</td>
<td></td>
</tr>
<tr>
<td>22 August 1918</td>
<td>Tapuiwahine 1C1</td>
<td>Intention to confirm sale of timber to Hawken. W-MDMLB minute 15, p 42.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Sale to be at value fixed by arbitration.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Valuation: £240. Sale to be at value fixed by arbitration.</td>
<td></td>
</tr>
<tr>
<td>Date</td>
<td>Block</td>
<td>Details</td>
<td>Reference</td>
</tr>
<tr>
<td>-----------------</td>
<td>------------------------</td>
<td>-------------------------------------------------------------------------</td>
<td>------------------------------------------------</td>
</tr>
<tr>
<td>17 October 1921</td>
<td>Rangitoto Tuhua 60A1B5A (324a or 17p).</td>
<td>Intention to confirm sale of timber to Beuck subject to valuation evidence showing that a royalty of 1s per 100 feet for all timber is adequate. Term: five years.</td>
<td>W-MDMLB minute book 17, p 76. F1 365 18/3/4, ANZ Wellington.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Downloaded from <a href="http://www.waitangitribunal.govt.nz">www.waitangitribunal.govt.nz</a></td>
</tr>
</tbody>
</table>
Our awa didn’t just define the land, they also defined the people. They were road maps across our whenua that our people identified with and were identified with. What I mean by this is that particular whanau knew particular awa and puna. While we did spend much time in the ngahere our lives tended to gravitate to the awa. They were brought up with the korero, knowledge and food sources associated with those awa and puna. They looked after those awa and were kaitiaki of them. Our awa were our food basket and our source of spiritual and physical sustenance . . .

—Hoane Titari John Wi

It is our tikanga that water gives life. To us water was valued as a basic component of life which must be cared for. The relationship between humans and water is intrinsic. It is part of one’s identity. To enquire as to your parentage is expressed in te reo Māori as ‘Na wai koe?’ – literally ‘to whose waters do you belong?’ Such is the inseparability of water and people. This is in complete contrast to the western view which sees water and waterways as tradable commodities.

—Tame Tuwhangai

22.1 Introduction

The iwi and hapū of Te Rohe Pōtāe told us of their important relationship with the wai (water, waterways, and water bodies) of their rohe. They described a material culture and a way of life that evolved around harbours, rivers, lakes, streams, wetlands, and more. They relied on the fisheries in these waterways and water bodies to sustain themselves, harvesting tuna (eels), īnanga (whitebait), kanae (mullet), and kakahi (mussels), as well as many other resources. Many Te Rohe Pōtāe communities also relied on wai for transport, trade, defence, cooking, bathing, and numerous other tasks or duties. Further, as the epigraphs for this chapter describe, the significance of wai for many Te Rohe Pōtāe Māori extends well beyond the tangible. It formed (and continues to form) fundamental parts of individuals’ and communities’ identities, nourishing them both physically and spiritually.

The centrality that wai played in the lives of Te Rohe Pōtāe Māori is reflected in the multitude of waterways and water bodies that define and connect the

Map 22.1: Te Rohe Pōtae waterways and water bodies
district. Along the northern coastline are the three major harbours of the district: Whāingaroa/Raglan, Aotea, and Kāwhia. It was here that, following the landing of the Tainui waka, Māori established the district’s earliest settlements. Over time, iwi and hāpū spread further inland, following the network of interconnected rivers, streams, and wetlands that traverse the length and breadth of the district, and developed their own unique relationships, rituals, and tikanga with the wai. In this chapter, we examine how these relationships, as well as the health of the wai in the district more broadly, fared following the Crown’s arrival in the district and its gradual assumption of authority over waterways and water bodies through a number of legislative and statutory regimes.

### 22.1.1 The purpose of this chapter

The story of water in Te Rohe Pōtae is the story of two different cultures, value sets, and systems of law meeting and sometimes colliding over this taonga and resource. In this chapter, we review the significance of water for Te Rohe Pōtae Māori and the Crown. The main purpose is to consider what the Treaty’s guarantee of tino rangatiratanga, and its local expression under Te Ōhākī Tapu and associated agreements as ‘mana whakahaere’, means in water management terms. In other words, to what degree did the Crown enable Māori in Te Rohe Pōtae to exercise authority over their water and waterways/bodies (namely their taonga) as Pākehā settlement in their rohe accelerated, and to what extent did the Crown recognise and provide for Te Rohe Pōtae Māori rights and interests in and their relationship with those taonga? We seek to ascertain how any differences between Te Rohe Pōtae Māori and the Crown over the possession and exercise of authority over water and waterways and water bodies have been reconciled in Treaty terms, if at all. We also examine the effects of Crown regulation of waterways and water bodies in contributing to their marked degradation throughout the district and determine how this has affected the customary fisheries of Te Rohe Pōtae Māori.

### 22.1.2 How this chapter is structured

We begin this chapter by reviewing the findings of other Tribunal reports about waterways and water bodies. We then set out the Crown’s concessions, and the positions of the claimants and the Crown. From the differences in these arguments, we draw out the issues the Tribunal needs to consider. We go on to review the Crown’s actions, policies, and legislation regarding the allocation or use and management of water and the various waterways and water bodies in the district. These different sections have brief introductions, which clarify the existing common law with respect to water and each type of waterway and water body, including who has the right to exercise possession and control. Here, we also consider what regulatory measures the Crown adopted to manage these taonga wai, which was done even though the common law should have been sufficient to set the boundaries of Māori rights in water (including the beds and banks of rivers and lakes and similar waterways). A Treaty analysis and findings section follows each section. The chapter concludes by assessing what prejudice the Crown’s actions,
practices, policies, legislation, and omissions may have caused the claimants. Finally, a summary of our findings on waterways is listed at the end of the chapter.

22.2 Issues

22.2.1 What other Tribunals have said

In terms of rivers and other waterways, the Tribunal found in the Ika Whenua Rivers inquiry that the evidence it heard clearly established that the middle reaches of the Rangitaiki, Whirinaki, and Wheao rivers were taonga over which the hapū of Te Ika Whenua had mana and rangatiratanga. The rivers were not only a vitally important food source and means of transport and communication, but essential for spiritual and cultural well-being of the tribe. From the Te Ika Whenua perspective, the Tribunal noted how the people belong to the rivers and the rivers belong to them. By contrast to this holistic perspective, the Tribunal noted how the common law divides rivers into their separate and constituent parts: bank, bed, and water. According to the Tribunal, the common law rule \textit{ad medium filum aquae} (which assumes the owner of land bordering a non-navigable river owns to the middle line of the riverbed), conflicted with the Māori view of ownership. In the Tribunal’s view, the application of this rule was a major factor in Te Ika Whenua’s loss of title and tino rangatiratanga over their rivers. The Tribunal found that reliance on this common law rule was inconsistent with the principles and guarantees under the Treaty.

After finding that the waterways in the National Park district were significant taonga in terms of the rangatiratanga, identity, traditions, and customary use of the claimants, the Tribunal found in that inquiry that ngā iwi o te kāhui maunga ‘possessed’ their waterways in the fullest sense possible. They also agreed with the Te Ika Whenua Tribunal and the National Freshwater and Geothermal Tribunal that, under the Treaty, Māori were entitled to be given a proprietary interest in their rivers. Access to such waterways should be on Māori terms, until such time as they make a Treaty-compliant alienation. As taonga, the Crown was bound under article 2 of the Treaty of Waitangi to actively protect their customary ownership and use of the waterways, until they wished to relinquish them.

In the National Park report, the Tribunal reviewed how Māori in the district lost possession of and authority over their waterways. It noted that under the English Laws Act 1858, the common law applied in the colony, so far as applicable to

circumstances of the colony from 14 January 1840, the date when William Hobson became New Zealand’s first lieutenant-governor. In examining the nature of that law, particularly the doctrine of aboriginal title, and the *ad medium filum aquae* rule, the Tribunal noted how the doctrine of aboriginal title was recognised in the courts of New Zealand, leading to questions around the extent of pre-existing Māori rights in the foreshore and seabed, and in water more generally. In terms of the *ad medium filum aquae* rule, the Tribunal referred to the Coal-mines Act Amendment Act 1903 because it restricted the rule solely to non-navigable rivers and streams. This legislation vested the beds of navigable rivers in the Crown. However, that statute did not apply in the National Park inquiry district, as none of the rivers were navigable.

The Tribunal further found that through the operation of the common law *ad medium filum aquae* rule, land alienations, and various statutes such as the Native Land Amendment and Native Land Claims Adjustment Act 1926, the Water and Soil Conservation Act 1967, and the Resource Management Act 1991 (RMA), Māori in that district lost possession and authority over many of their significant waterways. In terms of land alienations and the impact of the *ad medium filum aquae* rule, the Tribunal found that the doctrine embodied concepts quite alien to Māori. The common law separated waterways into constituent parts and vested ownership of the waterbed in the person or persons who owned the adjoining land. This stood in contrast to the Māori worldview.

Given the discrepancies between British and Māori understandings of waterways and the effects that the alienation of land would have on Māori possession and authority, we are of the view that the Crown was under an obligation to ensure that ngā iwi o te kāhui maunga fully understood the implications of these transactions. Accordingly, we believe that the onus of proof should shift to the Crown. It should be the Crown that needs to prove on a case-by-case basis, that Māori knowingly and willingly relinquished possession and control over the district’s waterways. This approach is consistent with the contra proferentem principle, which holds that, where there is an ambiguity, an agreement or contract should be ‘construed against the party which prepared it.’ Land sales in our district were overwhelmingly initiated by the Crown. Thus, for our purposes, it is appropriate that any ambiguities in those deeds of sale (and other means of alienation) should be construed in favour of ngā iwi o te kāhui maunga.

In the *Whanganui River Report*, the Tribunal dealt with the largest navigable river in New Zealand, and found that the oral history of the claimants established

---

that it was a taonga of the iwi of the Whanganui River.\textsuperscript{16} It found that while Māori did not conceptualise their possession of the river as an English-style ‘ownership’, this concept was the closest equivalent.\textsuperscript{17} The Tribunal noted that possession is, of itself, common law proof of ownership.\textsuperscript{18} In terms of the general law and the Treaty, ‘that which Māori possessed had to be determined by reference to what they possessed in fact and not by reference to what may be legally possessed in England.’\textsuperscript{19} It further found that what Māori possessed, and therefore owned, was a taonga, including possession and ownership of the water, ‘until it naturally escaped to the sea.’\textsuperscript{20} In the Central North Island report, the Tribunal agreed with these findings.\textsuperscript{21}

In the \textit{Stage 1 Report on the National Freshwater and Geothermal Resources}, the Tribunal listed several indicators of possession or ownership to determine whether a waterway is a taonga.\textsuperscript{22} These include evidence of the exercise of rangatiratanga and kaitiakitanga over the resource and whether there is evidence that the resource is considered to have a mauri. Other indicators included any genealogical associations, its spiritual and ritual use, whether it was celebrated or referred to in tribal proverbs or waiata, the location of settlements, the knowledge of and location of taniwha, and whether it has been relied upon as a food source or travel route or both. The Tribunal found:

water bodies were taonga over which hapū or iwi exercised tino rangatiratanga and customary rights in 1840, and with which they had a physical and metaphysical relationship under tikanga Māori (Māori law). Their rights include authority and control over access to the resource and use of the resource. This authority was sourced in tikanga and carried with it kaitiaki obligations to care for and protect the resource. Sometimes, authority and use was shared between hapū but it was always exclusive to specific kin groups; access and use for outsiders required permission (and often payment of a traditional kind).\textsuperscript{23}

That Tribunal, after finding that the claimants’ rangatiratanga rights included the possession or ownership of such taonga as guaranteed by the Treaty, noted that Māori rights and interests in their water bodies, however, were not left completely unaltered by the Treaty.\textsuperscript{24} Rather, they changed in three ways. First, because the

\textsuperscript{18} Waitangi Tribunal, \textit{Whanganui River Report}, p 293.
\textsuperscript{19} Waitangi Tribunal, \textit{Whanganui River Report}, p 291.
\textsuperscript{20} Waitangi Tribunal, \textit{Whanganui River Report}, p 263.
\textsuperscript{22} Waitangi Tribunal, \textit{The Stage 1 Report on the National Freshwater and Geothermal Resources Claim}, pp 51–61.
\textsuperscript{23} Waitangi Tribunal, \textit{The Stage 1 Report on the National Freshwater and Geothermal Resources Claim}, p 75.
\textsuperscript{24} Waitangi Tribunal, \textit{The Stage 1 Report on the National Freshwater and Geothermal Resources Claim}, pp 77–78.
Treaty provided for Pākehā to settle and make New Zealand their home, they would need access to water. In selling or leasing land through Treaty-compliant alienations, the claimants may have agreed to share their waterways. However, such shared arrangements did not amount to the relinquishment of their rangatiratanga. Secondly, the Crown has a legitimate role to play in the management of water resources, as provided for under article 1. Thirdly, the Treaty brought a new people to this country and established a bicultural nation. Under the principle of options, Māori gained the option of walking in both worlds. They gained protection of their property rights as citizens and they gained the right to development. The Tribunal noted its findings were general in application and were generic in nature. Māori, the Tribunal stated, had rights and interests in their water bodies for which the closest equivalent in 1840 was ownership.

22.2.2 Crown concessions

The Crown accepted that particular waterways may be taonga to Te Rohe Pōtae Māori and that it therefore has an obligation under article 2 of the Treaty to take ‘reasonable steps in the circumstances’ to actively protect those specific waterways. The Crown acknowledged the importance of rivers, lakes, and streams to Te Rohe Pōtae Māori as a source of customary food resources, and cultural and spiritual sustenance.

The Crown noted the large amount of tangata whenua evidence presented concerning issues relating to waterways and expressing concern at the current environmental health of specific waterways. It acknowledged that ‘[t]here is no doubting the importance of these water resources to tangata whenua.’ Furthermore, the Crown agreed that ‘[t]he relationship exists beyond mere ownership, use, or exclusive possession, it concerns personal and tribal identity, Māori authority and control, and the right to continuous access subject to Māori cultural preferences.’ However, it noted some qualifications to this as outlined in the following section. Overall, the Crown’s general approach was to advise the Tribunal to assess each waterway and its history on a case-by-case basis.

29. Submission 3.4.283, p 51.
30. Submission 3.4.283, p 51.
31. Submission 3.4.283, p 52.
32. Submission 3.4.283, p 52.
22.2.3 Claimant and Crown arguments
The claimants\(^{33}\) describe water and waterways as central to Te Rohe Pōtae Māori cultural, spiritual, and physical well-being and their customary way of life.\(^{34}\) Taniwha and other tikanga were traditionally essential to Māori governance of water. Taniwha for example, denoted where people could traverse water, use it or leave it alone.\(^{35}\)

Prior to European settlement transforming Te Rohe Pōtae into farmland and exotic forests, claimants asserted that harbours, estuaries, and lagoons, and the large number of rivers, streams, and swamp lands, were not only sources and transport routes, but food-baskets their tūpuna used to sustain themselves.

The claimants contended that the Crown assumed the ownership or management of these resources contrary to the principles of the Treaty of Waitangi. In doing so, it implemented policies, practices, and legislation resulting in the mismanagement of these water resources. In terms of harbours, they point to Raglan/Whāingaroa, Aotea, and Kāwhia, traditionally considered major food baskets for the local iwi. The assumption of Crown control through harbour boards undermined the claimants’ kaitiakitanga, rangatiratanga, and ownership over these areas.\(^{36}\) The evidence, according to the claimants, indicates that the Crown or its agents have ignored concerns of tangata whenua with respect to the management of these harbours and failed to work in partnership with them.

Claimant counsel submitted that water quality has deteriorated in the rohe due to drainage, forest clearance, pollution, farm runoff, and erosion.\(^{37}\) During the hearings, tangata whenua criticised the Crown for allowing the health of the waterways to decline. The claimants argued that many of these changes have occurred in their lifetime and they have felt powerless to halt them.\(^{38}\) Counsel submitted that no account was taken of Māori values in waterways in the common

---

33. Including Wai 440 (submission 3.4.198); Wai 551, Wai 948 (submission 3.4.250); Wai 846 (submission 3.4.251); Wai 1469, Wai 2291 (submission 3.4.228); Wai 1926 (submission 3.4.242); Wai 1992 (submission 3.4.173); Wai 556, Wai 616, Wai 1377, Wai 1820 (submission 3.4.279); Wai 1500 (submission 3.4.160, 3.4.160(a)); Wai 1606 (submission 3.4.169(a)); Wai 1824 (submission 3.4.181); Wai 399 (submission 3.4.159); Wai 762 (submission 3.4.170); Wai 836 (submission 3.4.131); Wai 928 (submission 3.4.175(a), submission 3.4.175(b)); Wai 1255 (submission 3.4.199); Wai 1480 (submission 3.4.176); Wai 1640 (submission 3.4.191); Wai 1704 (submission 3.4.297); Wai 1812 (submission 3.4.184); Wai 48, Wai 81, Wai 146 (submission 3.4.211); Wai 987 (submission 3.4.167); Wai 1147, Wai 1203 (submission 3.4.151); Wai 1230 (submission 3.4.168); Wai 1447 (submission 3.4.187); Wai 535 (submission 3.4.243(a)); Wai 691 (submission 3.4.246); Wai 788, Wai 2349 (submission 3.4.246(a)); Wai 849 (submission 3.4.194); Wai 868 (submission 3.4.247); Wai 870 (submission 3.4.202); Wai 1112, Wai 1113, Wai 1439, Wai 2351, Wai 2353 (submission 3.4.226); Wai 1448, Wai 1495, Wai 1501, Wai 1502, Wai 1592, Wai 1804, Wai 1899, Wai 1900, Wai 2125, Wai 2126, Wai 2135, Wai 2137, Wai 2183, Wai 2208 (submission 3.4.237); Wai 1588, Wai 1589, Wai 1590, Wai 1591 (submission 3.4.143); Wai 1908 (submission 3.4.236); Wai 2087 (submission 3.4.218); Wai 125 (submission 3.4.210); Wai 775 (submission 3.4.244); Wai 1327 (submission 3.4.249).
34. Submission 3.4.130(b), p 88; submission 3.4.115, p 13.
37. Submission 3.4.115, p 15.
38. Document Q6 (Burgess), p 7.
law or the relevant water legislation until the RMA, and even that does not go far enough to address their concerns.  

Waterway degradation thus constitutes a major grievance for the claimants, not least because the loss of mauri has led to a loss of marine species, has had a detrimental impact on taniwha, and has affected their ability to use their waterways in traditional ways.

The claimants argued that extraction regimes and town sewage schemes have polluted their waterways. They allege that repeated disregard for Māori cultural concerns characterises the history of sewage disposal in Te Rohe Pōtae. The discharge of human waste into waterways is offensive to Te Rohe Pōtae Māori, as they believe sewage should not enter food-gathering places. Yet, a number of councils in Te Rohe Pōtae have installed sewage systems that leach into waterways. Claimant counsel submitted that sewage discharges have negatively affected the mauri of the water and diminished the claimants’ ability to undertake effective kaitiakitanga and food gathering practices. The impact for the claimants has been the diminishment of their mana and their practising of rangatiratanga.

Northern Rohe Pōtae Māori were also concerned that failures to adequately regulate and control the use of septic tanks (such as those in Pirongia) have resulted in leaking into surrounding waterways. They referred to Piopio and the operation of the Raglan sewage plants as examples of the alleged failure of relevant historical legislation and now the RMA, to ensure appropriate consideration of their interests in sewage plant design and systems.

In reply, the Crown acknowledged that the extensive changes in land ownership accompanying colonisation incrementally and cumulatively caused major dislocation to Māori relationships with their waterways. Many of the underlying issues, the Crown submitted, are therefore ones that relate to, or arise from, patterns of land alienation.

The Crown contended that it has the right to make laws for good governance under article 1 of the Treaty and that other citizens have interests in water. The Crown noted that it has a legitimate role to play in the management of water, a matter conceded by claimants in the National Freshwater and Geothermal Resources inquiry. The Crown preferred that issues concerning Māori rights and interests in water and the current and proposed regimes for fresh-water management be left for consideration in that inquiry.

In terms of the historic management regime, the Crown noted the application of the common law from 1840 with respect to waterways and the gradual introduction of legislation after the rapid process of land alienation from Māori during

39. Submission 3.4.130(b), p 89.
41. Submission 3.4.130(b), p 88.
42. Submission 3.4.115, p 16.
43. Submission 3.4.115, p 16.
44. Submission 3.4.115, p 16.
45. Submission 3.4.130(b), p 88.
46. Submission 3.4.283, p 53.
the nineteenth century. The Crown submitted that the implementation of a management regime did not, in itself, cause environmental effects on waterways. In the Crown’s view, a case-by-case analysis is necessary in light of the prevailing circumstances of the time to ascertain causation.

The Crown also submitted it must treat Māori equitably with non-Māori in the application of its policies and practices in respect of waterways. Many people have interests in waterways for their various uses and activities. Thus, the Crown must balance the competing public interests in water, including any environmental impacts caused by the water activities. Such a balancing exercise is provided for in the Water and Soil Conservation Act 1967. In the Crown’s view, more recent legislation such as the RMA, the Conservation Act 1987, and the Local Government Act 2002, provides a sounder, more comprehensive basis for the consideration of Māori interests in taonga such as waterways.

The Crown argued that the issue of whether the legislation, policies, and practices of the Crown contributed to the environmental degradation of waterways depends on the substantiation of a causative link between a particular Crown action, omission, or policy and the degradation of the waterway in question. The Crown submitted that the appropriate inquiry is not whether the Crown has caused environmental impacts, but whether the Crown has applied environmental policies equally between Māori and non-Māori and taken reasonable steps to protect environmental taonga. The Crown contended that the Treaty does not impose on it a general obligation to prevent all negative environmental impacts on waterways in the inquiry district.

The Crown pointed out that in terms of the environmental health of the streams and rivers in the district catchments, ‘no evidence was provided to the inquiry’, which ‘does not contain any evidence’ about the environmental health of the Mangapiko and Waitomo Streams. In regard to the Waipā River, the Crown submitted that it had adopted a more holistic approach to the management of the river from the 1950s and water quality has improved in some reaches of the river. It argued that the RMA provides a framework for considering and addressing environmental effects for all rivers, including in this district, while the Ngā Wai o Maniapoto (Waipā River) Act 2012 addresses environmental health issues for that river in more detail.

47. Submission 3.4.283, pp 54–55.
48. Submission 3.4.283, p 56.
49. Submission 3.4.283, p 56.
50. Submission 3.4.283, p 51.
52. Submission 3.4.283, p 57.
53. Submission 3.4.283, pp 50–51.
54. Submission 3.4.283, pp 50–51.
55. Submission 3.4.283, p 51.
57. Submission 3.4.283, p 65.
58. Submission 3.4.283, p 65.
In other submissions, Crown counsel accepted that deforestation can increase the risk of stream bank erosion and sedimentation, disturb stream channels, and negatively affect stream biodiversity. However, the Crown submitted that it was not possible to assess, from the available evidence in this inquiry, the extent to which any of these environmental effects had occurred in this inquiry district. Nor could it be assumed that all the environmental effects alleged had in fact occurred. Counsel submitted that over time, the Crown has adopted a range of methods to reduce these environmental effects.

22.2.4 Issues for discussion
Based on the arguments advanced by claimants and the Crown, previous Tribunal findings, and the Tribunal’s statement of issues, we focus on the following questions in this chapter:

- What is the significance of water and waterways/bodies to the iwi of Te Rohe Pōtae. How were they managed traditionally and what customary use has continued?
- To what extent, if at all, did possession and authority over water and their waterways/bodies pass out of Māori hands? Did Māori in Te Rohe Pōtae knowingly and willingly cede authority over those waterways/bodies and associated fisheries?
- Did the Crown recognise and provide for Te Rohe Pōtae rights, interests, tikanga, and values upon its assumption of possession and control over water?
- Has and is the Crown’s regime for the management of water and waterways/bodies and fisheries consistent with the Crown’s obligations under the Treaty of Waitangi?

22.3 The Importance of Water to Te Rohe Pōtae Māori and its Regulation by the Crown

22.3.1 Water as taonga
Te Rohe Pōtae Māori consider water a taonga. Their relationship with wai in the district was imbued with respect for the mauri, or life-force, of that wai. The claimants told the Tribunal that Te Rohe Pōtae Māori traditionally nurtured, protected, and cherished water and waterways.

During the inquiry, the claimants referred often to Tangaroa, the guardian of the ocean, and his wife, Hinemoana, to explain the centrality of wai to the people of the district. Creation stories tell of how new life and energies sprung from relationships and balance between the gods.

59. Submission 3.4.310(e), p192.
60. Submission 3.4.310(e), p193.
Tikanga ensuring the management and care of water, then, was inextricably linked to the health of the gods, and the balance of the natural world. Claimant Lynda Toki described the importance of this tikanga in her evidence:

My koroua explained when I was a child that everything below the ground was Papatuanuku’s It was what she needs to maintain her health to sustain us. Everything above the ground was for our use in moderation but we must look after it and respect

---

1. Sean Ellison, transcript 4.1.3, pp 198–199

Tikanga ensuring the management and care of water, then, was inextricably linked to the health of the gods, and the balance of the natural world. Claimant Lynda Toki described the importance of this tikanga in her evidence:

My koroua explained when I was a child that everything below the ground was Papatuanuku’s. It was what she needs to maintain her health to sustain us. Everything above the ground was for our use in moderation but we must look after it and respect

---

the balance, and he said to leave her clothes on. Look after the waterways as they flow to Hinemoana like your blood to your heart. Don’t do anything to upset the balance of Hinemoana as she is the one who supports Papatuanuku and connects all people to land and sea. If either is out of balance, one or both are likely to have a heart attack . . . I was asked to watch how she heals herself and when the time came I was to help her. I was shown how to maintain the balance and how to use our resources to keep ourselves and our environment healthy.\(^63\)

Te Rohe Pōtae Māori consider the mauri of water so significant that they see water and humans as intrinsic to one another; indeed, water is an inseparable part of human identity. The mauri of water is expressed as both ‘a spiritual presence and physical health’, and Te Rohe Pōtae hapū were kaitiaki responsible for maintaining this mauri, which could, if not maintained properly, be lost.\(^64\) Claimant Tāme Te Nuinga Tuwhangai explained: ‘We identify through, and are linked by, the mauri of the rivers, streams, puna, lakes and wetlands. Where the mauri is strong, water provides and sustains physical and spiritual life for the people and other taonga taiao.’\(^65\)

This interconnectedness is also emphasised in the explanations of the importance of Te Puna o Rona in the Ngāti Hikairo Freshwater Management Plan for 2005–15:

The puna symbolises our life-line, it is a network of veins flowing from one source. Our dependence upon its existence is both tangible and intangible. The tangible being that we need water to survive, we have to resource it physically. It is the only source of fresh water in the whole Kāwhia sand-dune belt. As long as there is water here there is life. There in turn is the reference to the intangible, mana, if we can protect the life giving qualities of the puna, then we in turn retain our occupation of the land.\(^66\)

Water was used by tohunga, including with karakia, to heal patients as part of rongoā treatment, and in tohi ceremonies.\(^67\) But the water took on the status of taonga only when contained in a river, lake, puna, or harbour.

Te Rohe Pōtae Māori consider, for example, the Waipā River and other associated rivers and streams in the district as their awa tūpuna.\(^68\) Lakes, rivers, and harbour areas were also culturally significant because they were a vital source of food.\(^69\) In terms of land associated with water, the foreshore was described as centrally important, particularly for many coastal hapū. Claimants Angeline Ngahina Greensill and Sean Dansey Ellison said that the foreshore is important because ‘it

\(^63\) Document H3 (Toki), pp 10–11.
\(^64\) Document L7, pp 5–6; see also doc M31 (Greensill), p 1; doc M34 (Martin), p 1.
\(^67\) Submission 3.3.1020, p 246; doc L14 (Kereopa), pp 17, 33; doc P8 (Maniapoto et al), pp 2–3.
\(^68\) Document N51 (Thorne), pp 15–16; doc P8, p 2.
\(^69\) Document J14(b); doc J15 (Forbes), p 8; doc L1, p 6; doc N16(a) (Gilmore), pp 8–9; doc N48(a), p 17; transcript 4.1.1, p 91.
is a place of leisure, and a storehouse of food’. They were careful to emphasise its cultural and spiritual importance, too: ‘The foreshore is a sacred space, our place of prayer, our church. Ranginui in the heavens above is the roof, and Papatūanuku is the foundation and the floor. It is where we sense and feel the divine presence of all the gods and spiritual influences at all times.’

Rovina Maniapoto explained how whakapapa linked Waikato and Maniapoto and how the two iwi communicated and facilitated relationships between them using their waterways, stating: ‘the Pūniu River which came from Rangitoto and all the other little riverlets and it came down and joined the Waipā and the Waipā came down and joined the Waikato. So up and down they went.’

Māori also used their own laws, or tikanga, to manage their relationship with those waterways. In a world without written language, those tikanga were handed down from generation to generation through histories, stories, songs, sayings, place names, carvings, and other knowledge, and it was practised by the kaitiaki of the waters. Their management practices included the use of rahui, the stories of taniwha, and seasonal use of the resources, thereby allowing regeneration during off seasons.

In the Central North Island inquiry, the Tribunal noted that waters ‘that are part of a water body such as a spring, lake, lagoon, or river were possessed by Māori’. In Māori thought, ‘the water could not be divided out, as the taonga would be meaningless without it.’ The Tribunal then accepted that, where, on the evidence, Central North Island iwi and hapū could establish their water and waterways to be taonga, the waters could not be divided out and had to be considered a component part of that taonga. As for estuaries, wetlands, and lagoons, the same principles apply. Given the nature of the evidence before us, we accept the approach taken in the Central North Island inquiry and extend it to include harbours, as discussed in section 22.5.

### 22.3.2 The common law and the Crown’s regulation of water

The English common law was applied in New Zealand from 14 January 1840 ‘so far as applicable to the circumstances of the said Colony of New Zealand’; later confirmed by section 1 of the English Laws Act 1858 (to avoid doubt) and section 2 of the English Laws Act 1908, the effects of which are now preserved by section 5 of the Imperial Laws Application Act 1988.

The common law recognised no ownership in water, as it was regarded as a common resource for all. What common law did recognise was the right of landowners to access that water if it flowed on or bordered their property. Any property
in water could only be acquired by containment.\textsuperscript{75} A person who extracted or dammed it could, in such a circumstance, acquire an enforceable interest in it.\textsuperscript{76}

From 1840, the Crown’s authority in terms of water, water-bodies, and waterways in New Zealand was exercised through the common law and a range of water related statutes enacted to address the circumstances of the colony.

For water itself, the Crown enacted the Gold Fields Act 1862, the Mines Act 1877, various provincial laws during the existence of Provincial Government in New Zealand, the Wellington Waterworks Act 1871, and the Municipal Corporations Waterworks Act 1872 (the last two statutes permitting municipal corporations to extract water). The Municipal Corporations Waterworks Act 1872 deemed water extracted to be the property of councils authorised to extract the water and undertake water-works.\textsuperscript{77} These statutes demonstrate the Crown’s determination to regulate access to water. The Public Works Act 1876 and various iterations of public works legislation were also used to take land to construct public works related to water and waterways.

The Crown tended to regulate access when disputes arose between different factions of Te Rohe Pōtae Pākehā settlers concerning access to water. For example:

when a coal company wanted to extract coal from seams under the bed of the lower Waikato River, the Crown passed legislation (Coal-mines Amendment Act 1903) declaring that the beds of navigable rivers (and therefore the rights to minerals on and below such beds) were vested in the Crown. What constitutes a navigable river was not conclusively defined in the 1903 legislation, and has not been substantively addressed by the courts until very recently. However, the Waipā River case study demonstrates that the Marine Department took the view that the Waipā River between Ngaruawahia and Ōtorohanga, and the Mangaokewa River as far upstream as Te Kūiti, were navigable rivers. So legislation passed in 1903 to address one relatively narrow issue had wider consequences elsewhere in the country, in the process affecting the rights that Te Rohe Potae Māori possessed to rivers in their district.

When private enterprise wanted to develop hydro-electric power schemes, the Crown stepped in to ensure that sites capable of hydro-electric generation were used to their full capacity and in the interests of the nation. The legislation to effect this ([the] Waterpower Act 1903) vested in the Crown the sole right to use water for hydro-electric generation purposes. Having acquired this right, the legislation then allowed the Crown to licence the use of the water for this purpose by others. The Wairere Falls and Mokauiti power schemes, examined in the topic study on hydro-electric power development in the Mōkau catchment, relied on licences issued by the Crown. Although there was a nod in the statute towards other rights to water, which could include rights held by Māori at power generation sites, there was no investigation into whether such rights existed, thereby avoiding the need to consult, obtain

\textsuperscript{75} Waitangi Tribunal, \textit{He Maunga Rongo}, vol 3, p 1261.
\textsuperscript{76} Waitangi Tribunal, \textit{He Maunga Rongo}, vol 3, p 1261.
\textsuperscript{77} Municipal Corporations Waterworks Act 1872, ss 2–3.
agreement, and where necessary compensate, if those other rights were affected. Both Wairere Falls and the rapids on the Mokauiti River were pa tuna (eel fishing) sites.

When there was a flood, as became more prevalent once the forest cover was removed from hillsides, enabling legislation made it possible for the Crown and local authorities to make changes to the waterways such as stopbanks, dredging and channel straightening. For these works, any private rights (including Māori land property rights) that got in the way of implementing a river control scheme could be removed by use of the Public Works Act.

The Waipā River case study also identifies the strong influence on the environment of drainage boards, established to drain the large swamps of the valley floor. Often when these boards were established, the land title pattern in the drainage district was one of a mix of partly European-owned and partly Māori-owned swampland. However, drainage of the swamps became the dominant feature, whether the Māori landowners wanted that or not.\textsuperscript{78}

The Crown also legislated to control access to underground water, authorising the establishment of underground water authorities with responsibility for controlling, regulating, limiting, or prohibiting the taking and use of underground water and tapping underground water, controlling bores, drilling, and extraction.\textsuperscript{79} Such agencies were linked with local authorities through membership and voting procedures.\textsuperscript{80}

Thus, the Crown took authority over water and waterways through a combination of means including purchasing, enacting legislation, and through the establishment of local authorities, to which responsibility for the management of waters and rivers was delegated. Māori rights under the Treaty of Waitangi and common law (through the doctrine of aboriginal title) were either not well understood, or actively disregarded in favour of a management scheme that assumed only the Crown had the right to regulate access and use to water. This water management regime lacked recognition or provision for Māori rights and interests.

The following case studies demonstrate the evolution of water management by the Crown and its delegates and the responses of Te Rōhe Pōtae Māori.

**22.3.3 The common law and the Crown’s possession of water**

The cultural and spiritual significance of the Mōkau River and its tributaries is discussed in section 22.3.7.2. Te Rōhe Pōtae Māori considered the water and the river important taonga. In terms of the Mōkauiti River, the evidence before the Tribunal indicates that it too was a taonga. It was well-known to have an ‘exceptional’ tuna population and is a key site of customary fishing for Māori living in the Ōhura Valley to this day.\textsuperscript{81}

\textsuperscript{78} Document A148 (Alexander), pp 203–204.
\textsuperscript{79} Underground Water Act 1953, s 8.
\textsuperscript{80} Underground Water Act 1953, ss 3–6.
\textsuperscript{81} Document L14, p 4; doc L14, pp 27–28; transcript 4.1.17, p 745.
The Crown guaranteed Te Rohe Pōtae Māori their ability to exercise tino rangatiratanga over their taonga under article 2 of the Treaty of Waitangi. The next section explores whether the Crown protected these two river taonga in a manner consistent with its Treaty obligations.

The Water-power Act 1903 granted the Crown the sole right to use water in lakes, falls, rivers, or streams for the purpose of generating or storing electricity or other power. This right vested in the Crown was, however, ‘subject to any rights lawfully held’. This proviso should have been sufficient to protect existing Māori rights and interests recognised by the common law through the doctrine of aboriginal title to the falls and fisheries. Under the legislation, the Governor could also delegate to any local authority by order in council the right to use water from any lake, fall, river, or stream for the purpose of generating electricity for lighting or motive power. The link with the public works legislation ensured that the Governor was able to acquire (as for a public work) any existing rights or any lands necessary for utilising water for the generation or storage of electrical power.

The power schemes at Wairere Falls on the Mōkau River and Mōkauiti both relied on Crown-granted licences to use water for hydro-electric generation. Local authorities rather than the Crown constructed these power schemes. In 1914, the Waitomo County Council initially promoted the first of these schemes, but for various reasons did not pursue it. A later attempt in 1917 also failed to eventuate. However, the 1917 initiative did extract from the Public Works Department an agreement that a licence to use the river could be issued, but the department wanted to visit the site before making a final decision to be sure the site ‘was not also attractive to the Crown’. The Crown was essentially according itself first option to use the waterway for power generation. Officials from the Public Works Department inspected Wairere Falls in June 1917, finding that there was not sufficient data on river flows to inform the scheme proposal. Additionally, the Crown advised developers they would have to pay for the use of the water for power generation.

In 1919, the dam proposal was again revived. Public meetings were held to discuss the scheme, but there is no indication that Māori were specifically consulted. If they were not affected landowners, the Public Works Department appeared to presume that they had no interest in the development of the Wairere Falls over and above that of the general public.

When the application for consent was made for the scheme in 1924, the Public Works Department gave no consideration to whether Māori or anyone else held any existing lawful rights to the water or river at Wairere Falls. Had they

82. See, for example, the Water-power Act 1903, s 2.
83. Water-power Act 1903, s 3.
84. Water-power Act 1903, s 2.
85. Document A147(b) (Stirling), pp 136–137.
86. Document A147(b), p 137.
87. Document A147(b), p 137.
88. Document A147(b), p 137.
89. Document A148, p 403.
investigated, the potential to establish Māori rights and interests recognised by the common law through the doctrine of aboriginal title to the falls and fisheries should have been considered. There was also Māori land on the right bank, above and below the falls. This was the location of Karu-o-Te-Whenua B5A (30 acres) Māori land block. In 1904, an area of 4 acres 1 rood 20 perches was taken from the block for Aria Road, which passed across it to the adjacent bridge. The Public Works Department took far more land than required for this road in 1904, and the area it acquired covered a ‘substantial length’ of riverbank. The evidence indicates that owners of this land knew nothing about the advanced nature of the proposal for the power scheme until it was too late.

Historian Bruce Stirling points out that, when the owners of Karu-o-Te-Whenua B5A heard of the plans to dam their river, ‘they petitioned Native Minister Coates in 1921, warning that the land was a site of significance to them’. The petition was sent by Poutu Patupatu on behalf of Te Aue Kaahu, Te Ruhi Kaahu, and Wehewehe Kaahu (successors to the land’s owner, Kaahu Huatare), and it stated:

This land was reserved from the time of our ancestors down to our father Kaahu Huatare. He applied to the Native Land Court that it be set aside as a reserve and the reserve contained the pa which took in those portions used for eel weirs. The fact of this portion being a reserve has been held inviolate even by us. Certain persons have approached us with a view of allowing them to cause certain operations to be done on the reserve. . . . They have intimated to us that they are applying to the Government for authority.

The Minister of Native Affairs obviously did not have the requisite authority to stop the scheme application from proceeding, because the Crown provided an agreement in principle, recorded in a letter to member of Parliament W T Jennings signed by the Minister of Public Works on 6 October 1922.

The following year the Wairere Electric-power Board was established, and the Crown consented to the power scheme pursuant to section 5 of the Public Works Amendment Act 1908. In October 1924, it issued a 42-year licence. This licence authorised the use of up to 100 cubic feet per second of water for the purpose of generating power. The licence specified a rental to the Crown of one shilling per annum per kilowatt of maximum output.

The scheme was finally commissioned in 1925. In November of that year, the land used for the construction of the power-house site was taken under the Public...
Works legislation. This land is on the left bank of the Mōkau River above and below Wairere Falls. It was not Māori land at the time it was taken. However, the owners of Karu-o-Te-Whenua block tried again to get the surplus land taken for Aria Road on their side of the river returned. The Crown kept this additional land despite the owners' requests for its return, ostensibly for related buildings needed for the power scheme.

In 1927, one of the earlier Māori petitioners to the Native Minister in 1921 began to complain about the effects of the power scheme on their pā tuna (eel weirs) at Wairere. He wrote to the Native Minister seeking compensation for the confiscation of eel weirs and the acquisition in the following terms:

Greetings to you and your Government sitting in the New Zealand Parliament. This is to inform you, o Honourable Native Minister, that a block of 30 acres and 2 roods from the Te Karu-o-te-whenua block was set aside by Kaahu Huatere for himself on account of the eel weirs on the waterfall. There is one eel weir on the waterfall and another at the foot thereof. These eel weirs were handed down from the time of the ancestors even to Kaahu Huatere's days. These eel weirs are of great importance, and have been kept sacred from the ancestral days even to the days of Kaahu Huatere. These have been taken under the Public Works Act by the Wairere Power Board. This is a prayer to you the Honourable Native Minister to consider this undue hardship which has been occasioned by the confiscation of these very important weirs which has been handed down from the days of our ancestors even to Kaahu Huatere's days. It is mete and just that compensation should be paid for depriving the owners of these eel weirs, and also for the acquisition of the land by the Wairere Power Board.

From us, the children of Kaahu Huatere.

100. Document A147(b), pp141–146.
102. Te Auwe Kaahu and three others, Te Kūiti, to Native Minister, 1 July 1927, attached to Native Minister to Minister of Public Works, 22 July 1927 (doc A148(a), vol 3, pp13–16).
The Public Works Department passed the letter to the Wairere Electric-power Board for a response.\textsuperscript{103} The response from the board’s engineer followed a discussion at a board meeting. One member claimed knowledge of an eel weir placed some distance below the falls and downstream from the point of re-entry of the turbine tail-race. The other members claimed no knowledge of any weirs despite all being resident in the district for many years.\textsuperscript{104} The engineer also claimed that there was no evidence of eel weirs within the vicinity of the falls during the construction of works at the falls. The engineer also stated that no Māori land was taken for the scheme.\textsuperscript{105} The Public Works Department did nothing further to investigate the matter. Yet the records in the Māori Land Court showed that there were eel weirs within the vicinity of the falls and that the Crown kept land that was surplus to land taken from the Karu-o-Te-Whenua B5A block for a road reserve.

In terms of the scheme itself, the initial generator installed in 1925 had a capacity of 490 kilowatts. Additional generators were installed in 1938 (240 kilowatts), and 1952 (825 kilowatts).\textsuperscript{106} In doing so, more water was required to power the turbine generators. In 1938, that required an amendment to the licence. This was a further opportunity for the Crown to investigate the nature of any lawful Māori rights in the vicinity. It did not do so, nor did it consult with Māori. Rather, the Minister granted consent and the licence was amended increasing the water draw-off from 100 to 150 cubic feet per second.\textsuperscript{107} An amendment to the rental provision, retained the one shilling per annum per kilowatt of maximum output for the first 470 kilowatts per annum, and set the rental for any additional electricity generated above that figure at £1 per kilowatt of maximum demand.\textsuperscript{108} This latter rental complied with the rates set out in the Water-power Regulations 1934. Following the amalgamation of the Wairere Electric Power Board with the Waitomo Electric Power Board in 1976, further work on the dam was undertaken with the Crown providing 90 per cent of the finance required subject to a long-term repayment plan.\textsuperscript{109}

Although a range of Crown agencies were consulted about these works,\textsuperscript{110} there is no evidence that Māori interests were considered, not even when work was completed in the 1970s.\textsuperscript{111} At Wairere Falls today, there is a 2.5 metre high concrete dam constructed across the river at the top of the falls to create a small head-pond and allow the water to be drawn off into an intake channel on the true left (southern) bank. The water then drops through the power station.

\begin{footnotesize}
\end{footnotesize}
turbines before being discharged back into the river below the falls. The power station is a run-of-the-river scheme with little storage capacity behind the dam.112

While there is no evidence of the Crown consulting with Māori about the power scheme, the record of inquiry contains several references to tuna. The first relates to a report from the Auckland Acclimatisation Society in 1948 regarding their trapping of eels to prevent predation on trout and ducklings. Evidently, during tuna runs, tuna were subject to electric shock and were then caught at the screens on the head race. At that point, members were able to rake and gaff approximately 3,000 eels with another 500 being destroyed in the turbines.113 In his evidence, claimant Peter Stockman told of how he used to help his grandfather remove trailer-loads of electrocuted tuna from the dam’s surge chambers. They were forced to feed them to their pigs ‘as they were unfit for human consumption’.114

The second mention was an observation on the existing intake screens, ‘designed to keep rubbish (such as timber or dead stock) out of the intake leading to the turbines’115 Stirling noted that officials said the screens were ‘ineffective in excluding eels,’116 meaning they passed through the screens and were killed by the turbines:

It was recommended in 1977 that ‘some other and more effective means [be] found to exclude eels.’ The engineers [response] – lacking in fisheries expertise – was that a temporary mesh screen be laid over the main screen during the ‘eel run,’ which they believed was ‘of relatively short duration.’ A mesh of 25 × 25 mm would ‘probably’ prevent the entry of larger tuna, while a catch basket beyond the screen could trap smaller tuna for periodic removal. They added: ‘If the eels are of the right variety they might even be a commercial proposition.’117

These brief mentions belie the fact that Mākau River had been the site of numerous mahinga kai, especially for tuna, used by Te Rohe Pōtae Māori since before Pākehā settlement. Claimants in our inquiry specifically mentioned the threat to the tuna population allegedly posed by the Wairere Dam.118

The Mākauiti Dam also affected the tuna population in the Mākau River.119 This scheme generates considerably less electricity than the Wairere Falls scheme, but involves a larger area of land and is more complex than Wairere Falls.120 There

---

117. Document A147(b), p 147.
120. Document A147(b), pp 150–153.
appears to have been no Māori land blocks directly taken for the scheme.\textsuperscript{121} However, the history of one of the blocks demonstrates the assumption that once land was alienated, the owners of that land lost interests in the water and waterways running through or bordering it, including the Mōkauiti River.\textsuperscript{122} The land directly involved for the scheme included a very small portion of Mahoeunui 385A (by then no longer Māori land) and road reserve alongside the Mōkauiti River. The surrounding land had earlier been part of Umukaimata 1 (Pukewhau), which the Crown purchased in the late 1890s.\textsuperscript{123} Stirling advised the remaining balance land of Umukaimata 1B was unaffected as the edge of the land to be flooded behind the dam ended just below the urupā (which according to Stirling was buffered by an extra-wide road reserve between it and the river).\textsuperscript{124}

While Umukaimata 1B appears to have been unaffected, Māori owners further upstream were not so lucky. Aorangi B owners had long been able to access blocks of land because Mōkauiti River had previously ‘been more akin to a stream and was easily crossed.’ As the dam swelled the size of Mōkauiti River, accessing certain blocks now requires bridges, which have not been put in place.\textsuperscript{125}

Other than affected landowners, only government or local government agencies were consulted about the proposal, including the Minister of Marine, whose only interest appears to have been about the effects on introduced exotic species.\textsuperscript{126}

22.3.4 The common law and the Crown’s regulation of non-navigable rivers, streams, lakes, and springs

Under the common law, the \textit{ad medium filum aquae} presumption was applied to non-navigable rivers, lakes, and streams.\textsuperscript{127} For streams and rivers, that meant that where a waterway bordered two blocks of land, the owners situated in the banks of these water bodies owned to the middle of the stream or river-bed. The owners of land blocks that adjoined a lake owned the lake-bed to the centre of the lake, as a wedge shape interest, with the apex of that interest being the centre of the lake. Springs or small lakes captured within a land block were under the control of the land-owner. However, the presumption could only apply where aboriginal title was expressly excluded. As the majority of judges in \textit{Paki (No 1)} stated, the ‘application of the common law presumption of riparian ownership to the middle of the flow could not arise until Māori customary interests were excluded (as by purchase or some taking authorised by statute). The Crown had to own the land before it could grant it.’\textsuperscript{128} The presumption of ownership \textit{ad medium filum aquae} was first applied to Crown grants, and then on subsequent alienations of

\begin{footnotes}
\textsuperscript{121} Document A147(b), p 150.
\textsuperscript{122} Document A147(b), p 150.
\textsuperscript{123} Document A147(b), p 150.
\textsuperscript{124} Document A147(b), pp 150, 154.
\textsuperscript{125} Document A147(b), p 154.
\textsuperscript{126} Document A147(b), p 153.
\textsuperscript{127} \textit{Paki v Attorney-General} (No 1) [2012] NZSC 50 [16].
\textsuperscript{128} \textit{Paki v Attorney-General} (No 1) [2012] NZSC 50 [18].
\end{footnotes}
such Crown-granted land as European title. However, the presumption could be rebutted.\textsuperscript{129} Whether it could depended on the facts of each case.

Interestingly, the Crown relied on this aspect of the common law and the impact of land alienations during closing submissions before this Tribunal. The approach in the Crown’s submissions is premised on an acceptance that the claimants prove they did not consent to the alienation.

While in the civil courts, such an approach would require a case-by-case analysis initiated by disaffected Māori customary owners, in this jurisdiction the Waitangi Tribunal must apply a Treaty lens to the issue. As the Tribunal in the National Park inquiry noted:

> Given the discrepancies between British and Māori understandings of waterways and the effects that the alienation of land would have on Māori possession and authority, we are of the view that the Crown was under an obligation to ensure ngā iwi o te kāhui maunga fully understood the implications of these transactions. Accordingly, we believe that the onus of proof should shift to the Crown. It should be the Crown that needs to prove on a case by case basis that Māori knowingly and willingly relinquished possession and control over the district’s waterways.\textsuperscript{130}

Given Māori understandings of water and waterways/bodies and given the Crown’s role in facilitating alienations, the Crown must shoulder the burden of proving Māori gave informed consent. As the Crown was responsible for such policies, actions, practices, and legislation, it would not be consistent with the Tribunal’s jurisdiction if it required the claimants to have to prove that they did not willingly alienate their taonga waters and waterways/bodies in their district. Rather, they should only be required to link such alienations to Crown actions inconsistent with the Treaty. Thus, the burden must be on the Crown to prove that this was not the case with respect to each waterway/body.

A good example of this Crown view of these taonga relates to Lake Ngarongakahui. The lake is in the lower Taringamutu Valley on what was the Ohura South A4 block. The wetland contained pā tuna, hinaki, and rauwiri and was a source of tuna, piharau, kaeo, and kōura. The Crown acquired Ohura South A4 in 1901. The wetlands were drained shortly after the block was alienated. In 1908, the Taringamutu Totara Company’s tramway was built.\textsuperscript{131} The loss of the wetlands had an immense impact on Ngāti Hari and Ngāti Urunumia who lost a tribal taonga. In the words of claimant Tame Tuwhangai:

> The Crown thought that in acquiring the land that they didn’t need to consult with us anymore in relation to the food basket that was the lake and so it was drained without any recourse to us. This is important because the lake was a resource for us and

\textsuperscript{129} Paki v Attorney-General (No 1) [2012] NZSC 50, paras 22–23.
\textsuperscript{130} Waitangi Tribunal, \textit{Te Kāhui Maunga}, vol 3, p 1013.
its loss meant that we lost another source of kai. This had a direct impact upon us and our ability to feed ourselves and provide for manuhiri . . .

The draining of Paretao Lake circa 1907 is another case in point. Paretao was reserved as an important wetland for harvesting tuna. However, the reservation status under the Native land legislation offered the traditional owners little protection as it was comprehensively drained within three years of its lease being approved by the Waikato District Māori Land Board.

According to claimant Frank Kingi Thorne, Paretao was the principal tuna fishery on the Kāwhia Peninsula and played a pivotal role in the traditional occupation of the area. When Paretao was partitioned in 1892, it was set aside as an eel reserve for Ngāti Hikairo. The claimants maintain that at this point it was identified as inalienable and designated a tribal reserve of Ngāti Hikairo under the trusteeship of eight trustees (the award to eight nominal owners seemingly recognised that the lake was important to the eight hapū of Ngāti Hikairo). In August 1907, the Waikato District Māori Land Board approved a 21-year lease (with the right of renewal) to William Davis. At the hearing to approve this lease, Davis made clear his intentions to convert the swamp into pasture. He also provided a written medical statement that the swamp was ‘a grave menace to the health of the residents’ of Kāwhia and Te Puru. The issue at this point is not whether or not the owners knew that the lake was going to be drained, but that the lake was leased without consultation with the tribe as a whole.

Although the exact date of drainage is unclear, it appears that the lake was drained around 1907. A letter was sent by Rangiao Waitai, Waata Pumopi, and Atakohu Wetere to the undersecretary of Native Affairs on 9 December 1907 requesting an Order in Council be issued to investigate those persons entitled to the land. The letter is unclear as to whether the land had been drained. However, it does state that the ‘eels are doomed’; the eel reserve was for Ngāti Hikairo as a whole; and the owners in title were trustees for the tribe.

On 7 September 1910, Taui Wetere and Te Raukinga Pikia wrote to the Native Minister repeating the request that an Order in Council be issued so the beneficial owners could be determined. They stated the ‘land is now drained and the eels have died out’ and again they repeated the land was for the whole tribe. Although an Order of Council was issued on 2 November 1910, this was too late

---

133. Document A98 (Thorne), p 153; doc A64(b) (Belgrave), pp 17–18.
134. Document A64(b), pp 17–18; doc A98, p 154; claim 1.2.99, p 43.
135. Document A64(b), pp 17–18.
136. Document A64(b), pp 17–18.
137. Paper 2.6.62(c), p 162; claim 1.2.99, pp 43–44; submission 3.4.226, p 116; doc A60 (Berghan), pp 275, 290.
139. Document A64(b), pp 17–18.
140. Document A64(b), pp 17–19.
for the protection of the lake. The draining of Paretao demonstrates the impact of decisions made by the Native Land Court and Māori land boards in Te Rohe Pōtae. Ultimately, ‘by setting aside an eel reserve to a limited number of owners, without formally recognising their role as trustees for Ngāti Hikairo in managing the land as an eel reserve, the title provided no protection for this valued fishery’. In this example, the Native Land Board secured the agreement of only eight of the 155 listed owners to lease the Paretao block. Although the Tribunal does not have much evidence on the negotiation of the lease, the unfortunate result is that the decision of a few disenfranchised the wider tribal community.

In all these cases, the Crown has not been able to demonstrate that hapū or iwi, or indeed most owners, alienated their taonga or that they were even consulted.

### 22.3.5 The common law and the Crown’s regulation of navigable rivers

The common law presumed the Crown owned the bed of navigable rivers. In England, this presumption was concerned with the tidal reaches of a river. In New Zealand, the extent to which the presumption applied beyond tidal reaches of rivers was uncertain, several court decisions concerning the issue, such as Mueller v The Taupiri Coal-Mines Ltd (1900), and In re the Bed of the Wanganui River (1955) notwithstanding. In Paki (No 1) the majority of the judges found that:

Presumptions of Crown ownership under the common law could not arise in relation to land held by Māori under their customs and usages, which were guaranteed by the terms of the Treaty of Waitangi. Such proprietary interests might include, if established by custom, the beds of rivers, whether or not navigable in fact (as was recognised in Mueller and In re the Bed of the Wanganui River) and the beds of lakes (as was recognised in respect of Lake Rotorua in Tamihana Korokai). (Whether a common law presumption of Crown ownership of tidal lands applied in New Zealand does not arise in the present case but was held by the Court of Appeal in Attorney-General v Ngati Apa not to apply to any such lands held by Māori under customary rights.)

No substantive rule that the Crown owned the beds of navigable waters therefore entered New Zealand law in 1840.

However, and returning to the early twentieth century, the way the Crown dealt with this uncertainty was by enacting the Coal-mines Act Amendment Act 1903. Under section 14 navigable rivers were vested in the Crown. Section 14 provided that:

---

141. Document A64(b), pp 17–19.
142. Document A64(b), p 19.
143. Document A64(b), p 17; doc A98, p 154.
144. Paper 2.6.62(c), p 1260.
145. Paki v Attorney-General (No 1) [2012] NZSC 50 [16].
146. Mueller v The Taupiri Coal-Mines Ltd (1900) 20 NZLR 89 (CA).
148. Paki v Attorney-General (No 1) [2012] NZSC 50 [18].
(1) Save where the bed of a navigable river is or has been deemed granted by the Crown, the bed of such river shall remain and shall be deemed to have always been vested in the Crown, and, without limiting in any way the rights of the Crown thereto, all minerals, including coal, within such bed shall be the absolute property of the Crown.

(2) For the purpose of this section—

‘Bed’ means the space of land which the waters of the river cover at its fullest flow without overflowing its banks:

‘Navigable river’ means a river continuously or periodically of sufficient width and depth to be susceptible of actual or future beneficial use to the residents, actual or future, on its banks, or to the public for the purpose of navigation by boats, barges, punts, or rafts; but nothing herein shall prejudice or affect the rights of riparian owners in respect of the bed of non-navigable rivers.

The majority of judges in Paki (No 1) concluded that the question of ‘navigability’ was to be assessed in respect of particular stretches of a river and that this was consistent with the legislative history of the Coal-mines Act Amendment 1903 and its various iterations. The majority considered that the legislation sought to strike a balance between private and public interests.149 Thus, the Crown’s regulation of the common law presumption of riparian ownership to the middle of the flow was found to be in the public interest. It was justified by the need to ensure that navigable rivers were of beneficial use for the public purpose of transportation. However, neither the common law, nor the statute gave the Crown the right to ownership over the beds of non-navigable rivers. The judges concluded that the river adjacent to the lands involved in this case was not ‘navigable’ within the meaning of the legislation.150

The Tribunal notes that in the civil courts, the jurisdiction of the judges is limited to merely interpreting legislation. The Tribunal is not so constrained. Rather it must approach the issues before it through a Treaty lens. The Crown had the authority under article 1 to legislate to provide for and balance competing interests other than Māori rights and interests as the latter had been secured through the Treaty of Waitangi. Seen through a Treaty lens, the Crown did not need to vest ownership of the beds of navigable rivers or reaches of such rivers in itself. It could have secured the right to navigation by legislation without vesting. Such an approach would have been more consistent with the principles in article 2 of the Treaty: namely the principles of partnership, reciprocity, and mutual benefit, given that at one time all rivers in New Zealand were under the authority of hapū and iwi. In Te Rohe Pōtae, there is no evidence that Māori consented to the Crown vesting their taonga rivers in this way.

149. Paki v Attorney-General (No 1) [2012] NZSC 50 [56–77].
150. Paki v Attorney-General (No 1) [2012] NZSC 50 [89].
22.3.6 The Crown’s regulation of rivers
Aside from the impact of land alienations and the application of the common law, Māori had to contend with several localised river statutes enacted in the later part of the nineteenth century, the most important of which was the River Board Act 1884. That statute was consolidated in 1908 and remains in force. The primary function of river boards is to undertake river works and they have the power to take land for such a purpose.

The river boards would have to share this function when the Crown enacted the Soil Conservation and Rivers Control Act 1941. That legislation provided for the establishment of the Soil Conservation and Rivers Control Council under part 1, created catchment districts, and constituted catchment boards (with elected and non-elected members) under parts 2 and 3. The Minister of Public Works could recommend appointments to the council, actively participate in the work of the council, or receive recommendations from it.\(^\text{151}\) In turn, the council supervised and controlled the activities of catchment boards.\(^\text{152}\) The general objects of the council were to promote soil conservation, prevent and mitigate soil erosion, prevent damage by floods, and utilise lands in such a manner as to attain the other objects of the council. These objects governed the purpose of the boards.

Local body politicians in Te Rohe Pōtae were fiercely opposed to regional catchment boards, as they believed boards would be an unnecessary burden on rate payers and it took the Crown 11 years (from 1945 to 1956) to persuade local authorities to compromise.\(^\text{153}\)

After major floods in 1953, 1956, and 1958, focus shifted to flood control works on the lower Waikato, Waipā, and Mangaokewa river channels.\(^\text{154}\) The most severe flood in 1958 caused approximately £380,000 worth of damage in Ōtorohanga and £143,000 in Te Kūiti.\(^\text{155}\) This placed some pressure on local politicians to agree to set up a new agency.\(^\text{156}\) Eventually, they agreed to the Crown passing special legislation (the Waikato Valley Authority Act 1956).\(^\text{157}\) That legislation required that each county and town council in the catchment district elect their representatives and drainage and river boards also could elect representatives onto the authority. The authority had the powers of a catchment board.\(^\text{158}\) As a special concession to the local authorities of the district, section 11 provided that the Waikato Valley Authority was to operate mainly through local councils, so far as those councils were willing and able to undertake and finance any necessary works. However, the authority maintained responsibility for dredging and other works to maintain and improve the beds and channels of the Waikato and Waipā Rivers, unless otherwise

\(^{151}\) Soil Conservation and Rivers Control Act 1941, ss 3, 7, 11(1)(f), 16.
\(^{152}\) Soil Conservation and Rivers Control Act 1941, s 11(1)(k).
\(^{153}\) Document A148, p 205.
\(^{154}\) Document A76, p 198.
\(^{155}\) Document A76, p 198.
\(^{156}\) Document A76, p 198.
\(^{157}\) Waikato Valley Authority Act 1956, ss 4, 6.
\(^{158}\) Waikato Valley Authority Act 1956, s 9.
agreed. We received no evidence that Te Rohe Pōtae Māori were consulted during the establishment of the Waikato Valley Authority.

Due to the limitations on the Waikato Valley Authority, the catchments in the western part of Te Rohe Pōtae district flowing directly into the Tasman Sea were not included under its jurisdiction. In the absence of the establishment of catchment boards, responsibility for administration of the Soil Conservation and Rivers Control Act 1941 at a regional level rested with the Ministry of Works until 1967.

During the early years of the Authority, it implemented several flood control schemes. Initial schemes included the Waikato River downstream of Ngāruawahia at the confluence of the Waikato, and upstream of the Waipā and Mangaoweka rivers. The Crown subsidised this work. For over two decades, the Authority engaged in works along the rivers for flood control, with major works in and around Ōtorohanga and Te Kūiti and other towns north of Te Rohe Pōtae. Māori land was taken for these schemes through the Public Works Act 1928.

The implementation of the works in Ōtorohanga included changes to the course of the river ‘through the township and significant changes to the flood banks protecting Ōtorohanga, Te Kūiti, Huntly and Hamilton as well as changes to road and rail routes.’ Bends in the Waipā river at the southern end of the township in Ōtorohanga were modified and the ‘new river course was supported with stop banks and willows to slow the river and reduce bank erosion.’ The Authority exercised extensive powers to undertake these river works and the changes were extensive. The Crown authorised all this through legislation.

The evidence the Tribunal received indicated that Māori needs or values were not considered at all during the planning or implementation of the Ōtorohanga Flood Control scheme. Archival sources on the record of inquiry support this view, containing no evidence of consultation with Māori over the scheme. There were, however, requests for information regarding Māori land blocks and other Māori sites (particularly urupā). This was to facilitate land takings under the Public Works legislation.

The claimants described the impacts these modifications made on these waterways’ mauri (life force). They were concerned about the effects of the scheme on traditional food sources. Māori collected kai such as tuna and koura, as well

---

159. Waikato Valley Authority Act 1956, s11.
165. This is discussed in more detail in chapter 20 on public works, section 20.5.2.
as other species, from the rivers. Claimant Jim Taitoko stated that the river was a major source of kai and this diminished after the flood control scheme was implemented.\(^{173}\) Claimant Mataroa Frew, with respect to her mother’s generation, stated that ‘diggers that came in that just literally ripped [the eel] lairs away and my mother just lives with that, she says that for her, tuna were from here to there and that is what the Crown destroyed.’\(^{174}\) Roading also impacted on their relationship with the rivers and their taniwha.\(^{175}\)

These matters affected the wairua of the place and the people in and around Ōtorohanga.\(^{176}\) Mr Taitoko described this impact as follows:

> Let’s not talk about the spiritual part and how that affects us because if the spirit is okay then the river is okay. If the river is not okay, then obviously our Wairua is not okay. So let’s get real and say [the] ’58 flood [and the schemes that resulted from it, has] prevented the European houses from getting flooded but it took away our way of life.\(^{177}\)

Piko Davis, Janis Tuhoro, Jim Taitoko, and Hererangi Taitua observed changes to the physical nature of the river over time, which they attributed to the river development schemes.\(^{178}\) They told of the loss of the sandstone rock in the river where the Mangawhero met the Waipā.\(^{179}\) Under this rock was once an underground cave with an air-pocket and it was here that shelter was sought by a woman once held captive during an invasion by Ngā Puhi.\(^{180}\) She was able to escape and alert Te Wherowhero and his warriors. This escape led to the eventual triumph of Waikato over Ngā Puhi. One witness, claimant John Henry, remembers swimming under this rock. It was lost because of the river works.\(^{181}\)

Thus, these stretches of the river affected by the river works were intimately associated with the way of the life and history of the claimants or their forebears. Despite this, no provision was made in the legislation for their rangatiratanga, tikanga, and values.

### 22.3.7 The Crown’s regulation over rivers, streams, lakes, and springs, 1967–91

From the 1960s, the Crown began to recognise that its scheme for managing competing demands for water from these waters and waterways/bodies was insufficient and convened an interdepartmental committee to discuss the issue.\(^{182}\) The committee recommended that regional water boards be appointed to allocate

---

\(^{173}\) Document A76, p 205.  
\(^{174}\) Document A76, p 205.  
\(^{175}\) Document A76, p 204.  
\(^{176}\) Document A76, p 204.  
\(^{177}\) Document A76, p 205.  
\(^{178}\) Document A76, p 206.  
\(^{179}\) Document A76, p 206.  
\(^{180}\) Document A76, pp 206–207.  
\(^{181}\) Document A76, p 207.  
\(^{182}\) Document A148, p 206.
water among users. These recommendations led to the enactment of the Water and Soil Conservation Act 1967. Importantly, this legislation vested in the Crown the sole right to dam any river or stream, to divert or take natural water, to discharge natural water or waste into any natural water, or to use natural water. This did not apply to seawater. 183

It remained 'lawful for any person to take or use any natural water that [was] reasonably required for his domestic needs and the needs of animals for which he [had] any responsibility and for or in connection with fire-fighting purposes.' 184 The Crown’s assumption of possession and the right to allocate and manage the use of the resource was completed with this enactment; although, existing lawful water rights continued so long as notice requirements were met. 185 Such right holders were only obliged to register their existing use, although this did not appear to have occurred in at least one example from Te Rohe Pōtāe. 186 The legislation delegated the responsibility for determining any new applications for water rights to regional water boards. 187

The 1967 Act established the National Water and Soil Conservation Authority and the Water Allocation Council. 188 A number of bodies were tasked with administering the legislation, including the new authority and council, the Pollution Advisory Council (established under the Water Pollution Act 1953), the Soil Conservation and Rivers Control Council, all catchment boards and catchment commissions, River Boards and Drainage Boards and the Waikato Valley Authority. 189 The Pollution Advisory Council and the Water Allocation Council were subsequently combined into a single body in 1972 named the Water Resources Council. 190

All existing catchments established under the Soil Conservation and Rivers Control Act 1941 and the catchment boards as well as the Waikato Valley Authority, were deemed regional water regions and regional water boards for the purposes of the 1967 legislation. 191 Where no catchment board existed, the Water Allocation Council issued water rights to users.

Initially, the Waikato Valley Authority was the regional water board only for the Waikato and Waipā catchments. Outside this catchment, the remainder of the district was administered by the Water Allocation Council, and directly serviced by the Ministry of Works. 192 In 1973, these other catchments, extending west to the

183. Water and Soil Conservation Act 1967, s 21(1).
184. Water and Soil Conservation Act 1967, s 21(1).
185. Water and Soil Conservation Act 1967, s 21(2).
186. In this case, the Waitomo Electric Power Board failed to register its existing use of water at the Wairere and Mōkauiti power stations and only obtained rights to do so in 1976. This means that it was operating without any official right to use water between 1969 and 1976 (doc A148, p 207).
187. Water and Soil Conservation Act 1967, s 21(3).
190. Document A150 (Cunningham) p 774.
Tasman Sea and southwards to include the Mōkau catchment, were added to the Waikato Valley Authority’s district.\textsuperscript{193}

The primary functions of regional water boards included those they exercised as catchment boards. These were:

\begin{itemize}
\item the protection of the water supplies of local authorities;
\item pursuing the conservation and most beneficial uses of natural water within the region (including the planning for and promotion of works and projects for the conservation of natural water, and projects for the multiple use of natural water);
\item recommending the setting of levels for lakes and flows for rivers and streams;
\item investigating and recording all significant resources of natural water within the region, and its quality and availability;
\item checking the effects of damming, abstractions, diversions, pollution, and other factors affecting the volume, quality, and availability of natural water above and below ground within the region.\textsuperscript{194}
\end{itemize}

With respect to the sea, internal waters and lands covered or affected by them, regional water boards had to ‘undertake, exercise, and perform the same functions, rights, powers, and duties as they could undertake, exercise, and perform in respect of rivers and streams and lands affected, unless those functions, rights, powers, and duties’ were undertaken, exercised, and performed by a Harbour Board.\textsuperscript{195} The water boards also had to have due regard to ‘recreational needs and the safeguarding of scenic and natural features, fisheries, and wildlife habitats’. They were required to consult the ‘appropriate authority controlling fisheries and wildlife where they are likely to be affected’.\textsuperscript{196} Like the 1941 Act, the legislation had no provisions requiring Māori rights in their taonga waters to be recognised or provided for.\textsuperscript{197}

The Waikato Valley Authority, after various iterations, became the Waikato Regional Council (Environment Waikato) due to the local government reorganisation in 1989, as discussed in chapter 19 of this report.\textsuperscript{198} The council now has authority over soil conservation and flood protection schemes, water use and allocation, water pollution and monitoring.

There was no evidence Te Rohe Pōtae Māori were substantively consulted during these changes. The consequences for them of having no role in the management of their taonga waters and waterways/bodies are demonstrated by reference to the following case studies.

\begin{thebibliography}
\bibitem{193} Document A148, p 206.\textsuperscript{193}
\bibitem{194} Water and Soil Conservation Act 1967, s 20.\textsuperscript{194}
\bibitem{195} Water and Soil Conservation Act 1967, s 20(5)(h)(i).\textsuperscript{195}
\bibitem{196} Water and Soil Conservation Act 1967, s 20(6).\textsuperscript{196}
\bibitem{197} Document A148, p 201.\textsuperscript{197}
\bibitem{198} Document A150, p 59.\textsuperscript{198}
\end{thebibliography}
Lake Ngāroto

Lake Ngāroto was originally part of the district known to Māori as Te Mangaiao. Located 19 kilometres south of Hamilton and eight kilometres north-west of Te Awamutu, it has a surface area of 108 hectares, making it the largest of the Waipā peat lakes. It formed part of a more extensive wetland when it was taken by the Crown as part of the confiscations of land in the Waikato. It was described by Rangittiepa Huriwaaka as follows:

So water was just coming up in pools surrounding the whole place and that's why they call it a Ngāroto because the roto were here and the roto were there and the rotowere over here. There wasn't one whole lake. It was just clusters of lake surrounding that place. It got blocked up in the middle, then all these waters started going into the one place and then it became one big lake and then they ended up by calling it Ngāroto. But they had all these other lakes under that one big lake. That was only when I was a kid listening to all these kaumatua talking because they used to have the meetings over here. There was Karena Kamaki, my father and a whole lot of other kaumatua used to come here into this whare and they talk about this roto coming up, getting bigger and bigger and then they called it Ngāroto because all these lakes are flowing into one lake. It ended up to be one big lake. That was those days, it wasn't as big as it is today, and in our time there was a creek going along there but I don't know where that creek went to.

The lake played a central role in the history of Ngāti Raukawa, Ngāti Maniapoto and Waikato, but also has connections for other Te Rohe Pōtae iwi, including Ngāti Apakura. Ngāti Hikairo too have associations with the lake. In the minutes of the Native Land Court 1892, a witness from them named eight main settlements at Ngāroto.

According to claimant Harold Maniapoto, the relationship of different iwi with Ngāroto was influenced by the wars of the 1820s. That is because during the early nineteenth century, Ngāti Maniapoto and Waikato united against Ngāti Raukawa in this area. They successfully used the extensive wetlands and swamps in this area to their strategic advantage. Before the battle, they placed Uenuku, the pou tiki from the Tainui waka, in Ngāroto as their protector. It was recovered in 1906 and is now in the Te Awamutu Museum. Waikato and Ngāti Maniapoto were the victors and sought utu for many years against those who fought at the lake. It was this battle that led to the heke Te Amiowhenua. As Belgrave noted, Ngāroto –
‘this little place’ – foreshadowed the warfare that took place during the first three decades of the nineteenth century. It had its role in the conflicts that led to the invasion of Taranaki by Waikato and Ngāti Maniapoto in the early 1820s.\textsuperscript{208} The lake is considered sacred due to these associations.\textsuperscript{209}

Evidence of this past is in the landscape; as seen in Turanga-miru-miru, a fortified pā on the hills to the west of the lake. Signs of other pā and cultivations surround the lake.\textsuperscript{210} Evidence exists of a man-made floating island pā once located on the lake, and witnesses discussed the lowering and raising of lake levels during war time.\textsuperscript{211} The claimants consider the lake a taonga protected by the guarantees of article 2 in the Treaty.

The lake was declared Crown land when it was confiscated in 1865. Since then, the lake level had fallen by eight feet. Prior to the turn of the nineteenth century, the lake was 218 hectares; in 1907 it was reduced due to drainage to 145 hectares and in 1962 to 89 hectares.\textsuperscript{212} The minimum level for the lake and area was increased by the regional water board in 1969 to 97 hectares. However, by 1996 this had decreased again to 74.86 hectares, which is the approximate size of the lake today.\textsuperscript{213} These drops in lake level and size are attributed to the lowering of the drainage outfall at the Mangaotama Stream by the local Ngātoro Drainage Board, and later the Waikato Valley Authority.\textsuperscript{214} The Authority constructed and installed a weir to control lake levels at this point.

The Crown vested small sections of the land surrounding the lake in the Te Awamutu Borough Council, in their capacity as a domain board, in circa 1921.\textsuperscript{215} Buildings for yachting and rowing were constructed on these sections. These sites were transferred to the Waipā County Council in 1974.\textsuperscript{216} In 1975, the Crown set aside more land as a recreation reserve and vested it in the county.\textsuperscript{217} Thus, the entire foreshore was administered by the Waipā County Council by the close of 1975. The water in the lake was then administered by the Marine Division of the Department of Transport.\textsuperscript{218}

Chapter 6 of this report discussed how the confiscation of land was contrary to the principles of the Treaty of Waitangi. Obviously, Māori did not agree to confiscations and the loss of this lake. The Crown’s transfer of ownership to local authorities of this important lake without any regard to Māori tikanga and values, and without consultation is reflective of the general view prevailing in official circles, namely: if Māori did not own the land then their relationship with their waters

\begin{itemize}
\item \textsuperscript{208} Document A76, p 38.
\item \textsuperscript{209} Document A76, p 39.
\item \textsuperscript{210} Document A76, p 46.
\item \textsuperscript{211} Document A76, pp 39–40, 46.
\item \textsuperscript{212} Document A76, p 47.
\item \textsuperscript{213} Document A76, p 47.
\item \textsuperscript{214} Document A76, p 47.
\item \textsuperscript{215} Document A76, pp 47–48.
\item \textsuperscript{216} Document A76, p 48.
\item \textsuperscript{217} Document A76, p 48.
\item \textsuperscript{218} Document A76, p 48.
\end{itemize}
and waterways/bodies had been severed. What it prioritised in this case was the recreational needs of the Pākehā community.

### 22.3.7.2 The Mōkau River and its tributaries

Te Rohe Pōtae Māori first arrived at the Mōkau river mouth aboard the Tainui waka, where they settled for some time and placed poles in the ground at a place called Te Whenga, which, over time, grew into trees later named Ngāneke o Tainui. They also left the waka’s original anchor stone in the river mouth’s shallows, which, together with Ngāneke o Tainui, formed the southern coastal boundary of the Tainui tribal area. The stone remained there for centuries until it was stolen by a Pākehā trader in the 1890s and later moved to Maniaroa Marae when its guardians managed to secure its return. According to Taranaki tradition, the Tokomaru canoe landed at Mohakatino, just south of Mōkau, where its anchor remained until the Ngāti Tama Chief Tupoki placed it under a kōuka (cabbage tree) some time prior to 1830. This anchor was relocated several times in the nineteenth century to avoid it being stolen before being gifted to the Taranaki Museum in 1927. The evidence shows that Te Rohe Pōtae Māori possessed and exercised their authority over the river mouth and the river until at least the 1880s.

Despite sporadic engagements with Pākehā, whom for the most part were traders or missionaries, Te Rohe Pōtae Māori remained the authority at the Mōkau River mouth into the nineteenth century. In 1846, local missionary CH Schnackenberg noted that they

know nothing about the Queen’s sovereignty (at least in this part) in New Zealand... however [they] are not all disposed to quarrel with the Europeans, on the contrary they are very wishful to receive a body of settlers to whom they would sell a tract of land, but they never dream that in such an event they would lose their chieftainship in the river.

By the 1850s, however, the Crown was actively seeking to establish itself in the area and in 1854 it purchased the Mōkau block, which covered the land north of the river mouth, despite opposition from several prominent Te Rohe Pōtae chiefs (see section 5.3.4.2).

The Crown, aware of the Māori opposition in the region, did not attempt to on-sell the land to settlers and Māori occupation and use of the river remained largely unchanged for another 30 years. Notably, shortly after the sale Māori proclaimed a tapū over the river and warned against European vessels entering the area without their consent. In April 1869, a Crown warship shelled the river

---

219. Transcript 4.1.5, p 95.
mouth, suspecting that Māori were harbouring an outlaw, but it did not attempt to enter the river itself.²²⁶

It was not until 1875 that Māori, spurred by a growing interest in trade and the potential stores of coal and limestone further upstream, began allowing limited passage to European vessels up the Mōkau River. In 1878, a small Pākehā settlement was established on the southern bank of the river mouth but it collapsed two years later due to a lack of economic development.²²⁷ Another township was established in 1888 on the northern bank.

During this period, the Crown sold or leased much of the Mōkau block to Pākehā settlers with little consultation with Te Rohe Pōtae Māori. Given its size, Māori control over the river mouth was effectively lost by the sale and subdivision of land bordering it. This was how the Crown cemented its authority over the river mouth.

By 1900, the economic activity occurring along the river had increased dramatically compared to 20 years prior. In particular, the increase in coal trade, limestone extraction, and sawmilling encouraged the Crown to further cement its authority over the river mouth and establish the Mōkau Harbour Board. Under the Mōkau Harbour Board Act 1900, enacted pursuant to the Harbours Act 1878, the district was divided into three ridings; the Awakino Riding, the Mōkau Riding, and the Tongaporutu Riding. The Mōkau Harbour Board consisted of seven members, elected by electors in the respective ridings. Under the first schedule to the 1900 Act, the Mōkau district boundary was described as:

All that area, partly in Kawhia County, Land District of Auckland, and partly in Clifton County, Land District of Taranaki, bounded towards the north by the Huikomako Stream, and by lines forming the northern boundary of Section 1, Block 1, Awakino North Survey District; thence by the northern boundary-lines of Sections 3 and 4, Block 11, Awakino North Survey District, and by the production of the north-eastern boundary-line of the said Section 4 to Pakihikura; thence by a right line to the north-west corner of Section 3, Block 1, Awakino East Survey District, and by the north-west boundary-line of that section to the Awakino River; thence towards the north-east generally by the Awakino River, and by Mahoenui No 2 Block (Totoro) to the Mōkau River, and thence by the Mōkau River to Mōkau–Mohakatino No 1E Block; thence towards the east by the eastern boundary-line of Mōkau–Mohakatino Nos 1E and 1H Blocks to Waiarai Block; thence towards the south-east and again towards the north-east by the south-east and north-east boundary-lines of Waiarai Block to the production in a due easterly direction of the confiscation boundary-line; thence towards the south by a right line due west to the confiscation boundary-line, and by the said confiscation boundary line to the Tasman Sea; and towards the west by the Tasman Sea to Huikomako Stream, the place of commencement.

The harbour of Mōkau included that part of the harbour defined as the port of Mōkau in the Harbours Act, 1878. Soon after being established, the board purchased a privately owned wharf and erected a shed. It also began looking into suitable locations to build a new wharf. The board decided on an area at the western corner of Te Kauri pa for a new wharf and began construction in 1904. Te Rohe Pōtae Māori were only made aware of the proposed wharf when the wooden
piles were being stacked on the shore and wrote a letter of protest to the Minister of Native Affairs. They criticised the board’s failure to consult them and claimed that the new wharf would erode customary practices in the area, noting that ‘the site as marked interferes and damages our kainga and the place where our canoes lie.’\textsuperscript{233} In response, the Marine Department recommended that the board find a new site so as not to interfere with the ‘riparian rights of Māoris.’\textsuperscript{234} The board declined to shift the wharf’s proposed location, stating that it would not interfere with Māori riparian rights since it would not extend to the high water mark, alternative sites were infeasible or impracticable, and, it was claimed, the majority of those Māori who signed the petition did not reside at Te Kauri.\textsuperscript{235} In 1904, the Marine Department accepted the board’s arguments and approved its plans for a wharf at Te Kauri, which was built the following year.\textsuperscript{236}

In 1903, due to the operation of the Coal-mines Amendment Act, the lower reaches of the Mōkau that were navigable were vested in the Crown. In that same year a river district for the upper Mōkau River was proclaimed and a river trust constituted as a river board with all the powers of such organisations.\textsuperscript{237} This was

\begin{footnotesize}
\begin{enumerate}
\item Tatana Te Awaroa to the Minister of Native Affairs, 19 October 1904 (doc A149, p 88).
\item Telegram from the Secretary for the Marine Department to the Secretary of the Mōkau Harbour Board, 10 November 1904 (doc A149, p 88).
\item Minute from Marine Engineer, 22 November 1904 (doc A149, pp 88–89).
\item Minute from Marine Engineer, 22 November 1904 (doc A149, p 89).
\item Mōkau River Trust Act 1903, ss 3–4.
\end{enumerate}
\end{footnotesize}
done under the Mōkau River Trust Act 1903 and the first schedule of that legisla-
tion set the district boundary as:

All that area in the Auckland and Taranaki Land Districts bounded towards the
north-west by the south-eastern boundary-line of the Mōkau–Mohakatino No 2 Block
from the left bank of the Mōkau River for a distance of 40 chains; thence towards
the south generally by a line parallel to and 40 chains distant from the left bank of
the Mōkau River to the boundary-line between Subdivisions Nos 1F and 1G of the
Mōkau–Mohakatino No 1 Block; thence towards the east by the said boundary-line to
the left bank of the Mōkau River; thence towards the east by the said boundary-line
to the left bank of the Mōkau River; thence by a right line bearing north 300 east to a
point distant 40 chains from the right bank of the said Mōkau River; thence towards
the north generally by lot line parallel to and 40 chains distant from the right bank of
the Mōkau River to a point due north of the confluence of the Matakarehau Stream
with the Mōkau River; thence towards the west by a right line running due south to
the left bank of the said Mōkau River; and thence towards the north-east by the left
bank of that river to the place of commencement.

The Trust had the powers of a river board under the River Boards Act 1884.238
The Trust was primarily concerned with the conservation of the natural scenery
and navigation of the upper waters of the Mōkau River.239 Under section 5, the
Trust could do all things necessary for ‘opening lip, improving the navigation,’ and
the removal of all obstructions impeding or preventing such navigation. With the
sanction of the Governor in Council, it could erect jetties and make landing-places
in the banks of the river and maintain ferries. By special order, the Trust make
regulations under the River Boards Act 1884, regulating the use of such jetties,
landing-places, or ferries respectively, and imposing fees or tolls in respect of such
use for shipping or landing any passengers, goods, merchandise, or animals.

Importantly, nothing under the Act could affect or interfere with the ‘full and
free navigation of the river by Māori in their canoes or boats’, whether towed by
steamer or otherwise.240 In addition any Māori interested, or claiming to be inter-
ested, in any land from or upon which any earth, stone, boulders, or sand were
removed, deposited, or used could make application to the Native Land Court to
ascertain compensation.241 Compensation was assessed as per the Public Works
Act 1894 and that compensation was to apply to the taking of such earth, stone,
boulders, or sand.242 Under section 11, nothing in the Act could affect ‘any rights
conferred upon the Natives by the Treaty of Waitangi’. Nor could the Act confer
upon the Trust any jurisdiction over ‘any Native lands the title to which has not
been investigated by the Native Land Court.’ However, once title was ascertained

239. Mōkau River Trust Act 1903, long title.
240. Mōkau River Trust Act 1903, s5(d).
241. Mōkau River Trust Act 1903, s7(2).
242. Mōkau River Trust Act 1903, s7(2).
and it was required by or on behalf of the Crown, the Governor could declare such lands to be subject to the jurisdiction of the Trust either for an estate in fee-simple or as a public reserve. What is surprising about this statute is that it effectively declared the Treaty of Waitangi to be legally enforceable.

But the Trust was dismantled in 1912 due to a lack of funding. The Reserves and Other Lands Disposal and Public Bodies Empowering Act 1912 repealed the Mōkau River Trust Act 1903 and spread the trust’s responsibilities between the Department of Lands and Survey and the Harbour Board, while also further...
expanding the Board’s authority.\textsuperscript{243} The new legislation did not have a Treaty clause, nor provisions requiring Māori rights and interests to be considered or protected. The Board encountered similar difficulties trying to secure a reliable income as a series of floods and diminishing coal and timber trades placed growing pressures on its income.\textsuperscript{244} By 1939, coastal shipping had ceased and the Waitomo County Council assumed authority over the river mouth the following year by absorbing the functions of the Harbour Board at the request of the Marine Department.\textsuperscript{245} While transport for trade was diminishing, the river mouth was growing in popularity as a holiday destination through the 1940s. In particular, Pākehā settlers were keen to build holiday homes on the spit that extended from the northern end of the river mouth.\textsuperscript{246}

By 1972, harbour functions, such as regulating recreational boats and maintaining facilities, had dropped dramatically from when the Harbour Board was initially established and authority over the river mouth passed from the Waitomo County Council to the Marine Division of the Ministry of Transport under the Harbours Act 1950.\textsuperscript{247} However, in 1976, the Waitomo County Council merged with the Te Kūiti Borough Council to form the Waitomo District Council and in 1983 regained control of the river mouth ‘through a grant of control over the waters and foreshores of the Mōkau, Marokopa and Awakino Rivers under sections 8A and 165 of the Harbours Act 1950’. Then, following the passing of the Resource Management Act in 1991, some of the district council’s powers were redistributed to the Waikato Regional Council.\textsuperscript{248} While both the Waitomo District Council and the Waikato Regional Council have advocated a desire to strengthen Māori participation in decisions made regarding the spit, Te Rohe Pōtāe Māori have criticised local government as too focused on consultation rather than participation.\textsuperscript{249}

Mōkau Māori were not consulted regarding most of these developments. Thus, their ability to exercise tino rangatiratanga or mana whakahaere over their taonga, the Mōkau River, while enabled by statute in terms of the Upper Reaches for a short period of time (1903–12), ultimately ceased as authority over the river and the river mouth was assumed by the Crown or delegated to the Mōkau Harbour Board and local authorities. The Crown omitted to protect their rights and turned a blind eye to the status of the river as a taonga. Therefore, it is not possible to find that Mōkau Māori willingly relinquished their possession and rangatiratanga over the river and its river mouth.

\textit{22.3.7.3 The Waipā River}

The Waipā flows from the Rangitoto Range through low-lands and flood plains joined at various points by its many tributaries including the Pūniu River, its

\begin{itemize}
\item 243. Document A149, p 18.
\item 244. Document A149, p 18.
\item 245. Document A149, pp 18–19.
\item 246. Document A149, p 40.
\item 247. Document A149, p 19.
\item 248. Document A149, pp 20–21.
\item 249. Document A149, pp 21–22.
\end{itemize}
largest tributary, just south of Pirongia town. This is where the boundary of the Rohe Pōtæ inquiry district begins. It continues its way to Ngāruawahia where it empties into the Waikato River.  

Māori settlers of the Tainui waka first encountered the river after their vessel came to rest at Kāwhia, and the harbour soon became host to seasonal settlements utilising its fisheries and other customary resources. Eventually, more permanent settlements were established and these included Ötorohanga and Te Kūiïtata o Ngã Whakaarô ō te Iwi (Te Kūiïtta). Its cultural and customary significance to Te Rohe Pōtæ Māori is significant with Ngãti Māniapoto recording that their relationship with the river is ‘historic, intellectual, physical, and spiritual’ and it ‘lies at the heart of their spiritual and physical well-being, and their tribal identity and culture.’ The river provided ‘all manner of sustenance . . . Including physical and spiritual nourishment that has over the generations maintained the quality and integrity of Maniapoto marae, whānau, hapū and iwi.’ Ngãti Hikairo describe it as an important ancestor. It is also home to tribal taniwha, Waiwaia, and Tûheitia, who guard the spiritual well-being of the river. The Waipã was used for transportation from ancient times:

Iwi and hapu could travel from the Waikato River, the main highway of Waikato iwi, along the Waipã River, which gave access to northern Ngãti Maniapoto settlements. At Ötorohanga, travellers could canoe further south along the Mangaorewa and Mangapu tributaries of the Waipã. After a portage of about 10 kilometres they could then join the Mõkau River as it flowed through the Aria district. This required smaller canoes until about Totoro where travellers could then use the large canoes to the Mõkau harbour mouth.

In the 1830s, the Waipã River valley began to be cultivated for wheat and together with the Waikato district, it became a booming agricultural economy by the mid-1850s, featuring wind-mills and transport systems involving canoes that travelled down the Waipã to the Waikato rivers on to Kaiuku or Kãwhia, where coastal trading vessels shipped the produce to markets in Auckland.

The river was an important taonga of Te Rõhe Põtæ Mãori and thus their rangatiritanga over the river had been guaranteed under article 2 of the Treaty of Waitangi. Instead of recognising and providing for such matters though, the Crown instituted the management regime described above.

The first important piece of legislation affecting the Waipã River was the Coal-mines Act Amendment Act 1903. The Marine Department viewed the Waipã
(between Ngaruawahia and Ōtorohanga) to be navigable and therefore vested in the Crown. Thus, the Crown considered a large section of the Waipā to be navigable. Where the river was navigable, the Crown considered that it had the authority to charge royalties for shingle works from the Waipā riverbed. In 1924, for example, the Marine Department claimed royalties to shingle being extracted by a local business from the Waipā at Ōtorohanga. Māori land was taken for the purposes of a gravel pit by the Waitomo County Council in 1917, and later vested in the Otorohanga County Council. The council considered it was entitled to royalties as it owned the land (previously taken from Māori) including to the centre line of the river (ad medium filum). The Marine Department did not agree and pressed its claims that the river was navigable based on evidence of canoe transportation as far as Te Kūiti and that it was entitled to royalties as a result. Meanwhile, local Māori were expressing concern regarding the impacts of the gravel operation on swimming and fishing. They were also concerned about the lack of remuneration for the shingle extracted. Those concerns led to a review of the taking procedures and whether compensation had been paid. The review showed that compensation had been paid to the sole owner. That was the end of the matter as far as any consideration of Māori issues was concerned.

Other than where there was a prospect of royalties for shingle, the Crown quickly divested itself of nearly all responsibilities for the management of the river. It divided that responsibility between local authorities, river boards and drainage boards. Each exercised different but overlapping responsibilities, which varied on different geographical locations along the river. For example, the Waikato River Board established in 1911, and abolished in 1926, focused on those reaches impacting on the Waikato River.

While county councils for Kāwhia, West Taupo, Waitomo, Ōtorohanga, and Waipā had responsibility for water supply, river control, and sanitary works, they tended to focus mainly on roads and bridges. Borough councils such as Te Kūiti and town districts such as Ōtorohanga held similar responsibilities outside the areas of county jurisdiction. Drainage boards had responsibility for constructing and maintaining drains and watercourses.

Due to drainage schemes promoted during this period and the activities of various local authorities, the Waipā Valley was transformed to a fully developed pastoral economy. What is important to note is these various local authorities...
and boards had power to take land for any of the purposes for which they held responsibility. Such takings were done in accordance with the Public Works legislation, as discussed in chapter 20 of this report. The changes to the Waipā Valley were accelerated by Crown legislation and policy promoting the alienation of Māori land through sale and lease as discussed in parts 2 and 3 of this report and as outlined in the various case studies produced in the evidence, which also record Māori resistance to schemes promoted by drainage boards, the destruction of eel weirs and resistance to local authorities engaged in shingle extraction and other works. 

As noted in chapter 21 on the Environment, there were at least 20 drainage boards operating in the Waikato district by 1941 and Māori were only consulted about such schemes as affected land-owners. Whether the wetland was a significant historical or cultural site or a fishery for a hapū or iwi was not considered.

A similar disregard of Māori rangatiratanga, their tikanga, and values is apparent when considering the issue of river works. Obviously, and as we discussed above, these works impacted upon Māori owning land and/or living within the vicinity of the Waipā river at Te Kūiti and Ōtorohanga. Māori land was taken, along with some general land, to divert the course of the Mangapu Stream and the Waipā River. Works at Ōtorohanga resulted in land containing burial grounds being taken under the Public Works legislation. The importance of the river to the collective, namely the hapū and iwi was not considered. Nor were Māori tikanga, values, and impacts on the Māori way of life considered.

The establishment of the Waikato Valley Authority in 1956 does not seem to have improved the position of Māori in terms of the recognition of and provision for their rights, interests, tikanga, and values. Nor did its variation as a regional water board in 1941, and then a catchment board under the Water and Soil Conservation Act 1967. During the Authority’s existence, in its various forms, it established catchment schemes for Mangaokewa, the Mangawhero, the Tauraroa, the Mangapiko, Mangahoe, and the upper Waipā. It also undertook some erosion and hydrological improvement work through commercial forestation as well.

However, the Authority did little to acknowledge Māori rights, interests, tikanga or values in water until it was forced to do something following the decision of the High Court in the case of the Huakina Development Trust v the Waikato Valley Authority (1987). In an environment where there were many competing users and values, and no statutory reference to such matters, it was always unlikely that consent authorities would have regard to them until this decision of the High Court. The court found that the spiritual values and cultural relationship of Māori people to the waters of the region, including the waters of the Waikato River and its tributaries, were a relevant consideration when considering an application for a water right pursuant to s 21 of the Water and Soil Conservation Act 1967. It is

271. Huakina Development Trust v the Waikato Valley Authority [1987] 2 NZLR, 188.
272. Huakina Development Trust v the Waikato Valley Authority [1987] 2 NZLR, 188.
unfortunate it took an independent court to clarify what the Crown’s legislation authorised. A more explicit statutory reference with no room for ambiguity was obviously preferable.

In the late 1980s, the Labour Government undertook a full review of the environment statutes, leading to the enactment of RMA. Although the Crown continues to regulate the management of water, through regional councils (rather than regional water boards), the Act has strengthened the position of Māori values with respect to water.\(^{273}\) However, the right to manage and allocate water initially remained vested in entities created by the Crown, namely regional councils.

Obviously Waipā Māori were not consulted regarding most of the developments. Thus, their ability to exercise tino rangatiratanga or mana whakahaere over their taonga, the Waipā River, ultimately ceased as authority over the river and the river mouth was assumed by the Crown or delegated to local authorities. The Crown omitted to protect their rights and turned a blind eye to the status of the river as a taonga. Therefore, it is not possible to find that Waipā Māori willingly relinquished their possession and rangatiratanga over the river and its river mouth.

22.3.8 Treaty analysis and findings

In the Whanganui River Report, the Tribunal noted that ‘possession’ of a waterway or water body is in and of itself common law proof of ownership.\(^{274}\) In terms of the general law and the Treaty, what ‘Māori possessed had to be determined by that which they possessed in fact and not by reference to what may legally be possessed in England.’\(^{275}\) The Tribunal further found that what Māori possessed and therefore owned was a taonga, including possession and ownership of the water ‘until it naturally escaped to the sea.’\(^{276}\) The Tribunal agreed in the Central North Island report.\(^{277}\) We adopt the same approach. That necessarily means that, as Te Rohe Pōtae Māori considered water taonga and where possession could be established on the evidence as at 1840, Māori considered that they had the full rights of possession and management, or mana whakahaere, over that water, according to their own tikanga or customary law and in accordance with their own cultural preferences.

Contrary to the Māori philosophy for managing water and waterways/bodies, the Crown’s approach to water was legalistic and utilitarian in scope, heavily weighted to serve and thereby benefit the owners of property, or to provide for public transport, or the economic and recreational needs of settlers.\(^{278}\) There was no relational, spiritual or metaphysical aspect to its understanding of water and waterways. This approach rather was based upon the common law, which divided a waterway/body by reference to the water, bed, banks, and fisheries.

---


\(^{274}\) Waitangi Tribunal, Whanganui River Report, p 293.

\(^{275}\) Waitangi Tribunal, Whanganui River Report, p 291.

\(^{276}\) Waitangi Tribunal, Whanganui River Report, p 263.


Crown's early legislation, as a result, focused upon the rights of landowners, public navigation and recreation, and regulating development and introduced exotic fish species.

We have previously found that the lifting of the aukati and Te Ōhākī Tapu and its associated agreements left Te Rohe Pōtae Māori with the understanding that they would retain their mana whakahaere (autonomy or self-government) over their own affairs, lands, and resources, as discussed in chapter 18 of this report. What the Treaty and these agreements outlined was a blueprint (still to be worked through in terms of detail) whereby the Crown would exercise its powers under article 1 to legislate for the mana whakahaere of Te Rohe Pōtae Māori. At this point, the Crown had the opportunity to exercise its authority in a manner that provided for the possession, mana whakahaere, tikanga, and values of Te Rohe Pōtae Māori with respect to water and waterways/bodies for so long as they wished to retain these.

Unfortunately, since the time the Te Ōhākī Tapu agreements were negotiated, the collision of Te Rohe Pōtae Māori rangatiratanga, tikanga, and their values with Crown regulation was inevitable. That is because the Crown generally instituted its system of water regulation without regard to the Treaty of Waitangi or its principles, Māori tikanga or values. That pattern was set in the nineteenth century legislation and it continued into the twentieth century until 1991. The Mōkau River Trust Act 1903 stands out as a rare exception to the Crown's pattern of regulation.

Thus, the opportunity was lost, as the Crown relied on the common law rights of landowners and the statutes it enacted from 1840 to 1991 to assert its authority to regulate water. It did so, for the most part, without consideration of Māori rights, interests, tikanga, or values. The lack of care taken by the Crown to ensure it had informed consent from Te Rohe Pōtae Māori is apparent by reference to the examples relating to the use of water discussed in this chapter. The Crown vested in itself the sole right to use water for the purposes of hydro-electric generation. In doing so it assumed the right to control access and to charge for the use of water.

The Crown also sometimes vested the authority to construct and manage hydro-generation power schemes in local authorities or local electricity boards. In doing so, the Crown simply assumed it had the authority to legislate in this manner without any consideration of any potential impacts on Māori, thereby failing to inform itself how such schemes in the district may affect Māori rights and interests in water. Even where it was made aware of potential impacts on rights and interests in land, it pursued its own course and either it kept excess Māori land taken under the Public Works Act, as for the Wairere dam, or it failed to take into account potential impacts on Māori land, as with Aorangi B blocks and the Mōkauiti dam. Mōkau Māori were not specifically consulted about either hydro-electric scheme featured in this section. Nor did the Crown give adequate consideration to what the likely impacts would be on their customary taonga fish species, particularly tuna, as it made no provision for these species to pass the dams safely.

The reasons for this failure to recognise any interest or management right of Te Rohe Pōtae Māori in water and waterways/bodies go back to the fact that once
land was alienated, the Crown did not consider that collectives such as iwi, hapū, or whānau maintained any on-going interest in water or waterways/bodies unless they were directly affected landowners. Alternatively, the Crown merely legislated a solution deeming waterways such as the Mōkau and Waipā Rivers as navigable for certain reaches and thus vested in the Crown.

Historically (and whether rightly or wrongly) under the Crown’s management regimes for waterways, no full assessment of ownership issues were inquired into or even settled and no thought was given to involving Te Rohe Pōtae Māori in the management of water in the district.

The Crown took authority over water, waterways, and water bodies, and it delegated the bulk of its management responsibility to regional and local authorities without including or making provision for Te Rohe Pōtae Māori rangatiratanga or mana whakahaere as we discussed in chapter 19 on local government. The only exception to this being during the reign of the Māori councils (1900–05) and their limited jurisdiction over villages and sanitation as we discuss in chapter 18 on Te Rohe Pōtae Māori autonomy. We also saw no evidence that Te Rohe Pōtae Māori were consulted in any significant way during the establishment of local bodies, councils, boards, and other agencies such as the Waikato Valley Authority, which were delegated responsibility to manage the utilisation and allocation of water.\(^{279}\)

The preference of the Crown to work through local bodies to manage waterways, elevated the political priorities of those entities as regards water in the district. This was done without any regard to the Treaty rights and interests of Te Rohe Pōtae Māori, a matter we discussed in chapter 19 on local government.

The Crown has submitted that it has the right to make laws for good governance under article 1 of the Treaty, and it has a legitimate interest in the management of water given that other citizens have interests in water. We agree. However, this did not give the Crown the right to omit enacting any statutory recognition and provision for Te Rohe Pōtae Māori Treaty rights and interests from 1840 to 1991. At all the various points when the Crown legislated (and given its knowledge of prevailing circumstances of the time regarding the treaty rights of Te Rohe Pōtae Māori) all the case studies high-light that Māori did not willingly give up their possession and authority over their water and waterways/bodies. Rather, possession was incrementally wrested from them by reliance on land alienations and the common law, and by the statutory reinforcement of the Crown’s authority.

The Crown’s local government restructuring commencing in the 1980s and the passage of the RMA has provided some opportunity for improved recognition of Te Rohe Pōtae rangatiratanga or mana whakahaere.\(^{280}\) There is provision for the creation of Māori wards and special standing committees, as we discuss in chapter 19 on local government. Likewise, at the time of the hearings, the RMA enabled the transfer of powers from local authorities to iwi authorities under section 33, or the negotiation of joint management agreements under section 36A. In 2013, Māori representatives were elected to the Waikato Regional Council through two Māori

---

\(^{279}\) Document A148, p 205.

\(^{280}\) See chapter 18 on local government.
wards. While such a result is welcomed, the representatives do not represent any particular iwi of Te Rohe Pōtae and cannot therefore deliver mana whakahaere.

Therefore, no tangible result from these provisions of the Resource Management Act (as then in force) had been achieved in terms of water under the Act until 2012, and we note that the statutory power to determine such matters still resides with Environment Waikato. The departure from this pattern was the enactment of the Ngā Wai o Maniapoto (Waipā River) Act 2012. This was watershed legislation for Te Rohe Pōtae Māori that clearly gives effect to the principles of partnership, reciprocity, and mutual benefit and provides a blueprint for the management of water and waterways/bodies in the district. However, the vexed issue of possession and ownership remains.

Since 2014, and the close of hearings, the Resource Management Act has been amended to include the possibility of Rohe Mana Whakahono agreements. The purpose of such agreements as set out in section 58M are to provide a ‘mechanism for iwi authorities and local authorities to discuss, agree, and record ways in which tangata whenua may, through their iwi authorities, participate in resource management and decision-making processes’ under the Act. The other purpose is to ‘assist local authorities to comply with their statutory duties under this Act, including through the implementation of sections 6(e), 7(a), and 8.’ The use of these provisions will also benefit other iwi beside Te Rohe Pōtae Māori.

The Crown’s position adopted in closing submissions for this inquiry (that it must treat Māori equitably with non-Māori in the application of its policies and practices in respect of waterways and take a balanced approach) was a position not apparent in any legislation until 1991. It did not treat Māori equitably with non-Māori because it did not recognise and provide for their rights and interests, and nor did it require those matters be balanced against other interests. The only exception being the Mōkau River Trust Act 1903, which did not remain on the statute books for long. The RMA has improved the situation, but it has its limitations.

Therefore, we find that the Crown has acted in a manner contrary to the principles of the Treaty of Waitangi. It has used its authority to regulate water and waterways/bodies contrary to the principle of partnership, the principle of reciprocity underpinned by the essential exchange of kāwanatanga for rangatiratanga and the principle of mutual benefit. It has done so by failing until 2012 to provide for Māori mana whakahaere and possession with respect to their water taonga. In doing so it has failed to actively protect the rangatiratanga of Te Rohe Pōtae Māori over the water and waterways/bodies that they consider taonga. A treaty consistent approach would have been to develop the detail of how the mana whakahaere of Te Rohe Pōtae Māori could be recognised and provided for. An extension of the Ngā Wai o Maniapoto (Waipā River) Act 2012 to include all taonga waters, waterways/bodies of Ngāti Maniapoto is the obvious solution to the issue. Similar legislation will be needed for other iwi of Te Rohe Pōtae or Rohe Mana Whakahono agreements will need to be negotiated.
22.4 Crown Regulation and Environmental Effects

Water pollution due to sedimentation from land-clearance work, pastoral production, mining, and industry and human waste from settlements and towns increased throughout the nineteenth century as Pākehā settlement gathered pace in Te Rohe Pōtae.

From the late 1880s, awareness of the need to deal with human waste grew at the local level. The Government or local authorities completed sewage schemes for most major Te Rohe Pōtae towns and settlements, but these schemes often used waterways/bodies to transport such waste from the areas of dense human habitation, as further discussed in section 22.4.2.

Pollution initially received little national attention and action. The legislation that did exist was mainly concerned with the protection of exotic introduced fish species. The Pollution of Water Bill 1912 addressed pollution to some extent, yet arguably gave polluters more rights than those affected by pollution. A substantive attempt to deal with the issue did not occur until drafting of the River Pollution Prevention Bill 1937, but this was never enacted. Meanwhile, the interdepartmental committee on pollution convened in the same year only made ad hoc recommendations. The issue was again picked up when a nationwide survey in 1947 found extensive water pollution. However, there was no political will to deal with pollution until 1953, when the Water Pollution Act was passed.

The Water Pollution Act 1953 established the Pollution Advisory Council. The council’s principal functions were to inquire into and make reports and recommendations to the Minister of Marine on ways of preventing or reducing the pollution of waters. The council had several other functions, including education and awareness and compiling and publishing codes setting forth requirements for the treatment of trade wastes or other pollutants before being discharged into waters. It also had a role in encouraging voluntary compliance with those codes, developing model by-laws for trade wastes, and advising Government departments, local authorities, and public bodies to coordinate the policies and activities with respect to the prevention or reduction of the pollution of waters. However, it had no powers to actively monitor and control water pollution until 1963.

In 1956, the Ministry of Works, the Department of Health, and the Department of Scientific and Industrial Research released a report on water pollution in the Waikato River Basin. The report noted that ‘stream pollution in the Waikato and in the whole country is not a new development [and] no serious thought was given to this pollution problem until critical conditions became apparent and
some streams were grossly polluted. It stated the biggest sources of pollution were untreated sewage and industry wastewater. In particular, it noted:

- The septic tanks at Otorohanga and Te Kūiti were discharging poorly treated sewage into the Waipā River. At Otorohanga, ‘large quantities of paper, rag and faecal matter’ were littering the river and it was evident that the Borough had not given any attention to the septic tank ‘for a considerable period.’
- The Dairy Company at Otorohanga was discharging wastewater directly into the Waipā river which was discolouring the stream for 100–150 yards downstream.
- As a result of pollution being discharged by the dairy factory and sewage plants, the faecal coliform counts were exceptionally high downstream of Otorohanga and Te Kūiti.

The report noted cowshed wastes being discharged into the waterways was ‘the most widespread source of pollution’ and although they had not been able to ascertain methods for dealing with the problem, they did note one obvious solution would be for the wastes to be used on the farm itself. They argued this would take time and education to achieve but ‘it should not be an impossible objective to aim at.’

The report’s comprehensive coverage of point-source pollution demonstrated the Crown was aware – from at least the late 1950s – that Te Rohe Pōtae waterways were deteriorating and needed to be improved. They concluded that ‘decisions will soon have to be made on a number of difficult problems.’ For several reasons, including poor communication between the Crown, the Waikato Valley Authority and the county councils, neither the Crown nor local bodies implemented the report’s recommendations.

The Water Pollution Regulations 1963 granted the Pollution Advisory Council additional powers to manage and enforce water quality measures through a new classification system that described water as class A, B, C, or D – with D being the lowest class of fresh-water. This classification system was used to assess and place conditions upon water discharge outfalls. The requirements for each water classification were published by the Council in November 1966.

In December 1965, the Pollution Advisory Council classified the entire portion of the Waipā catchment south of the Pūniu River as class D, excluding only four sites. The Water Pollution legislation comprised no statutory or regulatory requirement to consult with Te Rohe Pōtæ Māori regarding this classification, to take into account their relationship with this waterway catchment, or to consider their

---

293. Document A150, p 75.
Requirements for Water Classification

The Pollution Advisory Council published the following summary of the requirements for each water classification in November 1966:

The lowest class of fresh water – class D – allows for their use in general recreation (not swimming), including fishing, agricultural use and general industrial water supplies. The important criteria included a limit on the dissolved oxygen concentration to 5 parts per million (5 ppm) and all discharges are required to be substantially free from suspended solids, grease and oil. The latter requirement prevents unsightly discharges taking place when other conditions have been fulfilled.

Class C waters are intended for use as recreational waters including swimming. The criteria additional to class D requirements include a minimum dissolved oxygen content of 6 ppm and a coliform bacteria content of not more than 1,000 per 100 millilitres (ml).

Class B waters are waters from polluted catchments but which are suitable for public and industrial water supplies after adequate treatment. The criteria for these waters are similar to class C waters except that the coliform bacteria content is restricted to 5,000 per 100ml.

Class A waters refer to controlled catchment areas where no sewage, industrial wastes or other polluting discharges are permitted. Such waters are reserved solely for water supply purposes. In general, such waters will be in upland catchments.¹

¹. Pollution Advisory Council, general explanatory notes, November 1966 (doc A150, p 75).

Tikanga or values. However, a limited public notification procedure was employed when a change in classification was sought for one site.²⁹⁴

The Water and Soil Conservation Act 1967 constituted the Water Resources Council, which assumed authority for pollution control and water quality, working in collaboration with the regional water boards established by the Act. In Te Rohe Pōtae, the Waikato Valley Authority continued as the regional water board. It was charged with weighing competing values and saw its role as ‘finding a balance between the exploitative use of water, such as abstraction and waste discharge, and human and non-human uses which relied on water in its natural state, such as fisheries, wildlife habitat and recreation.’²⁹⁵

²⁹⁴. Document A150, p 76.
During the 1960s, growing the pastoral economy in the region overshadowed the effects of nutrient-leaching on waterways identified in the previous decade.\textsuperscript{296} The fact that added nutrient load was over-fertilising plant growth in lakes and waterways, resulting in eutrophic environments, was known yet largely ignored by the Crown.\textsuperscript{297}  

Suggestions the Crown may have been unaware of the degradation of waterways in the district are unconvincing, because between 1969 and 1976 the Ministry of Works and Development conducted a ‘Water Resources Study’ of the Waikato catchment on behalf of the National Water and Soil Conservation Authority and the Waikato Valley Authority. These surveys measured ionisation levels and chemical and dissolved oxygen concentrations in the catchment. However, recording coliform counts, nitrates, phosphates, and ammonia concentrations did not start until 1971. As the Waikato River was the focus, the main water quality measurements of the Waipā River occurred immediately before it joined the Waikato. Between 1969 and 1971, the surveys also recorded figures at Ōtorohanga, Pirongia, and Whatawhata.\textsuperscript{298} ‘The results indicate that there was a high concentration of pollutants released at Ōtorohanga, which were considerably depleted by the time the Waipā River reached Ngāruawahia. Importantly, while coliform counts taken at Ōtorohanga remained high, it was lower than that measured in 1956. This may suggest that the classification system introduced by the Pollution Advisory Council had led to some improvement at point sources of pollution.’\textsuperscript{299}  

The criteria for point-source discharges continued to develop throughout the 1970s and 1980s. However, industrial waste and sewage remained a concern to the health of the waterways. Furthermore, despite efforts to improve farm-based discharges (largely the result of work done by the inter-agency Farm Waste Disposal Committee which encouraged farmers to treat their waste on-site or dispose of it through land-spraying and irrigation), problems with monitoring these discharges occurred and improvements were not seen rurally.\textsuperscript{300} Occasionally, an accident would occur, as when the New Zealand Dairy Company had to make an emergency discharge of two million litres of milk into the Waipā River in 1979. This discharge caused anoxic conditions for 50 kilometres of the river for over 24 hours, and it resulted in major fish death and damage to the benthic invertebrate fauna.\textsuperscript{301}  

The first dedicated report on water quality in the Waipā catchment was produced in 1984. The samples used for the Waipā and its tributaries between April 1983 and March 1984 indicated that, while the water quality of the upper Waipā was high, it declined considerably at all sampling points downstream.\textsuperscript{302} Sampling

\textsuperscript{297} Document A154, p 61.  
\textsuperscript{298} Document A150, pp 78–79.  
\textsuperscript{299} Document A150, p 79.  
\textsuperscript{300} Document A148, pp 211–12; doc A150, pp 77–79.  
\textsuperscript{301} Document A150, pp 85–86.  
\textsuperscript{302} Document A150, p 87.
points on the Mangaokewa and the Mangaorongo Streams – where the wastewater treatment plants at Te Kūiti and Ōtorohanga discharged – recorded ‘high amounts of conductivity, pH, suspended solids, turbidity, nitrogen and faecal coliforms.’\(^{303}\) The Mangaorongo measured the highest faecal coliform count of all sampling sites, which was attributed to ‘sewage pond discharge with additional inputs from agricultural sources such as dairy sheds.’\(^{304}\) Median coliform counts were measured at Mangaokewa and breached the limits imposed upon class B waters, however, that did improve by 1985. The worst measurements were recorded on the Mangapiko Stream downstream of Te Awamutu.\(^{305}\)

It seems that issues related to pollution did not only impact on the Waipā River. Several claimants said that their traditional waterways were so polluted that they can no longer swim in them or use the water for cooking.\(^{306}\) Daniel Rata, for example, grew up near the junction of the Īngarue River and Mangakahu Stream in the 1970s and remembered fishing for eels and collecting watercress and puha from clear and clean streams. However, when he revisited the area as an adult, he was surprised and disappointed to see the Mangakahu had become still and ‘thick with mud’ so that children could no longer swim there. For his family, this was a direct result of the increased discharges from the sawmill upstream.\(^{307}\)

Claimant Paora Haitana also commented:

> I have seen the diminishing of food resources and water quality within our rohe. I put the losses down to ignorance and failure on the part of the Crown to protect our precious resources in breach of the Treaty . . . I can tell you from my own experience and from seeing with my own eyes that these resources are being overfished by commercial eelers, polluted by farm runoff and there has been other interference with the mauri of the waters.\(^{308}\)

Claimant Tame Te Nuinga Tuwhangai, too, linked the severe degradation of waterways in the district to Crown ignorance, and legislative and policy omissions:

> particular values such as the protection of the mauri of the awa have not been considered. We have observed low water flows, or in some cases completely dry puna, draining of wetlands, changes in sediment patterns, and increased fluctuations in water levels. The Treaty of Waitangi guaranteed to us our fishing rights and promised us undisturbed possession of our taonga. But the guarantees of the Treaty have not been met by the Crown. Provisions in the RMA and Conservation Act requiring decision makers to take account of kaitiakitanga and the principles of the Treaty are no way

---

\(^{303}\) Document A150, p 87.

\(^{304}\) Document A150, p 87.

\(^{305}\) Document A150, p 87.

\(^{306}\) Submission 3.4.115, p 15.

\(^{307}\) Document S6 (Rata), p 21.

\(^{308}\) Document L2 (Haitana), p 13.
near good enough to meet the guarantee of tino rangatiratanga. Furthermore, we are yet to see the Crown attempt to uphold even these basic statutory requirements. 309

In the 1980s, water boards began to develop their own water quantity and quality standards. Regional water boards began producing documents which looked at catchments in a more holistic way. 310 That said, Māori tikanga and values with respect to water were not taken into account and any positive legislated requirements for water quality achieved at this time were incidental to their concerns. For example, in 1981 a legislative amendment to the Water and Soil Conservation Act 1967 added aesthetic values such as ‘wilderness and scenic appreciation’ to the values water boards had to recognise and provide for. This amendment came after campaigning by European recreation and conservation organisations to gain recognition for the retention of rivers in their natural states. The Act was also amended to allow national water conservation orders and local water conservation notices to be granted. 311

The amendments proposed in 1981 prompted Koro Wetere (member of Parliament for Western Māori) to draw attention to the fact that the 1967 Act did not consider Māori values relating to water and argue that the same recognition should be given. 312 This resulted in a minor 1983 amendment that provided for one person to ‘represent the interests of the Māori people in relation to natural water’. Aside from this, regional water boards were not statutorily required to consider Māori interests in respect of water. This lack of statutory provision meant that if Māori had any issues with the way the water boards managed water in their rohe, virtually no legal avenues were open to them. The bodies established to hear appeals against the decisions of water boards, such as the Town and Country Planning Appeal Board (and its successor the Planning Tribunal) did not consider Māori values relevant to water management. As noted previously, it was not until 1987 when the High Court in the Huakina case determined that Māori cultural and spiritual values were relevant considerations when determining applications for water consents or discharges, that such an approach was reversed. 313

22.4.1 Crown regulation of pollution since 1991

As discussed in chapter 21 on the environment, part 2 of the RMA requires that during the processing of new applications for resource consents and for planning purposes, regional councils and other consent authorities must recognise and provide for matters of national importance including the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga (section 6(e)). They must also have particular regard to the exercise

---

of kaitiakitanga (section 7(a)); and they must take into account the principles of the Treaty of Waitangi (section 8).\textsuperscript{314} As noted in chapter 21, the wording between these provisions is quite different for the reasons explained there. Our findings in respect to the Resource Management Act in that chapter apply equally here. Due to these provisions, planning documents must now address these matters.

What is positive is that Māori have benefitted from the more thorough analysis of water consent applications required by Part 2, and planning documents are now laced with sections that recognise and attempt to provide for such matters, take them into account or have regard to them. Consultation with Māori affected by consents is also given greater emphasis.\textsuperscript{315}

Under the RMA, regional councils manage water through their regional policy statements, regional plans and rules. In 2000, the Waikato Regional Council implemented the Waikato Regional Policy Statement, and in 2007, the Waikato Regional Plan became operative. The regional plan permits all activities considered to be of no consequence to the environment or to have minor and easily mitigated environmental effects. Activities with more substantial effects on the environment are classified as either ‘controlled’, ‘discretionary’, or ‘non-complying’ and require a formal resource consent application to be lodged. In making an application, applicants are required to consult with interested parties (including tangata whenua). The council then assesses the application.\textsuperscript{316} Activities requiring consents are monitored by the council, which has the power to enforce a range of punitive measures if the consent holder is not complying with the conditions of their consents.\textsuperscript{317}

A review of the enforcement framework used by the regional council in Te Rohe Pōtae in 2011 by the Auditor-General found that Environment Waikato’s performance was lacking. In particular, the Auditor General noted the Council did not have consistent policies to deal with non-compliance, complaints, and pollution incidents.\textsuperscript{318} The Auditor General also found that the Waikato Regional Council has failed to meet its own environmental standards to protect and improve freshwater quality, and that at the time of audit water quality was continuing to deteriorate in the region.\textsuperscript{319} Most importantly, although there have been efforts to improve the quality of pollutants discharged directly into waterways (like sewage), the more general runoff of pollutants and nutrients from the land (known as non-point source discharges) had increased.\textsuperscript{320}

The council’s regional plan (operative at the time of our hearings) was even less clear regarding the monitoring and mitigation of non-point source pollution as it appeared their chief strategy to combat non-point source pollution was to attempt to educate primary producers in best-practice land management (e.g. streamside
fencing and riparian planting). This is a concern because these sources are now the most significant contributors of pollutants to rivers like the Waipā.321

As these problems are not only of concern in Te Rohe Pōtae, the Crown has undertaken several initiatives to address major industry impacts on freshwater quality at source. The Crown, for example, promulgated water quality guidelines through the Ministry for the Environment when it took over the responsibilities of the Water Resources Council in 1992. In 2003, the Ministry of the Environment facilitated the Dairying and Clean Streams Accord signed by that Ministry, the Ministry of Agriculture and Forestry, regional councils, and Fonterra, which set performance targets. Those targets included excluding dairy cows from 90 per cent of streams, rivers, and lakes; immediately having all dairy farm effluent discharges comply with resource consents and regional plans; fencing 90 per cent of regionally significant wetlands; and putting in place nutrient input and output systems on farms.322

In response to increasing criticism about regulation of the accord, the Crown promulgated the National Policy Statement for Fresh Water Management under the Resource Management Act. The statement (current at the time of our hearings) imposed ‘requirements on regional councils regarding water quality and quantity, management and use, and tangata whenua roles and interests.’323 The standards set were a move towards improving water quality. However, the scientific and Māori communities expressed significant doubts over whether the statement set sufficiently high standards for water quality.324 Towards the end of Tribunal hearings, national discussions on freshwater management continued. The ‘Fresh Start for Fresh Water’ reform programme was to involve discussions with iwi claiming significant freshwater resources and the Iwi Leaders Group. At the time of writing, questions regarding this process were before the Tribunal’s Freshwater Stage II inquiry.325 Given their inclusion in another inquiry, these questions are not considered in this report.

The regional council tried to implement some initiatives in response to these national developments in its Regional Plan. These were broadly grouped under the ‘Healthy Rivers: Plan for Change’ project. The aim of the project was to ‘help achieve reduction, over time, of sediment, bacteria and nutrients (nitrogen and phosphorus) entering water bodies (including groundwater) in the Waikato and Waipā catchments.’326 The project was expected to involve considerable consultation with stakeholders, including tangata whenua and specialists in matauranga Māori, and would culminate in a formal submission and hearing process in 2017.327

---

324. Submission 3.4.15(a), pp 32–33; doc A150, p 99.
326. Document A150, p 100.
327. Document A150, p 100.
As part of this project, the Waikato Regional Council increased the number of water quality monitoring sites on the Waipā River from five to 14.\(^{328}\)

Following the agreement reached with Waikato-Tainui regarding the co-management of the Waikato River in 2008, the Crown enacted the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010. During the third reading of the Bill, Nanaia Mahuta noted that an agreement with Ngāti Maniapoto would have to be completed for the Waikato and Waipā Rivers.\(^{329}\) On 27 September 2010, the Crown signed a deed of co-management with Ngāti Maniapoto over the upper reaches of the Waipā River known as the ‘Waiawa Accord.’ The deed also recognised their interests for the lower reaches of the river. The legislation giving effect to the deed is the Ngā Wai o Maniapoto (Waipā River) Act 2012. The legislation does not affect the Tribunal’s jurisdiction to hear historical claims relating to the river.

The preamble of the Act is included in this report as an appendix to this chapter. The Act itself included several provisions that sought to increase Māori participation in customary fishery management regarding the Waipā River, which are unique to the three co-management deeds for the Waikato and Waipā catchments (the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010, the Ngāti Tuwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Act 2010, and the Ngā Wai o Maniapoto (Waipā Act)).\(^{330}\)

It was not known at the close of hearings how successful the co-management regime involving Ngāti Maniapoto has been in addressing water quality issues for the Waipā.

### 22.4.2 Sewage

The extent to which the Crown’s management system has considered Māori cultural and spiritual values comes to the fore with a review of sewage disposal in the district. This issue is instructive as it demonstrates the differences in sociocultural values between the Crown’s water management regime and Te Rohe Pōtai Māori values and tikanga concerning water quality. The next section reviews case studies from the district to demonstrate how these differences have been resolved, if at all.

It should be first noted that Te Rohe Pōtai Māori prefer sewage to be disposed of in land-based ways rather than into waterways. It is culturally inappropriate for human waste to be discharged into waterways, particularly where food is gathered. Claimant Harry Kereopa described the impact of such spillages ‘... the water has been desecrated in one of the worst ways possible. Just the thought of it that is upsetting.’\(^{331}\) Claimants also emphasised the tikanga that protects wāhi tapu sites associated with freshwater bodies. Te Pare Joseph, Hutukawa Joseph, Rangi Joseph, and Lynda Toki pointed out that ‘because many of our taonga come from

---

\(^{328}\) Document A150, p 100.  
\(^{329}\) Document A150, p 196.  
\(^{330}\) Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act, s 93; Ngati Tuwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Act, s 58; Ngā Wai o Maniapoto (Waipā River) Act, s 32.  
\(^{331}\) Document L14(c) (Kereopa), p 36.
the sea . . . we would never willingly put anything into our waterways that will contribute to the contamination of Hinemoana or Tangaroa.”

22.4.2.1 Raglan sewerage scheme

For over 40 years, Te Rohe Pōtae Māori have opposed Raglan’s sewage treatment schemes, which have been discharging sewage into the Whāingaroa Harbour, once an abundant source of kai moana and the location of wāhi tapu. Te Rohe Pōtae Māori have felt shut out and let down by decisions regarding sewage and sewerage in their rohe. The claimants argued that the Crown breached their Treaty rights when it enacted a number of resource management schemes, delegating management of the harbour and its resources to local authorities, and as a result failed to account for their mana and kaitiakitanga. They criticised the Crown for ‘the systematic loss of cultural identity and the ability for effective decision making due to various mechanisms that have stemmed from Crown legislative and delegated authority.’

Despite the sewerage system undergoing frequent periods of review and occasional upgrades, little has changed. Māori complaints regarding the sewerage schemes have not diminished since their establishment. In addition to their inability to exercise kaitiakitanga, claimants told us how the treatment plant continuously failed to comply with the relevant water right conditions set by the Crown and its delegated local authorities, leading to polluted waterways, the loss of customary kai moana fisheries, and the desecration of culturally significant sites. Throughout the period, a pattern emerges in which sewerage systems recurrently failed as Māori concerns continued to fall on deaf ears.

Raglan’s first sewage treatment system was made up of a series of septic tanks. The tanks were connected to field tile soakage, which would allow the sewage to be broken down as it leached into the soil. However, soakage was poor in some areas and the disposal method became a health risk. In 1970, the Raglan County Council proposed a new sewage treatment system including a two-stage oxidation pond. It also applied for the right to discharge up to 200,000 gallons of treated domestic waste per day into Raglan Harbour. The director of the National Water and Soil Conservation Authority noted at the time that the area contained ‘extensive shellfish beds’ and that ‘any discharge from the proposed oxidation ponds must be of such quality as to maintain SA standards in the shellfish waters.’

In January 1971, the Authority granted the county council a 10-year permit to discharge treated sewerage into the Whāingaroa Harbour, subject to a series of conditions, including ‘the ponds being continuously operated and adequately

---

333. Submission 3.4.210, p 71; doc A152, p 3.
337. Document A152, p 87. The ‘SA’ classification was the highest quality for saline water, referring to waters specifically used for shell-fishing.
maintained to maintain in the receiving waters a satisfactory quality standard. Following a number of delays, however, construction and installation of the scheme did not begin until 1973, during which time the septic tank system continued to be overloaded, spilling raw sewage onto footpaths and the beachfront.

That year, the Tainui Tribal Committee, representing Māori interests in Raglan, wrote to the member of Parliament for Western Māori, Koro Wētere, seeking support for their objections to the proposed scheme. Their objections were:

- siting of the ponds 300 yards from Māori Community Centre, and the possibility of the prevailing winds carrying offensive smells into the area;
- siting of the ponds adjacent to an entirely Māori residential and community area;
- possible pollution of shellfish grounds;
- decrease of value of Māori property in the area;
- proximity to domain of Te Atai-o-rongo, the taniwha guardian of the Tainui people;
- further loss of Māori coastal lands; and
- Raglan Māoris have lost too much land through acquisition for public use.

They requested an environmental report be commissioned and a meeting with the Raglan County Council and the Minister of Works. The county council disregarded the Committee’s objections, however, most likely because they were not owners of the land being taken for the ponds.

Amidst continued opposition from local Māori, the sewage system began operations in March 1977, though at that point only one of the two planned oxidation ponds were completed. In June, emergency overflows were taking place as the second oxidation pond was delayed due to difficulties with rock excavation and bad weather. As a result, partially treated effluent was discharged into the nearby Pokohue stream, which ran into an estuary adjacent to the Raglan Township. In August, members of the Tainui Tribal Committee wrote to the Waikato Valley Authority stating that the Raglan County Council was not complying with established water conditions. They noted that effluent was flowing directly into the Pokohue stream, that it was being discharged without secondary ponding, and that the discharge was ‘far beyond’ the approved 200,000 gallons per day. The Authority responded that the risk to health was minimal and that all works would

340. Secretary Tainui Tribal Committee to County Clerk Raglan County Council, 3 October 1973, attached to KT Wētere to Minister of Māori Affairs, 10 October 1973 (doc A63(a) (Alexander document bank), pp 957–959).
be completed the following month, though it was not until December that the system was fully installed and the emergency discharges ceased.  

Within three weeks of being installed, storms damaged the outfall to the harbour. The Senior Inspector of Health found that it needed to be moved to another location and suggested moving it further into the harbour, however, as the District Commissioner of Works noted, that was likely to upset Te Rohe Pōtae Māori. Nonetheless, works for the new outfall continued amidst continued complaints from residents. When the new pipeline was nearing completion kaumātua Kuru Riki and Herepo Rongo went to the lair of the taniwha Te Atai o Rongo and ‘apologized to him and asked him to help them stop the hara and desecration and [to] protect his land’. Complications with the scheme continued into the 1980s, with residents complaining of recurring sewage leaks into the harbour and the Auckland Regional Authority reporting that shellfish in the area were unsafe to eat.

In June 1990, the Raglan County Council’s right to discharge expired and in November, after being reformed as part of the Waikato District Council, the council applied to renew a water right to discharge treated domestic waste water into the harbour. The application received submissions in opposition from the Minister of Conservation, who was concerned about ‘protecting the ecological, recreational and visual values which could be adversely affected’ by sewage discharge. Other opponents included claimant Angeline Greensill on behalf of the Whāingaroa Ki te Whenua Trust, and her mother Tuiawa Eva Rickard on behalf of the Tainui Awhiro Trust. Ms Greensill objected to the scheme on the grounds that no environmental impact report had been done, that discharging human waste into the sea was in conflict with Māori values, that the county council had failed to adhere to the original discharge conditions, and that Māori had not been consulted when the scheme was designed. She further noted that there were options other than disposing into the sea available. Ms Rickard outlined that the Tainui Māori Trust Board’s objections were the same as those raised in November 1975 by the Tainui Tribal Committee, namely that the siting of the scheme near the Poihakena Burial Grounds with the outfall into Whāingaroa Harbour was ‘totally insensitive’ and reiterated Ms Greensill’s assertion that ‘polluting the sea with human effluent is culturally and spiritually unacceptable’.

In December 1993, Rickard, Greensill, the Department of Conservation, Waikato District Council, and the Waikato Regional Council signed a memorandum of agreement stating that the discharge would continue as planned on the proviso that alternative options for waste disposal were investigated with trials beginning.

---

348. Document A152, p.120.
within three years.\textsuperscript{354} They also agreed that a Raglan Sewerage Consultative Group would be formed. Half of the Consultative Group was to be made up of representatives from the district and regional councils and the other half, representatives of local Māori. Together, the group would make recommendations to the councils on proposed upgrades to the sewerage system.\textsuperscript{355} However, in February 1994, when the Consultative Group was still being established, the district council was granted a four-year permit to discharge sewage from the oxidation ponds, once again without consulting Māori. That year the faecal coliform count in the harbour rose from less than one per 100 millilitres in 1991 to between 700 and 2,400 per 100 millilitres, 12 times the limit for bathing waters.\textsuperscript{356} Reports also found that eating oysters from the area ‘posed an extreme health risk’, with Māori noting – and DOC confirming – a loss of 70\% of their kaimoana.\textsuperscript{357}

In June 1994, following complaints that local Māori were still not being consulted, the Raglan Sewerage Consultative Group met to discuss possible alternative sewage treatment and disposal systems. At the meeting, Māori outlined their continued opposition to the location of the oxidation ponds over the lair of the taniwha Te Atai o Rongo and the discharge of sewage into the harbour near Poihakena Marae, later noting that as ‘far as the tangata whenua were concerned, a land based system was the only alternative in view of the custom that what comes from the land must go back to the land.’\textsuperscript{358} The district council, however, asserted that the soil and topography of the area were not suited to a purely land-based disposal system and approved a wetland system that would continue to discharge treated waste into the harbour.\textsuperscript{359} Local Māori again strongly opposed the resource consent for the new system and in 1998, the district council agreed that the oxidation pond over Te Atai o Rongo would be decommissioned and the new outfall pipe would not be routed through Te Kopua land, though otherwise the scheme was to go ahead as planned.\textsuperscript{360} In June 2000, the Raglan Wastewater Working Party was established to further explore alternative options to harbour-based discharges but in 2002 concluded that land-based disposal schemes were too expensive and not suitable for Raglan’s topography.\textsuperscript{361}

After failing to stop the resource consents for the new sewage system, Māori instead appealed to the Environment Court to have the consent shortened from the proposed 15 years to five. The court rejected this appeal, concluding that local Māori had been consulted extensively and that land-based options were not economically feasible.\textsuperscript{362}

Throughout the following decade, the sewage system exhibited a ‘pattern of sewage spills and emergency overflows’ amidst continued complaints from local Māori.\textsuperscript{363} Despite compliance reports consistently finding the system at a level of ‘significant non-compliance’ the regional council did not take any significant enforcement action during this period.\textsuperscript{364} Indeed, a recent report by the Auditor-General into the management of freshwater fisheries found that the Regional Council did ‘not appear to currently have effective strategies of management systems to address risks associated with significant non-compliance and/or repeated non-compliance.’\textsuperscript{365} Ultimately, the fallout following the Environment Court decision was immense and continued to affect the working relationship Māori had with the district council while our hearings were been held.\textsuperscript{366}

Although the Crown (and the agencies to which it delegated its powers) responded to Māori concerns regarding the sewerage system, they always did so ‘within the confines of the development of a sewage system that would still discharge wastewater into the Harbour against the wishes of tangata whenua.’\textsuperscript{367} In the meantime, Māori continue to grieve at the continued destruction of the harbour, as claimant Angeline Greensill notes:

> The ponds sit like a festering carbuncle on our awa, our moana, our takutai moana. It has degraded our waterways, kaimoana areas adjacent to our marae and contributed to the destruction of traditional practices. Our refrigerator is now a thoroughfare for the human excrement of the residents of Raglan . . . Attempts to have the sewage pipeline decommissioned, the oxidation pond removed and the discharges of effluent into the Whaingaroa/Raglan Harbour terminated have been going on since 1974 . . . And who remains to clean up the mess?\textsuperscript{368}

\textbf{22.4.2.2 Ōtorohanga sewerage scheme}

Like the other case studies in this section, by the mid-twentieth century Otorohanga’s sewerage infrastructure was made up of septic tank systems. When these tanks were full, untreated sewage was discharged directly into the Waipā River.\textsuperscript{369} Beginning in 1969, upgrades were undertaken in the area. The general pattern that emerges is that early upgrades were undertaken without consultation with tangata whenua and resulted in high levels of effluent discharge into waterways. By contrast, upgrades undertaken after the passing of the RMA were required consultation with tangata whenua and generally resulted in more tangata whenua concerns being met. In recent years, local Māori in Otorohanga have had better experiences with the district council than Raglan tangata whenua have had with the Waipā District Council. In large part, this is because they were involved in the

\textsuperscript{363} Document A152, p 198.
\textsuperscript{364} Document A152, p 204.
\textsuperscript{365} Document A152, pp 205–207.
\textsuperscript{366} Document A148, pp 221–223.
\textsuperscript{367} Document A152, pp 205–207.
\textsuperscript{368} Document M31(b) (Greensill et al), p 19.
\textsuperscript{369} Document A150, p 103.
decisions surrounding upgrading the town’s sewage treatment facilities. However, this case study does suggest that there is an on-again/off-again nature to Māori involvement in the resource consent process (where Māori are defined by their role as submitters), which works against the development of a lasting relationship with local government.

Since at least the mid-1950s, serious pollution problems at Ōtorohanga were known. A 1956 report produced for the Pollution Advisory Council, for example, noted that pollution due to town sewage and dairy factory waste at Ōtorohanga was one of the three main problems in the Waikato catchment and that top priority should be given to abating the problem. However, despite the recommendations, it was at least 13 years before the Crown made any substantial effort to combat the problem. Furthermore, although the Crown had agreed as early as 1961 that local government subsidies for sewage treatment facilities in small towns were necessary, the Ōtorohanga Borough Council did not begin upgrading its septic tank system until 1969 and struggled to get central government funding to do this.

In June 1969, the Ōtorohanga Borough Council sought funding for the construction of a two-stage oxidation pond system which would discharge treated wastewater to the Mangaorongo Stream. The Pollution Advisory Council accepted the proposal and issued them with a temporary permit to continue as usual until the oxidation ponds were expected to be completed (December 1970). This did not eventuate as the borough council was hampered by a number of delays (including their inability to secure funding) and they were granted consecutive temporary permits allowing them to continue the discharge until April 1972. In March 1972, the Ōtorohanga County Council (which by this time had absorbed the borough council) unsuccessfully applied for a further temporary permit and for the next two years discharged untreated sewage into the Waipā without a permit. In May 1974, the Waikato Valley Authority became aware of the lapse and informed the county council that if the untreated discharge continued to occur they would be liable for a fine of $2,000 plus $100 per day. In response, the council filed an application to continue until the ponds were complete, which they ‘confidently expected’ would be before the end of 1974. Despite opposition from the Environmental Defence Society, the Authority granted the council the right to discharge up to 272,000 litres of domestic sewage from the septic tank into the Waipā until May 1975. In 1975, after the completion of the oxidation ponds, the council was granted the right to discharge up to 600,000 litres of treated effluent into the river for a period of 10 years. It does not appear that Māori interests were considered during this process.

In the 1980s, the Ōtorohanga District Council undertook sewage reticulation extensions and was granted a number of new water rights. One of these allowed the

council to discharge 2000 cubic metres of treated effluent into the Mangaorongo Stream for 10 years. Although the assessment of the application took into consideration effects on farmers downstream from the discharge point (who used the river for stock watering), it did not consider whether Māori customary uses of water would be affected.376

The first chance for the effects of the Resource Management Act to be seen came in 1995 when the Otorohanga District Council’s resource consent expired, and they proposed to upgrade the sewage treatment plant. The Waikato Regional Council told them that any new consent needed to ‘demonstrate active consultation’ with interested groups including tangata whenua.377 In order to fulfil these obligations, the district council hired Works Consultancy Ltd to undertake consultation with the relevant parties. They appear to have undertaken this consultation relatively thoroughly.

In meetings set up to discuss the proposal, tangata whenua representatives emphasised their concerns regarding the odour emitting from the ponds and the effect on fish and plant life, and the humans who might consume them.378 After further work with the affected parties, Works Consultancy proposed to replace the last 10–20 metres of the effluent line with an earth trench in order to allow for earth treatment prior to discharge. Although tangata whenua had residual misgivings (including that a taonga was buried somewhere in the area of the proposed wetland site and that the discharge to the Mangaorongo Stream would continue to have a negative effect on customary fisheries) they ultimately supported the proposal as it would ‘significantly improve the existing situation’.

There were, however, caveats to their approval, which included that the resource consent duration was reduced to 10–15 years and that regular monitoring of the discharge occurred.379 Members of the Te Nehenehenui Regional Management Committee also made it clear that water-based disposal should be replaced with land-based disposal in the long-term and that ultimately discharge into the Mangaorongo Stream ‘must cease completely!’.

When the Otorohanga District Council applied for the consent, they agreed to add these monitoring conditions and to investigate and report on land-based disposal alternatives before the consent expired. An extra condition of the consent was that the wetland must be installed by 30 April 2000. The resource consent was granted in June 1998 with 2012 being the year of expiration.380

The Otorohanga District Council’s subsequent efforts to construct the wetland suffered several setbacks and they were unable to complete the work until 2002. This, coupled with their failure to provide ongoing monitoring and reporting information, resulted in the district council receiving a number of ‘significant non-compliance’ ratings from the Waikato Regional Council during that period.381

Following completion of the work and the construction of the earth trench in 2003, the district council received consistently high levels of compliance from the Waikato Regional Council for the five years.\(^{382}\) However, they came under scrutiny again from 2008 to 2010 for a number of emergency discharges from the ponds straight into the Mangaorongo, with higher-than-acceptable levels of faecal coliforms, nitrogen, and BOD\(_5\). They also failed to meet their monitoring and reporting requirements during this time.\(^{383}\)

In 2010, the district council began work on renewing the wastewater treatment plant consent. By this time there were significant concerns regarding the efficiency and effectiveness of the current wetland system and the council proposed to upgrade the oxidation ponds. As per the 1998 consent, a study into land-based disposal was included in the initial scoping though the council concluded that the costs were too high to be feasible.

In 2011, the council began consultation with tangata whenua, not only as part of its duties under the Resource Management Act, but also in light of the Ngā Wai o Maniapoto (Waipā River) Bill being discussed in Parliament at that time. A tangata whenua working group was formed to produce a cultural impacts assessment that raised a number of concerns about the pond system and discharge point. Although the goal was ‘to restore the waterways . . . to a level acceptable to the iwi’ and the current treatment process was not perfect, the working group agreed to support the proposal as it was the best way at the time to improve the water quality, even if it was only in the short-term.\(^{384}\) While limited, the Ōtorohanga sewerage scheme demonstrates the strength of the co-management regime in accommodating Māori tikanga and values.

22.4.2.3 Te Kūiti sewerage scheme

Te Kūiti relied on basic septic tank sewerage systems until 1969, when upgrades to this system were commenced after the Pollution Advisory Council issued water classification ratings for the Waipā River. Oxidation ponds were operational in Te Kūiti by 1976 and that wastewater effluent was being discharged into the Mangaokewa Stream.\(^{385}\) There is no evidence that tangata whenua were consulted in the pre-Resource Management Act era. The impending expiration of resource consent in the 1990s, provided an opportunity for Māori views to be considered. Ultimately, however, the solutions settled on did little to address Māori concerns in the long run, and claimants expressed their concern that pollution had depleted fish stocks.\(^{386}\)

The experience of Te Kūiti Māori with the Waitomo District Council is somewhere between that of Raglan and Ōtorohanga tangata whenua. Although Māori generally supported upgrades to the treatment of meatworks effluent and

\[^{382}\text{Document A150, pp 116–117.}\]
\[^{383}\text{Document A150, pp 117–119.}\]
\[^{384}\text{Document A150, pp 119–121.}\]
\[^{385}\text{Document A150, pp 129–130, 134.}\]
\[^{386}\text{Document S45 (Turner-Nankivell), p 4; doc S50(c) (Green, Tahi), pp 16–17.}\]
supported the removal of communal septic tanks on the banks of the Mangaokewa Stream, there was less support for the discharge of treated effluent into the same stream. Furthermore, while a recent upgrade has added additional treatment of effluent before it is discharged into both oxidation ponds and an artificial wetland, the effluent still ends up in the Mangaokewa Stream and was considered by many to be a ‘take it or else’ proposal.\(^{387}\)

In 1997, the Waitomo District Council’s resource consent for the Te Kūiti wastewater treatment plant expired. As part of preparatory work for the new application, three upgrade options were identified, and a working party formed to consider them. However, Māori criticised the consultation process the council followed as inadequate and unrepresentative.\(^{388}\) For example, the council’s first attempt to meet with tangata whenua about the proposal did not appear to include Ngāti Maniapoto or the local regional management committees (Hauauru ki Uta and Te Tokananui-a-noho).\(^{389}\) This omission was rectified in late 1997 and tangata whenua representatives invited to join a sewage working party. In 1998, the Waitomo District Council circulated a public consultation paper that proposed a two-stage process: stage one was the immediate building of a wetland and rock filter system, and stage two the purchase, within seven to 10 years, of land to allow for land-based disposal. Waitomo District Council’s commitment to investigate a land-based disposal alternative became a central part of the resource consent application and was the preferred option of tangata whenua. Te Mauri o Maniapoto Council of Elders approved the two-stage proposal in March 1998.\(^{390}\)

In July 1998, the Waitomo District Council lodged two revised resource consent applications for the Te Kūiti wastewater treatment plant with the Waikato Regional Council. The applications included a report on the fisheries in the Mangaokewa that noted the discharge from the plant was having a ‘significant adverse effect on both fish and invertebrates in the stream.’ The regional council noted several issues with the applications and environmental assessment and requested more information from them. In particular, they noted the plan did not meet Waikato Regional Council’s commitment to improve water quality across the region.\(^{391}\) Although the District Council responded with the additional information, a series of accidental discharges of untreated waste into the Mangaokewa Stream throughout the second half of 1998 exacerbated the Regional Council’s concerns.\(^{392}\)

Several Māori submitters, as well as Fish and Game and the Department of Conservation, opposed the resource consent applications advertised in November 1998. Included in the Māori opposition were Te Mauri o Maniapoto, Te Tokanganui-a-noho Trust, Te Korapatu Marae Trust, Te Korapatu Marae, R. Tiwha Bell, Maadi Waikura Jacobs, Rewi Panapa, Lee Crown, Putangi Kehu Wehi, Tanya Cherie Barnard, Lena Kura Kaewinga Manaia, John and Elizabeth Moerua,

---

and Charlie Mackinder. They all stated their concern that the discharge levels were ‘shocking’ and the Stream was no longer the ‘vital food source’ it had been. They felt that the consultation process had not been carried out properly and wanted the council to guarantee that environmental degradation would not continue.\textsuperscript{393} They specified:

\begin{itemize}
  \item there should be no discharge to the Mangaokewa unless it was of the highest quality;
  \item there should be controls to ensure that the stream water is suitable for humans and fish;
  \item the oxidation ponds should be of a high enough standard to prevent any further leakages or overflows;
  \item tangata whenua should be told if land is to be acquired before the consent is granted so that if there are any issues with the land this can be addressed beforehand;
  \item the Council should ensure that wāhi tapu are not present in the wetland where disposal would occur; and
  \item the consent duration was too long.\textsuperscript{394}
\end{itemize}

The Waitomo District Council appears to have been genuinely surprised by the level of opposition and agreed that the matter should be resolved by a hearing.\textsuperscript{395} Following further consultation in 1999, the Māori submitters carried a motion that no more discharge into the stream be allowed and that a land-based system be investigated within two years. They raised concerns regarding the accidental discharges and overflows, and the cumulative effect of the various discharges on the stream (including discharges from three mills, two meatworks, timber treatment sites, sewerage, quarries, a landfill, farm run-off, and truck wash operators). They also repeated their request that the council identify the land that they wished to buy at an early stage. Further meetings were held between the councils and the Māori submitters where the Māori submitters agreed to several more favourable conditions. These included the creation of a land-based disposal system, formalising the two-stage approach, a review after two years, and an agreement that monitoring reports would be produced and sent to the regional council and tangata whenua.\textsuperscript{396}

The application for the revised proposal was heard in June 1999 in Te Kūiti. Māori submitters at the hearing stated that whilst they opposed the continued discharge to the Mangaokewa Stream they would not oppose the application as long as conditions were put in place that would ensure a land-based alternative was developed.\textsuperscript{397} The hearing committee approved the resource consent application. In doing so, they reasoned that the continued discharge was necessary to allow

\begin{footnotesize}
\begin{itemize}
  \item 393. Document A150, pp 140–141.
  \item 394. Document A150, p 141.
  \item 395. Document A150, pp 141–142.
  \item 396. Document A150, pp 142–143.
  \item 397. Document A150, pp 144–145.
\end{itemize}
\end{footnotesize}
time for a land-based alternative to be investigated and put in place. They noted the concerns of the iwi and reduced the consent period to five years.  

The Waitomo District Council subsequently appealed the reduction of the consent period in the Environment Court stating that the reduction had been made without any explanation of ‘how such a reduction could be achieved’ and that the wording of the consents was unclear. The council requested the Environment Court grant a consent for seven years.  

The Māori submitters repeated that they would like to stick with the five-year term and that if the district council can show substantial progress within the term they would not oppose an extension to the existing consent. Essentially, their main concern was that they would get to the end of the five years and no progress would have been made. The Environment Court approved a consent period of six years and this would be irrespective of the council’s progress in investigating land-based alternatives.

Following this, the Te Kūiti wastewater treatment plant consistently failed to meet the standards set in the resource consent conditions. This was in part due to the plant not being able to cope with increased wastewater from Universal Beef Packers. It was reported that poor discharges (some of which included solids) had a significantly negative effect on the health of the stream. The problem and the associate negative publicity was so bad in April 2000 that the Waikato Regional Council reported the wastewater treatment plant to its Regulatory Committee. Upon further investigation it was apparent that the plant was not only failing its discharge quality obligations but had also failed to provide a number of monitoring reports and plans that its resource consent required. Waikato Regional Council staff began visiting the plant on a weekly basis to examine the oxidation ponds, the Stream and the upgrades.

In May 2001, the regional council conducted an audit of the plant and found that it was failing to meet 22 of its 30 consent conditions and the upgrades had not yet been started. According to the regional council, the plant had a ‘significant compliance problem’ and that the discharge was having ‘a significant adverse effect on the environment’. They noted that the ‘sight of rubber and plastic material on the nearby vegetation’ was ‘disturbing’.

In June 2001, the Waitomo District Council secured a trade waste agreement with Universal Beef Packers to process their increased wastewater, but reported they were still negotiating with Te Kūiti Meats regarding the costs and charges. They also noted that they had accepted a tender for the upgrade works that proposed to save money by stretching the work out over two or three years. However, they noted that these delays would result in them continuing in their failure to meet their consent conditions and could result in the Waikato Regional Council prosecuting them for continued non-compliance. They suggested they

---

400. Environment Court consent order, 7 October 1999 (doc A148(a), vol 7, p 985).
could mitigate this in the short-term by purchasing new aerators, mixers, pumps and inlet screen. However, in April 2002 another sewage overflow occurred on Waitete Road, resulting in the Te Tokanganui-a-noho Regional Management Committee complaining to the Waikato Regional Council. They stated:

Our Hapu, Ngati Rora are very concerned about this latest episode, because last year we were informed that there would be no more sewerage spillage into the river, as Universal Beef Packers had installed new pumps to prevent this. As we receive our drinking water downstream from the Beef Works, the water recently has been odorous along with a sour taste.

By March 2002, construction work at the treatment plant had finished. However, the upgrades had not been completed to the standards of the consent conditions and, in particular, no wetland had been created. This was despite the Waikato Regional Council warning the district council that they would have to apply to modify their resource consent. The district council also failed to respond to the non-compliance matters highlighted in the audit and suggested, for the first time, that it did not intend to investigate land-based disposal methods as they did not believe they would work.

By August 2002, the councils had meet and agreed they needed to re-establish links with iwi well before the resource consent applications expired in a few years’ time and a working party was planned to be established in the near future. In September 2002, a company employed by the regional council to investigate wetland options noted the wetland would not improve discharge quality unless it was two to five times larger than was currently proposed and that land-based disposal would be difficult due to the soil type of the area, again unless the land-disposal area was made significantly bigger. They suggested further investigation needed to be undertaken before any firm conclusions were drawn, and a different solution, like the one being developed at the Te Awamutu wastewater treatment plant, may be more economic as well as being environmentally and culturally acceptable. By June 2003, considerable work had been undertaken at the treatment plant and the regional council awarded the plant a ‘partial compliance’ ranking in its audit report.

In July 2003, the Waitomo District Council replied to the regional council’s audit report, officially stating for the first time that it did not intend to follow up on the proposed wetland or land-based alternative. They stated it was ‘impractical’ to consider such a system as it would require between 130 and 208 hectares of land and cost between $7.5 and $9 million for the land. They considered this would be unsustainable and would use ‘prime dairy land that contributes to the Waikato

---

regional economy’. The chief engineer at Waitomo District Council argued that ‘obtaining land and funding this level of expenditure would be unsustainable for this community.’ They advised they would file an application for the variation after consulting with local iwi in September. However, they still had not done so by October 2003 and the regional council informed them that they had until 1 December 2003 to do so, or they would likely face ‘enforcement action’. The Waitomo District Council filed their application on 4 December, noting they would consult with iwi. Their application requested both the removal of the wetland and the requirement to produce annual reports into land-based disposal alternatives. Even though the district council delivered the application after the due date without having undertaken consultation, the Waikato Regional Council does not appear to have pursued the ‘enforcement action’ it had threatened.

In December 2003, the regional council confirmed they had received the application and requested additional information from the district council about why it sought to remove the condition to investigate land-based disposal and what the extent of their consultation had been. The district council still had not replied by March 2004, so the regional council sent a follow up request stating the information must be provided by 12 March. It was received on 13 March and stated the district council did not consider land-based alternatives feasible and therefore did not consider any further investigation to be necessary. They informed the regional council they had been consulting Te Tokanganui-a-noho Regional Management Committee who had yet to make a decision on the variation application.

On 20 April 2004, Te Tokanganui-a-noho submitted their decision on the application. Whilst they acknowledged the issues that the district council was faced with, they remained ‘fundamentally opposed’ to disposing human waste into what was a ‘food basket for the tribe’. They stated that, although they had iterated this position for several years, the council had not taken any action to ‘address our concerns save the provisions in the existing resource consent that WDC is now seeking to remove’. They also argued that the investigations into the wetland and land-based disposal alternatives were not completed to a suitable standard and other options, such as leasing the required land or extending the timeframe over 10 to 15 years to reduce the financial burden on ratepayers, had not been investigated fully. They stated the effects of the proposed consent alteration had not been adequately assessed. In particular, there had been no investigation into the effect it would have on native species, and no consideration of planting along the banks of the Mangaokewa Stream as a way to reduce nutrient loading in the stream. They concluded their goal was not to maintain poor or moderate water quality but to increase and maximise water quality.

In June 2004, the Waitomo District Council forwarded Te Tokanganui-a-noho’s decision, and their response to the regional council. They stated they would consider additional planting ‘in the vicinity of the discharge’ but opposed additional planting in ‘all other areas adjacent to the river under [their] management’ as they thought that this was ‘beyond the scope of the consent application.’ They reiterated they considered land-based options to be unaffordable, but they would agree to investigate ‘options such as rock filters that may overcome cultural concerns.’ The regional council also conducted another audit in June 2004, which noted that despite a significant improvement in discharge quality, the district council had still failed to produce a number of the reports and monitoring studies that it was required to under its consent and was therefore awarded another ranking of ‘significant non-compliance.’ This audit came after they had sought to remove all consent conditions they had negotiated with Māori to get their agreement.

The Waikato Regional Council received five submissions in response to the district council’s resource consent variation application. One neutral submission from the Waikato District Health Board, three opposing submissions from Fish and Game New Zealand, Maraeroa Incorporation, and Rereahu Regional Management Committee, and one submission from Te Tokanganui-a-noho which simply stated that more consultation should be undertaken. The Rereahu submission noted:

> Without wetland filtering of the effluent there are large amounts of nutrients being added to the river without any effective means of removal. The resulting growth in algae and other bacteria will make this part of the river unhealthy for migrating fish and eels that some of our people rely on to support themselves and their families.

> I live in Te Kūiti and I have many family members that live in places further up the Mangaokewa River and the effect that sewerage and other pollutants from places further up and down the catchment is having on our traditional food sources from the rivers is making it difficult to continue fishing the rivers. We know that eels return to the sea to breed and their young eventually swim back up the same rivers to grow and replace the ones that have gone. If we keep putting effluent into the rivers they probably won’t come back.

> We are all caretakers of the river, and the District Council should be taking better care of it. I know the effluent has to go somewhere and there has been some progress made with the new plant, but the council should consider long term solutions that encourage improvement in the state of our river.

A hearing for the resource consent variation application was held in September 2004 and the hearing committee rejected the district council’s application. In doing so, the committee acknowledged the progress the plant had made in the last couple of months but stated they remained concerned that the council had not offered any mitigation to the interested parties (particularly tangata whenua)
for the effects of removing the wetland and land disposal conditions from the consents. In particular, they believed the land-based disposal alternatives had not been fully investigated and they directed the district council to produce at least one more report on the subject before their resource consents expired the following year (2005).415

The district council began the process of applying for new consents in early 2005. However, a series of failed consent audits, inadequate monitoring and reporting, delayed upgrades, and changes to their staff meant the consent renewal process was not completed by the time that research was undertaken for this inquiry. That is, the consents that expired in October 2005 still had not been renewed by March 2014. Instead, not being able to fully complete the required resource consent applications by September 2005, the district council continued to operate the plant under section 124 of the Resource Management Act. This section states if a new application is lodged more than six months prior to the expiry date of an existing consent, the user may continue to operate under their original consent until their new application is determined and all appeals heard.416 In July 2006, the district council temporarily placed their upgrade plans on hold in order to focus on ensuring the plant was running at an optimal level. Despite this commitment, the discharge quality from the plant continued to be poor.417 Momentum for the proposed upgrades appears to have increased by July 2008 when Waitomo District Council staff and the mayor met with the Maniapoto Māori Trust Board to discuss the consent and upgrade process. Staff noted the Maniapoto Māori Trust Board was demonstrating ‘very valuable pragmatism’ and they wanted to be involved in finding solutions for the whole upgrade (not just the discharge mechanism as they had previously assumed).418 However, this momentum soon slowed, and the revised resource consent applications were not filed until August 2009.419

Waikato Regional Council audits undertaken during this time resulted in consistent ‘significant non-compliance’ ratings due to excesses in ammoniacal nitrogen, e-coli, suspended solids and volume limits.420 The district council was issued with formal warning letters in September 2007, July 2008 and July 2010.421 In particular, the audit undertaken in mid-2010 revealed the high levels of ammoniacal nitrogen and bacteria present in the discharges posed a ‘significant public health risk’. Given the scale of the problem, the treatment plant was referred to the Enforcement Decision Group who found the following:

The site has been rated as being significantly non compliant for 9 out of the last 10 years, and consecutively for the last seven years. The primary issues of non compliance relate to exceeding various consent limits for Total Suspended Solids, Biochemical

Oxygen Demand, Total Nitrogen, Total Ammoniacal Nitrogen, and Faecal Bacteria (*E. coli*). The annual average level of exceedance for each of these parameters ranges from slightly over to more than 6 times over, but monthly exceedences are sometimes greater, up to 28 times the maximum permissible limit for example in faecal bacteria levels.\(^{422}\)

The third formal warning in July 2010 was also accompanied by an abatement notice which required the district council to cease its ‘unlawful discharge of effluent’. However, this appears to have been a formality pending the completion of the upgrades.\(^{423}\) By June 2011, the district council had secured $3.65 million worth of funding under the Ministry of Health’s Sanitary Wastewater Subsidy Scheme in order to carry out long-term upgrades.\(^{424}\) These were completed by September 2013, however, the resource consent process was still ongoing when research for this inquiry was completed in March 2014.\(^{425}\)

It is notable that the district council promised tangata whenua various things to get their application through the consent process and then spent the next six years eroding the promises they made by frustrating agreed conditions for the resource consent.

### 22.4.2.4 Piopio sewerage scheme

Up until the 2000s, Piopio disposed of its sewage via individual septic tanks with soakage into the ground. However, this was not particularly effective and at times resulted in ground water contamination, effluent ponding and effluence flowing into waterways.\(^{426}\) In 2002, the Waitomo District Council proposed to install a reticulated sewage system that would transport sewage to a treatment plant, treat it, and then discharge it into the Mōkau River. After they received a substantial subsidy from the Health Department to undertake the work, they actively pursued the proposal, resulting in conflict emerging between Piopio tangata whenua and the Council.\(^{427}\) Tangata whenua opposed the original resource consent proposal, and appealed the decision in the Environment Court when it was granted. This section details how Piopio’s sewage disposal system was eventually upgraded in a way that discharged treated effluent into the Mōkau River, despite the objections of tangata whenua that this was culturally offensive and inappropriate.\(^{428}\)

In the words of Muiora Barry:

> The disrespect of our people and culture by the Crown has also manifested itself in the 2008 Piopio sewerage scheme proposal and the way in which this was put to us by authorities . . . although the reasons behind the proposal were sound the proposal

\(^{422}\) Document A150, pp 168–169.  
\(^{423}\) Document A150, p 169.  
\(^{424}\) Document A150, pp 168–169.  
suggested by the government involved activities which were culturally offensive to our people and involved an intention to discharge waste waters into the Mōkau River. If this were allowed to take place then our lands, waterways, wahi tapu and food basket, would no longer exist and the land and river that our whanau are speaking of today would no longer have the same Wairua. Ultimately if sewage were to be allowed into the river then it would contaminate everything in its path. The discharge area into the Mōkau River is also approximately 30 meters from urupa belonging to our people. This is a matter of considerable concern to us and once again displays the Crowns breach of obligations to protect our wahi tapu and other interests.\footnote{429}

Mrs Barry informed us that to avert this damage they scouted other options that would address the sewage issue, including offering various parcels of their own land to process the wastewater in a land-based way. Mrs Barry considered that the Council’s decision to pursue the water-based discharge (which was held up in the Environment Court) disrespected their position as kaitiaki of their waterways and their connection with their culture and the river. Ultimately, she concluded:

We believe that the alternative proposals we suggest are things that should be given serious consideration – we are not a people that are against these necessary public works. Instead our objectives are to ensure that these developments where necessary and beneficial to the community are implemented in a way that is culturally sound.\footnote{430}

In 2008, the Waitomo District Council applied to the Waikato Regional Council for a consent for a new system, which was opposed by tangata whenua. The application was heard by the regional council in April 2008.\footnote{431} A technical report prepared by the regional council’s staff concluded the proposal met the water quality and aquatic ecosystem objectives as well as the social and economic needs of the Piopio community, but that it would not satisfy the cultural objectives of tangata whenua. Ultimately, the regional council accepted the proposal and recommended that a 20-year grant be awarded.\footnote{432}

In regard to water quality, the regional council staff noted that the sewage would be treated to a high standard before it was discharged into the River and the effects were ‘likely to be relatively small’\footnote{433}. In coming to that conclusion they noted the failing system was discharging effluent into the Piopio and Kuratahi Streams (which flow into the Mōkau River). This therefore meant the current system was having an adverse impact on the Mōkau River regardless. A water quality scientist for the Waikato Regional Council also concluded that discharging the contaminants into the Mōkau River was preferable than into the Piopio and Kuratahi streams because the greater flows in the river meant the contaminants could be

\footnotesize{\begin{itemize}
\item 429. Document Q35 (Barry), p 7.
\item 433. Document A148, p 227.
\end{itemize}}
diluted to a greater extent.\textsuperscript{434} He explained that, although the concentration of suspended solids, biochemical oxygen demand, faecal coliform bacteria, Kjeldahl nitrogen, phosphorus, and ammonia levels would increase, the adverse effect of this was 'likely to be relatively small'.\textsuperscript{435} Council staff also noted the Mōkau River was already a degraded environment with high levels of turbidity (cloudiness), nitrogen, phosphorus, and \textit{E coli} and estimated the Mōkau River was unsuitable for swimming for over 60 per cent of the time.\textsuperscript{436}

In opposition to this, the regional council staff noted the proposal was unacceptable to tangata whenua and summarised their objections as:

- the discharge was culturally offensive;
- the discharge would disturb the mauri of the Mōkau River, which is wāhi tapu;
- the discharge would have a detrimental effect on both waterways and land from the discharge point to the sea; and
- important traditional fisheries were at risk.\textsuperscript{437}

Staff also noted that the iwi had lodged Treaty claims with the Tribunal regarding the Mōkau River.

The staff’s report discussed the concept of mauri in some detail, stating that 'mauri is considered to be the essence or life force that provides life to all living things [including water and] when mauri is completely extinguished, death is associated. It noted three Māori submissions objected to the discharge of human waste into the River as being culturally offensive and referred to Environment Waikato policy documents that stated the same. The report also noted the proposal was ‘clearly inconsistent with the Maniapoto Iwi Environmental Plan’ because it was discharging treated sewage into the Mōkau River.\textsuperscript{438}

The author was also required to assess the application against the Waikato Regional Policy Statement, which recognises the cultural offence of discharging human-based sewage effluent into water and requires other alternatives to be investigated. The policy also states that in the event that land-based disposal is not practical or affordable, Environment Waikato ‘will encourage options involving a land-based treatment component’. The author noted the Waitomo District Council had investigated land-based options but these were ‘deemed to be unviable given present resources’. Instead, the applicant proposed to discharge the treated wastewater into a subsurface flow wetland before it was discharged into the river through a rock outfall.\textsuperscript{439} Ultimately, the author concluded ‘in this instance section 2.3.4.19 [of the policy] has been satisfied’ as investigations have shown land-based disposal to be unaffordable and the applicant proposes to use the subsurface flow and rock outfall as a ‘land-based treatment component’.\textsuperscript{440}

\textsuperscript{434} Document A148, p 227.
\textsuperscript{435} Document A148, pp 226–228.
\textsuperscript{436} Document A148, pp 226–229.
\textsuperscript{437} Document A148, p 226.
\textsuperscript{438} Document A148, p 228.
\textsuperscript{439} Document A148, pp 228–229.
At the hearing, three Māori submitters presented evidence that included the following viewpoints:

- The Mōkau River is wāhi tapu.
- The ongoing discharges to the Awa would create a poisoning effect on the River, including on the River’s mauri.
- Mauri was not just limited to intangible effects, but was also physical and any negative effect on the river would have a corresponding physical, mental, and spiritual effect on the health and well-being of tangata whenua. This included tangata whenua no longer gathering food from the River which would affect their ability to supply kai for themselves and their guests.
- Tangata whenua wish for a partnership with the council that would result in a practical option for wastewater. They believed that the Waitomo District Council had been unwilling to develop that relationship.
- The consultation process was incomplete and had been flawed.
- Technical witnesses had provided evidence on cultural matters that they lacked the expertise to comment on and this evidence was flawed.
- Technical evidence to support a proper consideration of the proposal was not provided.
- Environment Waikato had failed to consider alternatives to the proposal and tangata whenua were not given an opportunity to be included in the scoping for solutions.
- Alternative schemes were unaffordable because the Waitomo District Council did not apply for a high enough subsidy.
- The Resource Management Act requires social and economic and cultural effects to be considered, rather than allowing one area to be dismissed.
- The proposal should be consistent with Environment Waikato planning documents.
- Environment Waikato should clean up the status quo for the Mōkau River.  

Despite this, the hearing committee granted the consent in 2008 for a term of 20 years. In its decision, the committee stated it was concerned for the health and safety of Piopio residents. The committee considered the Waitomo District Council had ‘undertaken a sound evaluation of the alternatives’ and had ‘made an informed and reasoned decision.’ The consent included a condition, offered by the district council during the hearing, that a community liaison group be established and hold annual meetings.  

Following the decision, the Mōkau ki Runga Regional Management Committee lodged an appeal with the Environment Court against both the regional and district council’s decisions. Their list of reasons for the appeal emphasised the negative effects on the mauri and mana of the river, and the impact on the health
and well-being of tangata whenua. Although they had attempted mediation in September 2008, this was unsuccessful.443

During the pre-hearing process, the regional management committee submitted on behalf of all who have mana whenua interests in the lands and waterways adjoining their land that:

The rights of our whanau and hapu are a part of our tino rangatiratanga and our responsibilities are a part of our role in kaitiakitanga. These rights and responsibilities are inherent to who were are, and inherited from our tupuna . . . Currently our traditional and cultural practices are still very much alive . . . If the sewage discharge was to be allowed or consented to, it would totally inhibit the tangata whenua of the Mōkau ki Runga rohe below the discharge point to collect or consume (or offer for consumption) kai currently collected from, in and along the Mōkau River.

It would be the height of bad etiquette to serve polluted food to one’s visitors at our tribal gatherings. It would also be totally disrespectful of us consenting to our whanau downstream to be subjected to having to consume polluted human waste regardless of what level of filtering has been undertaken to justify its discharge.444

By the time the appeal was heard in September 2010, the proposal had been modified to allow for the treated wastewater to pass down a hill and over a planted wetland area before it was discharged over a series of perforated timber baffles (the ‘discharge structure’). This modification had been developed after consultation with iwi and was said to allow for contact with Papatuanuku prior to being discharged into the water.445 However, although the council submitted that this had been accepted by tangata whenua elsewhere, the Mōkau ki Runga Regional Management Committee found this solution to be unacceptable.

During the hearing, witnesses for the regional management committee (Raumoana White, Peter Stockman, and Barbara Marsh) explained how the discharge was contrary to their heritage, culture, and beliefs. They also presented a partially developed alternative proposal for land-based disposal. However, other evidence to the court from the district council argued that the type of soil in the area, the water table and additional costs did not allow for their alternative proposal.446 The Environment Court decided that the evidence was not compelling enough to justify extending the appeal while the partially developed proposal was investigated further.447 Ultimately, the Environment Court dismissed the regional

444. Secretary Mōkau ki Runga Regional Management Committee to Environment Court, 28 August 2009 (doc A148, pp 234–235).
management committee’s appeal, subject to one condition: that the permit needed to include a reference to the overland discharge structure. The amended conditions were approved by the court in February 2011.\footnote{Mōkau ki Runga Regional Management Committee v Waitomo District Council and Waikato Regional Council, final decision of the Environment Court, 17 February 2011 (Decision [2011] NZEnvC 42), p 2 (doc A148, p 236).}

Although the Environment Court acknowledged the important relationship the Mōkau ki Runga Regional Management Committee had with the river, it explained it was satisfied no alternative solution to treated wastewater being discharged into the river was available, at that time. In light of this, the court was satisfied that the discharge structure ‘goes a reasonable way to meeting concerns of iwi by ensuring some overland passage of the treated wastewater before discharge into the river’. The court was also convinced that the proposal to establish the community liaison group would ‘ensure that dialogue with iwi continues’ and the Waikato District Council would be open to seriously considering any suitable alternatives should they be found. With regard to the balancing act that was required of them, the court stated:

This case requires us to weigh the health and safety needs of the Piopio community against the cultural value of the appellant that any discharge of treated wastewater to the river is unacceptable, even if it results in little actual effect on the water quality. We agree with the Court in \textit{Tainui Hapu} [Raglan treated sewage discharge appeal in 2004] where it had to address a similar issue and held: ‘The health and wellbeing of the whole community would benefit if tangata whenua are able to experience fully their cultural and traditional relationship with their ancestral water, and to exercise their kaitiakitanga. But the health and wellbeing of the whole community is at risk if the District Council is not able to provide for sanitary disposal of treated wastewater.’ As in \textit{Tainui Hapu}, we are satisfied that the evidence does not reveal a feasible and affordable alternative to the discharge to the river at this time.\footnote{Mōkau ki Runga Regional Management Committee v Waitomo District Council and Waikato Regional Council, decision of the Environment Court, 22 December 2010 (Decision [2010] NZEnvC 437), pp 31–33 (doc A148, p 236).}

\subsection*{22.4.3 Treaty analysis and findings}

The historical treatment of waterways/bodies has been tantamount to treating them as sewers or drains into which pollutants such as sewage could be discharged. It has led to the significant decline in water quality in many waterways/bodies in the district. Non-point source pollution is also a problem, particularly from agriculture. While the Crown’s understanding of non-point source pollution continues to develop, it was nonetheless aware of the effects of such pollution since the early twentieth century, yet the Crown failed to take any remedial action until 1956.

Pollution has significantly impacted on Māori spiritual and customary values and use. The case studies on sewage show that Te Rohe Pōtae Māori have consistently sought to have such matters addressed and for local and regional authorities
to impose stricter controls on consents associated with sewage schemes. Their view is that such authorities have not done enough to ensure water quality is a high priority.

The four case studies of sewage disposal in Te Rohe Pōtae – Raglan, Otorohanga, Te Kūiti and Piopio – also demonstrate a number of similar features regarding the Crown’s management system. First, Māori have sought higher water quality standards than what local councils have wanted to provide, and the Waikato Regional Council has been prepared to insist upon, as conditions of consents. Secondly, the Raglan, Otorohanga, and Te Kūiti case studies begin with poorly performing septic tank disposal systems that were polluting waterways and causing offence. When they were upgraded to reduce pollution, such issues continued. All three councils did not want to pay the upfront costs of large-scale land purchase programmes for their sewage schemes. Instead, they opted for treatment systems involving minimal purification treatment before being discharged into oxidation ponds. The water from the oxidation ponds was then discharged into natural waterways rather than to land. Furthermore, we have seen evidence that in all three cases the ponds that were built were too small, or quickly became overloaded as the towns’ populations expanded. The subsequent discharges (into streams) contained substantial bacterial and nutrient pollution. As Alexander notes, the councils’ desire to minimise costs during upgrades resulted in inefficient and unsuccessful projects that have ultimately forced councils to weather much higher costs in the long-run.

Thirdly, consultation processes that occurred before the RMA were limited by the nature of the statutory regime that did not require Māori rights and interests to be considered. After the Act was introduced in 1991, the statutory neglect of recognising and providing for Māori relationships with their water and waterways/bodies was to some degree rectified. However, although these statutory references may have resulted in improved consent conditions or improved planning documents promulgated under the Act, the Waikato Regional Council’s enforcement of consent conditions has continued to be poor. As the Ōtorohanga, Te Kūiti and Raglan case studies demonstrate, all three treatment plants regularly failed their annual audits and yet there was minimal follow-up from the council.

Fourthly, regional authorities and consent holders who were responsible for historical environmental effects that continue to plague the water and waterways/bodies considered taonga by Te Rohe Pōtae Māori are not required to address these matters under the Resource Management Act. We acknowledge that many of the problems associated with pollution are historical. That is exactly the issue with the Resource Management Act. It is not retrospective. Therefore, neither the Crown, nor any regional authorities in existence post 1991 or long-term consent holders,

---

can be made accountable under the 1991 legislation for the mismanagement of water and waterways/bodies pre-1991, or before the issue of current consents.

Although councils have carried out some work to address the pollution of rivers and streams in Te Rohe Pōtae, we saw no evidence that this had been successful. Settlement and agriculture run-off continue to have a negative effect on the freshwater of Te Rohe Pōtae, and without drastic measures, this is unlikely to change in the near future. Ultimately, the 1991 Act has not improved water quality in Te Rohe Pōtae. This is evident from Waikato Regional Council’s own statistics that show that the biggest change between 1989 and 2007 has been a marked increase in the total nitrogen content at all five sites on the Waipā River due to the increasing intensification of land use. E coli and phosphorus levels are also high, although they have remained relatively steady over the past 20 years.  

In terms of the Waikato River, in 2011, the Auditor General reported the performance of Waikato Regional Council was particularly lacking with respect to providing solutions to these issues. It revealed that the overall water quality in the Waikato region was deteriorating and the Waikato Regional Council was failing to meet its own environmental standards. The Auditor General concluded that while the council may have made some headway into improving the quality of certain discharges, non-point discharges (such as nutrient and chemical runoff) were causing water quality to decline more generally. In particular, the Auditor General noted the council had insufficient regulatory methods in managing threats to freshwater quality and did not have consistent (specific) policies to deal with non-compliance, complaints, and pollution incidents. The Auditor General strongly recommended the council review and improve the measures it chose to achieve its goals and its day-to-day performance in implementing those measures.  

While the addition of Māori issues under Part 2 of the Resource Management Act has improved the situation for Māori communities, the 1991 Act does not accord an appropriate priority to Māori concerns. Obviously, there is improved recognition of Te Rohe Pōtae Māori relationships with water and waterways, their values and tikanga, but unfortunately as is evidenced by the Piopio case study, the application of section 5 of the Act does not necessarily result in an outcome that is consistent with Māori tikanga, values, and expectations for their taonga.  

The lack of priority accorded to the relationship between Māori groups and various waterways/bodies of water is because the Act also requires a number of other values to be recognised and provided for, taken into account or considered. Therefore, while there is space for Māori voices to be heard, this is limited by the other matters that can be given equal or greater weight. Furthermore, treaty rights and interests, and indeed all other matters listed in Part 2 of the Act, are trumped by section 5, which describes the purpose of the Resource Management Act as to ‘promote the sustainable management of natural and physical resources.’

\[454\] Document A150, p 94.  
\[455\] Document A148, p 247.  
\[456\] Document A148, pp 238–244.  
\[457\] Document A148, p 237.
noted in chapter 21 on the Environment, all those exercising duties and powers under the Act, including the Environment Court, are required to give effect to this primary purpose. The Act then lists a hierarchy of matters decision makers must consider. Section 6 sets out what they must recognise and provide for and this includes the relationship of Māori with their ancestral lands and waters. Section 7 merely requires that the matters listed including kaitiakitanga be taken into account. Section 8 only requires that the court have regard to the principles of the Treaty of Waitangi.

Te Rohe Pōtae Māori cannot expect veto authority over the allocation, use, and management of water, waterways/bodies as that would be contrary to the principles of the Treaty of Waitangi. However, they can expect that their Treaty rights are appropriately integrated into decision making and planning under the Resource Management Act. If the hierarchy in part 2 of the Act were reversed or if the purpose of the legislation under section 5 was extended to require all those exercising duties and functions under the Act to act in a manner consistent with the principles of the Treaty of Waitangi, a different balancing exercise would be required. It would be one that was clearly focused on partnership, mutual benefit, and reciprocity, alongside sustainable management.

It would also require providing for the rangatiratanga or mana whakahaere of Te Rohe Pōtae Māori in local government, in planning, and in consent processes including enforcement. Engagement on issues such as sewage disposal would be premised upon a recognition that their culture, tikanga, and values have as much to offer as regional and local body politicians representing the views of the rest of the community. This different framework for management is more likely to meet the section 5 purpose of the legislation, as noted by the Environment Court in the Mōkau ki Runga decision discussed previously. As it stands, the status quo is resulting in the health of the districts waterways/bodies continuing to decline.

Thus, for all waters and waterways/bodies (with the exception of the Waipā River) there is a disconnect between the legislative framework for the management of environmental effects as regard water and waterways/bodies and the way that Te Rohe Pōtae Māori want their rangatiratanga and kaitiaki responsibilities exercised.

Therefore, we find that the Crown acted in a manner contrary to the principles of the Treaty of Waitangi from 1840 to 1991, namely the principles of good governance in article 1 and rangatiratanga in article 2. It did so because it did not legislate to recognise and provide for the mana whakahaere, values, and tikanga of Te Rohe Pōtae Māori associated with taonga water and waterways/bodies so they could be integrated into its legislative management regime. Since 1991, the Resource Management Act has improved the situation but has its limitations as described in this section and this issue needs to be addressed. The solution would be to amend the Ngā Wai o Maniapoto (Waipā River) Act 2012 to include all taonga waters, and waterways/bodies of Ngāti Maniapoto. Similar legislation will be needed for other iwi of Te Rohe Pōtæ or Rohe Mana Whakahono agreements will need to be negotiated. At the least, section 8 of the Resource Management Act should be amended to state that nothing in the Act should be done in a manner inconsistent
with the principles of the Treaty of Waitangi or a new reference with the wording stipulated previously should be added to section 5.

22.5 Harbours, Takutai Moana, Estuaries, and Lagoons

As with water and river management, under the introduction of common law, the Crown assumed the right to possess and manage harbours in Te Rohe Pōtae. As discussed in this section, this steeply contrasted the ways in which Te Rohe Pōtae Māori had exercised their tikanga and managed the area for generations.

22.5.1 Crown concessions

While the Crown considered that there was scant evidence demonstrating how Te Rohe Pōtae Māori exercised their rangatiratanga and mana over harbours prior to 1840, it did recognise that the evidence demonstrates harbours and takutai moana of the inquiry district have been a valuable resource and an important part of the identity of āiwi and hapū living in and around them. In particular, the Crown accepted the harbours and takutai moana were an important source of food and trading posts, as well as ‘cultural and spiritual sustenance for the āiwi and hapū that lived around them’. In addition, the Crown acknowledged that Te Rohe Pōtae Māori traditionally ‘managed their relationship with those harbours in accordance with their own tikanga and customary practices.’ The Crown recognised this relationship was ongoing.

22.5.2 Claimant and Crown arguments

The claimants’ specific submissions with respect to harbours were, inter alia, that Te Rohe Pōtae Māori signed the Treaty expecting that they would be able to maintain their tino rangatiratanga over the takutai moana and harbours (including practising kaitiakitanga without interference) and that the Crown would actively protect these as a taonga. The claimants alleged that this has not occurred. Instead, the claimants submitted that the Crown appropriated ownership of the harbours and failed in its duty to treat tangata whenua as equal Treaty partners. In doing so, they submit the Crown ‘has not respected the principles of partnership and good faith, has usurped the role of kaitiakitanga, and has minimised the resulting exploitation and degradation of resources.’

The claimants contend that despite the important relationship both they and their tūpuna have with the harbours and takutai moana, Crown actions and inactions have severely decreased their ability to perform kaitiaki duties for their waters. In particular, they submitted that, since the installation of harbour

---

458. Submission 3.4.283, p 97.
459. Submission 3.4.283, p 96.
460. Submission 3.4.283, p 112.
461. Submission 3.4.283, p 96.
boards in Te Rohe Pōtae, Māori groups have been excluded from exercising their rangatiratanga over harbours, despite never ceding those rights.\(^{465}\)

In closing submissions, claimant counsel maintained:

for those iwi and hapū who have been coastal people for many generations, it is hard to put into words the impact of losing a significant part of the Takutai Moana (in terms of ownership and control) and what effect that has on the ability to exercise mana and rangatiratanga. Indeed, Rohe Pōtae Māori have noted that the loss of control means they are hampered in their ability to exercise full and undisturbed mana and rangatiratanga over their customary fisheries and the harbours themselves.\(^{466}\)

The claimants’ assert that they have been hampered in their ability to meaningfully participate in the management regimes over the coastal area. In this regard, claimant counsel submitted that the Crown has breached the Treaty by failing in its duty to treat tangata whenua as an equal Treaty partner. The claimants believe the main way that this has occurred has been through ignoring the concerns and objections of Te Rohe Pōtae Māori regarding harbour management.\(^{467}\) Although rangatiratanga authority over the harbours has diluted over time, it has never been completely removed, and Te Rohe Pōtae Māori have fought strongly for its revival.\(^{468}\)

Claimant counsel elaborated that, because the Crown and local authorities do not appear to have ‘any real intention . . . to work with Te Rohe Pōtae Māori to form an actual partnership over Te Moana’, tangata whenua have to ‘work within a Pakeha framework in order to have their ideas put on the table’. This, they submit, means that they are only consulted so that councils can tick a box and put their ideas into an existing plan, rather than actually listening to tangata whenua.\(^{469}\)

Claimant counsel generally accepted that the Harbour Boards undertook limited activities during the period 1885–1980s.\(^{470}\)

The environmental health of the harbours in Te Rohe Pōtae is of great concern to Te Rohe Pōtae Māori. They claim the deteriorating health of the rivers and streams that feed the harbours has had a corresponding negative effect on the health of the marine environment. For example, erosion upstream has resulted in massive amounts of inert material being dumped in the mouths of harbours. In some places, this has been so rapid that the harbours have not been able to adequately adapt to the change and biological activity in the harbours has diminished. This has impacted on Te Rohe Pōtae Māori as they have traditionally relied on the harbours as a major food basket.\(^{471}\)

\(^{465}\) Submission 3.4.115, p 26; submission 3.4.195, p 4; doc N43 (Mahara), p 4.
\(^{466}\) Submission 3.4.115(a), p 45.
\(^{467}\) Submission 3.4.115, p 26.
\(^{468}\) Document A148, p 28.
\(^{469}\) Submission 3.4.115, p 25, para 11.7.
\(^{470}\) Submission 3.4.115, p 24; submission 3.4.115(a), p 44; doc A148, p 31.
\(^{471}\) Document A148, p 15.
The Crown in reply submitted that overall the extent to which the evidence of tangata whenua and technical witnesses deals with issues of mana and rangatiratanga in respect of the takutai moana and harbours is incomplete, making it difficult to draw conclusions.

In respect of harbour management the Crown submitted that, even if at times, bodies and authorities that were responsible for managing harbours may not have had specific Māori representation, this did not necessarily mean that Māori were not consulted or did not have their interests taken into account by those authorities when making decisions about harbours.\textsuperscript{472}

The Crown noted that issues relating to the ownership of the foreshore and seabed have not been a major focus of the claims in this inquiry district. Indeed, the technical evidence did not consider matters relating to customary title in respect of the takutai moana in any detail, and tangata whenua evidence relating to such issues is also limited. The Crown’s ability to engage with such issues, counsel submitted, was similarly limited.\textsuperscript{473}

\textbf{22.5.3 Harbours, Takutai Moana, estuaries, lagoons as taonga}

There are three major harbours within the Rohe Pōtae district inquiry boundary: Whāingaroa/Raglan Harbour, Kāwhia Harbour, and Aotea Harbour, in addition to various river mouths, estuaries, and lagoons. Whāingaroa means ‘the long pursuit’ and refers to the lengthy search of the Tainui waka before finding a final resting place. The waka passed Aotea Harbour on its way south, which forms into a large estuary between Whāingaroa and Kāwhia. Eventually, the Tainui waka made landfall at Kāwhia Harbour, further south. The harbours are thus considered tapu by many Te Rohe Pōtae Māori, as they are fundamentally linked to the first Māori to arrive and settle in the area.\textsuperscript{474}

The harbours and surrounding area were, unsurprisingly, also some of the most heavily contested locales in the district and, as discussed in section 2.6.2.4, many different iwi and hapu claimed interests to them. These interests, along with their associated rights, obligations, and relationships, were guided by tikanga, as claimant Thomas John Moke of Ngāti Mahuta explained:

many hapū and iwi of the Tainui waka had the ability in traditional times to utilise the resources that flourished in the Kāwhia Harbour. Use rights were common and these arrangements were clear and understood and controlled by tikanga. Post 1840, these rights were placed in a foreign context relating to absolute ownership and control, that compromised these historical use rights, creating conflict, mistrust and tension . . . It is however, my contention that certain hapū claimed a more permanent kaitiaki responsibility given their ongoing occupation along the coast . . . Because ownership/
control has been stripped away from us, it is difficult today to fulfil our kaitiakitanga role in a meaningful way.\textsuperscript{475}

In the pre-European and early-European days, harbours were also important as a means of communication, providing access to the towns on the shores of the harbours.\textsuperscript{476} Te Rohe Pōtae Māori also relied on these significant places for the food basket they provided. Many claimants told the Tribunal about the central role that harbours have had for hapū and iwi, and how customary rights over particular parts of the harbours were just as ‘jealously guarded as rights to particular lands’, as further discussed in section 22.6.\textsuperscript{477}

\section*{22.5.4 The common law and the Crown’s regulation of harbours}
The common law presumed harbours, lagoons, and estuaries to be arms of the sea. An arm of the sea was ‘a portion of the sea projecting inland, in which the tide ebbs and flows.’\textsuperscript{478} As such, the title to such places was vested in the Crown unless the presumption could be rebutted. As noted in \textit{Attorney-General v Ngati Apa} (2004) the common law presumption of Crown ownership of such tidal lands does not apply to those areas held by Māori under customary rights and title.\textsuperscript{479} However, for many years this was not well understood by the Crown or the courts.\textsuperscript{480}

The Crown legislated with respect to harbours very early on in the history of the new colony. Prior to 1842, the Governor appointed harbour masters, but in that year the process was formalised by the Harbours Regulation Ordinance 1842. That legislation provided for the appointment of pilots and harbour masters in the various harbours of the new colony, and for the regulation of shipping, including from time to time making regulations respecting

the anchoring and mooring of vessels, the package landing deposit and removal of gunpowder, the erection of magazines for the safe keeping thereof and the rent to be charged for the same, for the watering and ballasting and discharging of ballast of or from vessels, and all other matters relating to the safe and commodious navigation of such harbours or rivers, and the order and management of vessels resorting thereto, as may be deemed necessary.\textsuperscript{481}

This provision demonstrates that the Crown assumed it could control harbours. Control over harbours and shipping was at this stage under the Colonial Secretary and the Governor. In 1862, that responsibility moved to the marine boards established under the Marine Boards Act of that year. These boards were the forerunners to harbour boards.

\begin{thebibliography}{9}
\bibitem{475} Document J7, pp 3–4; see also submission 3.4.115(a), pp 47–48.
\bibitem{476} Document A148, p 28.
\bibitem{479} \textit{Attorney-General v Ngati Apa} [2003] 3 NZLR 643 (CA) at [47]
\bibitem{480} \textit{In Re the Ninety-Mile Beach} [1963] NZLR 461.
\bibitem{481} Harbours Regulation Ordinance 1842, s 7.
\end{thebibliography}
Oyster Fisheries

The Oyster Fisheries Act 1866, the first fish law in New Zealand, followed concern that oysteries near Auckland and other major settlements showed signs of depletion. The Act provided for the leasing of oyster beds for commercial purposes and artificial propagation, and for the protection of natural beds by enabling closures. No specific provisions were made for Māori (there were then no Māori representatives in the House) but the Act did not apply to foreshore oysteries. Later, that exclusion was thought to have been made out of consideration for the aboriginal natives, who were fond of oysters and who might not understand the necessity of preserving them in the way proposed, and who would probably offend against the law (Pollen, 1874 16 NZPD 478). Eight years later foreshore oysteries were brought into the Act but still without provision for Māori. It seemed sufficient to say in the debate in the House since that time [1866] the Natives had acquired other tastes (Pollen, 1874 16 NZPD 478). The discovery of more extensive beds near the remote Stewart Island led to ‘exclusive’ commercial licence grants by a notice and objection procedure, in the Oyster Fisheries Amendment Act 1869. When a new Oyster Fisheries Act was proposed in 1892, Māori had separate Parliamentary representation and Northern Māori MP Kapa voiced his concern that commercial licences had been granted over beds customarily exploited by Māori (75 NZPD 364). It was then provided (in section 14) that

The Governor may . . . declare any . . . portion of a bay . . . or tidal waters . . . in the vicinity of any Native pa or village to be an oyster-fishery where Natives exclusively may take oysters for their own food . . . and may prescribe regulations for preventing the sale by Natives of any oysters from such beds, and for protecting . . . the oysters therein from destruction.

Thus were the first assumptions made about the nature of Māori fishing interests. They were to become so ingrained in over a century of subsequent fishing laws as to make virtually incomprehensible any other view. (a) The oyster laws assumed the unrestricted right of the Crown to dispose of inshore and foreshore fisheries. Inherent in that assumption was the view that the foreshore and the seas beyond them were held by the Crown without encumbrance. There was some uncertainty about that at first, but the opinion was soon almost sacrosanct that the Crown owned all the foreshores, including that adjoining Māori lands. (b) It was assumed that no examination of the Treaty was required. That does not mean the Treaty was overlooked. It was central to nearly every Parliamentary address by the Māori members on the fishing question (eg, Taiaroa 1877, 27 NZPD 65, Kapa 1892, 75NZPD 364, Heke 1886 NZPD 885). (c) It may have been assumed that Māori fishing had had no commercial component. If that were so it was a clear contradiction of fact. The
first Oyster Fisheries Act of 1866 proposed controlled sales through the lease of oysters to commercial interests, though, denying Māori the right of sales from their oyster beds. Yet just one year before, the House had been furnished with a return of produce sold at the ports of Onehunga and Auckland between 1852 and 1858. It showed that Māori had provided literally thousands of kits of oysters annually (1865 AJHR E-12). The 1892 Act also made it clear that native oysters were ‘for their own food’ and regulations could be made to prevent any sales. (d) The alternative assumption may have been that Māori were stripping the beds and state regulation was necessary to control them. But total prohibition is not the regulation of trade especially when the right to trade is given to others. If that was understood, then the assumption must have been that Māori fishing carried no commercial rights, or alternatively, it may have been considered that Māori should be displaced in their domination of the fish market. No specific allegation of Māori overfishing was in fact made at this time, but the view that Māori fishing was other than commercial was soon ingrained. (e) It was assumed the control of even Māori reserves should remain with the Crown, the Crown alone having the power to regulate them. It was not until the next century that thought was given to the control of these reserves by tribal authorities, although such power was rarely if ever given. (f) In any event a regime was assumed whereby non-Māori interests could be licensed for commercial exploitation, while Māori interests should be provided for in non-commercial reserves near to their major habitations. It added much to Māori grievance that few Māori oysteries were created while non-Māori secured exploitation rights over traditional Māori beds (see 4.5.10). From a Māori point of view that was the inherent weakness of the reservation system. Once it was settled that the Crown alone could recognise Māori fishing grounds the danger arose that it might not recognise very many (as indeed it did not), and that particular fishing rights would be non-existent in areas removed from major Māori habitations.

All these moves by the Crown assumed that it could control the foreshore and seabed as it saw fit. In the Muriwhenua report, the Tribunal noted that this assumption extended to fishing reserves.482

By 1878, the Crown had enacted several public and local statutes demonstrating its assumption that it possessed and had authority over harbours, estuaries, lagoons and the takutai or coastal areas of New Zealand. The list of statutes relevant to Te Rohe Pōtae at this time included the Marine Act 1867, the Marine Act Amendment Act 1870, the Marine Act Amendment Act 1877, the Harbour Boards Act 1870, the Harbour Boards Act Amendment Act 1874, the Harbour Works Act

1874. There were many more statutes concerning specific harbours around New Zealand enacted during this period. It had also established a Marine Department.

The Harbours Act 1878 was enacted to regulate the management of harbours, demonstrating again the Crown’s assumption of ownership and authority over harbours. Section 147 of the Harbours Act 1878 finally resolved the issue of who had the right to manage the foreshore and seabed. It forbade the granting of any part of the seashore or land under the sea ‘without the special sanction of an Act of the General Assembly’. This led to the view that the Crown’s common law right to the foreshore was not subject to customary usage, at least until the 1980s, when the doctrine of aboriginal title was revived. Returning to section 147, it provided:

No part of the shore of the sea, or of any creek, bay, arm of the sea, or navigable river communicating therewith, where and so far up as the tide flows and re-flows, nor any land under the sea or under any navigable river, except as may already have been authorized by or under any Act or Ordinance, shall be leased, conveyed, granted, or disposed of to any Harbour Board, or any other body (whether incorporated or not), or to any person or persons, without the special sanction of an Act of the General Assembly.

This provision assumes the Crown’s right to lease, convey, or grant such areas. The 1878 Act declared the process of establishing new harbour boards under special Acts and continued those already in existence. Special Acts were also necessary for reclamation works.

Where any new harbour boards were constituted, their membership were to be comprised of elected and non-elected representatives. Members were elected by ratepayers, local governing bodies entitled to elect members, and those appointed or elected from those paying levies or dues. No provision was made for Māori membership.

All harbour boards could appoint pilots and harbour masters, and with the sanction of the relevant Minister administering the Marine Department they could install lights, buoys, and seamarks, impose dues and levies, rates, deal with obstructions and ship wrecks, undertake customs functions and other harbour works, and take land for such purposes under the Public Works Act 1876. What is notable about the legislation is the high degree of Crown control over harbour board operations.

Where there was no harbour board, the Governor in Council had all the powers, functions, duties, and authorities conferred upon harbour boards under the legislation. Alternatively, the Governor in Council could vest the management of any wharf (where owned by the Crown) in any local governing body or any other

483. Harbours Act 1878, s 28.
484. Harbours Act 1878, s 19.
486. Harbours Act 1878, s 29.
487. Harbours Act 1878, s 12.
The Governor in Council could authorise any local governing body or person to construct harbour works (other than the reclamation of land from the sea or any harbour, the construction of any graving dock, dock, or breakwater in any harbour in the sea). Such works had to be done for the use and benefit of the public. They could also be authorised to use and occupy any part of the foreshore or of any tidal land or tidal water as they considered necessary for the construction and use of such harbour works. Dues and rates could be taken by the body or person undertaking such works.

Through its marine and harbour legislation (including the many amendments and consolidating statutes such as the Harbours Act 1950) the Crown continued its assertion of possession and authority all under the administration of the Marine Department. The Marine Department also had responsibility for marine fisheries. Then in 1961, the Harbours Amendment Act of that year gave the Marine Department the authority to make grants of control over the foreshore and seabed.

The legislation also laid the basis for the management of foreshore, seabed, harbours, estuaries, and lagoons through to 1972, when the functions of the Marine Department were transferred to the newly created Marine Division at the Ministry of Transport and its fisheries responsibilities were transferred to the new Ministry of Agriculture and Fisheries. All these government agencies were based in Wellington, from where they oversaw the activities of individual harbour boards. In 1988, a number of harbour boards’ roles, responsibilities, functions, and properties were transferred to port companies under the Port Companies Act 1988. This did not affect Te Rohe Pōtae.

The passing of the Resource Management Act in 1991 furthered the Crown’s control over the coastal marine area. That is because the functions and powers over the foreshore, seabed, and seawater that had been given to the Marine Department, the Ministry of Works and Development, the Ministry of Transport, the Department of Conservation, and local authorities were all consolidated under the Act. Regional councils were then given responsibility for administering water, working, where necessary, with the Department of Conservation in terms of the coastal marine area. In 1993, the functions of the Marine Division concerning navigation and safety were transferred to the Maritime Services Agency, later renamed Maritime New Zealand. The Department of Conservation is responsible for the management of the coastal marine area. It also administers the Marine Reserves Act 1971.

489. Harbours Act 1878, s 16.
490. Harbours Act 1878, s 16.
491. Harbours Act 1878, s 16.
492. Harbours Act 1878, s 17.
493. The first schedule to the 1988 Act lists 12 harbour boards specified in the Act (those closest to Te Rohe Pōtae are Auckland and Taranaki). There has been no change to the schedule between the original Act and the current Act.
In New Zealand, given the decision of the Supreme Court in the Attorney-General v Ngāti Apa (2004) with its finding that the Crown’s radical title to the foreshore and seabed may be subject to Māori customary (or aboriginal) title, it logically follows that harbours, lagoons, and estuaries could equally have been subject to Māori customary title. Thus, it is arguable that the presumption associated with arm of the sea that it vests in the Crown could be rebutted, where proof of aboriginal or customary title existed.

At the time of our hearings, the most recent piece of legislation enacted relating to the coastal marine area was the Marine and Coastal Area (Takutai Moana) Act 2011. This Act repealed the Foreshore and Seabed Act 2004. As noted by the Tribunal in the Foreshore and Seabed report, the Treaty recognised, protected, and guaranteed tino rangatiratanga over the foreshore and seabed. Today, the Crown accepts that under article 2 of the Treaty, it has a duty to confirm and guarantee those property rights (in so far as the foreshore and seabed is within New Zealand boundaries and is properly the subject of extant Māori property rights). The Crown submitted the Takutai Moana Act 2011 contains the process for ensuring the rights are confirmed and guaranteed and is compliant with Treaty principles. In particular, the Crown highlighted how the Takutai Moana Act declares that neither the Crown, nor any other person, can own the foreshore and seabed not already held in private title.

22.5.5 The Crown’s regulation of harbours in Te Rohe Pōtæ

Māori knowledge of the Treaty guarantee of possession and rangatiratanga was demonstrated by King Tāwhiao when the aukati was lifted. He declared that Māori had ownership of harbours (in that instance the Kāwhia Harbour) under the Treaty. Such a statement was important, given the King’s clear understanding of Treaty guarantees. It was an understanding not mirrored by the Crown, which assumed it owned the foreshore, seabed, harbours, estuaries and lagoons. Such an attitude can be sourced to the common law of England.

Despite this evidence that Māori considered they possessed and held authority over their harbours, the Crown progressively assumed that possession and authority. In Te Rohe Pōtæ, harbour boards were established for Raglan/Whāingaroa, Kāwhia, and Mōkau. Both the Raglan and Kāwhia Boards were administered by Kāwhia County Council. Special Acts were needed to deal with the foreshore and seabed until the Harbours Amendment Act of February 1963. Under that legislation, the Marine Department granted the Kāwhia Harbour Board authority to control the foreshore of Kāwhia Harbour from Tauratahi Point.

500. Document J7, p 7; submission 3.4.115(a), p 42.
to Waiharakeke Stream for a period of 21 years.\footnote{Document A148, pp 32–33.} Other than this function, the harbour boards were ‘low-key’ organisations that maintained coastal facilities at the ports.\footnote{Document A148, p 30.} They do not seem to have undertaken activities like reclamation or sand extraction. Had this occurred, tangata whenua may well have had their attention drawn to the fact that the Crown was assuming strong authority over their harbours.\footnote{Document A148, p 31.}

The Resource Management Act delegated primary responsibility for the coastal marine area to regional councils and the Department of Conservation. The coastal marine area is defined in section 2 of the Act as:

the foreshore, seabed, and coastal water, and the air space above the water—

(a) of which the seaward boundary is the outer limits of the territorial sea:

(b) of which the landward boundary is the line of mean high water springs, except that where that line crosses a river, the landward boundary at that point shall be whichever is the lesser of—

(i) 1 kilometre upstream from the mouth of the river; or

(ii) the point upstream that is calculated by multiplying the width of the river mouth by 5.

Harbours are captured by this definition.

The Department of Conservation also has responsibility for the administration of the Marine Reserves Act 1971 and is responsible for that part of the Parininihi Marine Reserve in the Pukearuhe/Whitecliffs areas that fall within this inquiry district.\footnote{Document A148, p 91.} The harbour boards in Te Rohe Pōtae still exist today.

By the 1980s, Te Rohe Pōtae Māori were raising their desire for recognition of their authority over their harbours. The Tainui Māori Trust Board led the issue. The board attempted to gain customary control of the Aotea and Kāwhia Harbours. The Crown did not work with the iwi on this issue. What was missing from the equation was the political will to work with local Māori. By contrast, the Crown was actively delegating harbour board roles, responsibilities and functions over the same harbours to local authorities.\footnote{Document A148, pp 91–92.} Then under the Resource Management Act in 1991, the Crown delegated even more authority to regional councils.

Primary responsibility for the harbours in the district, however, rests with the Waikato Regional Council. In 2004, it approved the Waikato Regional Coastal Plan (except parts relating to marine farming and marinas that were approved in 2005 and 2007). The plan states the Council’s desire to establish a ‘constructive partnership with tangata whenua.’\footnote{Waikato Regional Council, ‘Establish a Partnership’, in Regional Coastal Plan (2004), https://www.waikatoregion.govt.nz/council/policy-and-plans/rules-and-regulation/regional-coastal-plan/regional-coastal-plan/2-tangata-whenua-perspective/23-establish-a-partnership/ .} The plan also states a commitment to ‘recognise and
take into account historical, spiritual, cultural and traditional values of tangata whenua’ in relation to Kāwhia.\(^{508}\) The plan specifies that this can be achieved by ‘the transfer and/or delegation of RMA functions, powers or duties’ over areas of ‘special value to tangata whenua.’\(^{509}\) However, the plan ‘is cautious about when this might happen’ and states instead that the council will work with tangata whenua over time in identifying such areas.\(^{510}\) Although it recognises the Waikato-Tainui iwi management plan, it has been unable to recognise both Ngāti Maniapoto’s 2007 iwi management plan and Ngāti Hikairo’s 2010 heritage management plan because these were completed after the Regional Coastal Plan became operative.\(^{511}\) This left both iwi with limited recognition of their status both as kaitiaki and as those with possession and authority of their takutaimoana, harbours, estuaries, and lagoons.

The next section reviews the case studies for each harbour to ascertain how in practice the Crown gradually assumed possession and control over specific harbours and whether Te Rohe Māori agreed to this transfer of possession and control.

### 22.5.5.1 Kāwhia and Aotea

The adjacent Kāwhia and Aotea Harbours were prized possessions that Māori exercised rangatiratanga and kaitiakitanga over. Claimant Thomas Moke described the significance of the Kāwhia Harbour as a taonga:

> It goes without saying that the Ngaati Mahuta people, both past and present, consider the Kaawhia Harbour a significant taonga and a significant part of our hapuu identity. We are a coastal/sea-faring people. The takutai moana is part of us and we are part of it as encapsulated in the saying: Kaawhia tangata, Kaawhia a tai, Te Piu o te mata o Kaawhia Moana.\(^{512}\)

John Kaati, speaking on behalf of the Kāwhia Fisheries Claim (a claim for Ngāti Kiriwai, Ngāti Hounuku, Ngāti Korokino, and Ngāti Te Kanawa Te Maunu), also described how Kāwhia was known for its abundance of kai and how inland hapū would congregate in the region during the times when species like mohimohi, kahawai, mango, tamure, and patiki were in particular abundance. He explained that they would catch these kaimoana from November to April and sun-dry

---


and preserve them to last.\textsuperscript{513} Kāwhia, he said, was traditionally known as a place teeming with kaimoana. He remarked: “There was an abundance of fish stock in Kāwhia. The name Kāwhia means “abundance of everything.” The people living there were heavily reliant on the shellfish beds for the likes of pipi, kokota, ngoro, kutai and titiku, just to name a few.\textsuperscript{514}

Aotea Harbour is similarly significant. Claimant Boss Mahara of Ngāti Te Wehi explained how, at the time of the signing of the Treaty, Ngāti Te Wehi had an ‘intimate relationship with the environment’:

We knew every aspect of our land and our waters. We knew where to get water. We knew where to get kai. We knew where our waahi tapu were. We had a relationship with the environment and that relationship was reciprocal. The land and the harbour looked after us so we had to look after it. We were the kaitiaki.\textsuperscript{515}

There are many important sites such as the site of Whatihua’s marae and whare, the creek where Hoturoa, captain of the \textit{Tainui} waka, caught tuna for his wife, and many others.\textsuperscript{516} Settlement was dense and this is consistent with the large number of archaeological sites surrounding the landscape of the harbours.

There is no doubt that in the early years of Pākehā settlement, Māori possession and rangatiratanga and their customary law dominated access to and use of the harbours. Frank Thorne told the Tribunal how Ngāti Hikairo taxed ships for the use of Kāwhia Harbour between 1850 and 1880. Similarly, Ngāti Hikairo charged a fee for the use of the Maketu coastline when the Kāwhia Regatta was held in the early 1900s.\textsuperscript{517} Historian Cathy Marr also noted how government ships required the permission of Te Rohe Pōtae Māori from 1866 to enter the Kāwhia Harbour, and how local Māori groups interfered with the Government’s placement of buoys in the harbour in 1883 as a protest against their imposition.\textsuperscript{518}

Gradually, however, the Crown’s assumption of control through legislation slowly whittled away that dominance. By the twentieth century while still able to exercise some degree of control over their own practices within the harbour, the local people concerned about exploitation of their fishing stocks had no choice but to seek Crown protection for their rangatiratanga due to the commercial fishing activity of non-Māori. This story demonstrates that they had not conceded possession but obviously realised that they needed the Crown to protect their authority over their harbour.

The story begins with commercial fishing activity at Kāwhia and Aotea harbours, which began in the early 1920s. That activity was met with continued opposition from Te Rohe Pōtae Māori for much of the twentieth century. In October 1922, several Māori from Kinohaku, south of Kāwhia Harbour, wrote to

\textsuperscript{\begin{itemize}
\item 513. Document Q16 (Kaati), pp 3–4.
\item 514. Document Q16, p 4.
\item 515. Document N43, p 3.
\item 516. Document A76, p 57.
\item 517. Document A98, p 124.
\item 518. Document A78, pp 66–67, 904.
\end{itemize}}
the local Police Sergeant informing him that they intended to prevent commercial fishing in the harbour. They explained that they only opposed those selling fish caught in the harbour and not those catching fish for themselves. Later that month, the Collector of Customs for the Auckland district forwarded the letter
to the Secretary of Marine noting that four licensed fishing boats operated in the harbour. The Secretary of Marine responded to the Collector in November, claiming Māori had no legal right to prevent others, commercial or otherwise, from fishing in the harbour. The Secretary informed the Constable at Kāwhia that any attempts by local Māori to deter commercial fishers should be escalated to the Native Minister, though it appears that no further actions were taken by Māori in this case. 519

In October 1928 the Inspector of Fisheries from the Auckland district visited Kāwhia to inspect commercial fishing activities being carried out by Europeans. The Inspector understood that his visit was likely to have been the first of its kind in Kawhia and that Māori were ‘locally supposed to have no restrictions whatever on their fishing’. While in Kāwhia, the Inspector found that some Māori were using illegal wire nets to fish in the harbour. With help from the local Constable, the Inspector confiscated a number of undersized fish and destroyed the nets, contradicting Māori understandings of unimpeded fishing rights in the harbour. 520

Following the confiscation, Marae Edwards of Kawhia wrote to member of Parliament Maui Pomare complaining that their nets had been seized. He emphasised that the nets were designed for catching all kinds of fish and described their custom, catching ‘fish in the summer as food supply for the winter as sharks are dried and schnappers are cured’. He further noted that in the past, food of this kind had been used ‘at meetings called by the King’ and that ‘netting for fish was the custom indulged in by [their] ancestors’. He asked why netting for fish was suddenly prohibited as ‘for many years previously, no prohibition [had been] made’. In particular, he called upon the Treaty of Waitangi, citing that he thought ‘this part of the Treaty was still in existence’. He also noted that he had asked the Inspector and Constable whether or not they were aware of the provisions of the Treaty prevailing in this circumstance and that they had answered that they ‘did not know about the Treaty’. Instead, they stated that were ‘enforcing the law to prevent nets which might catch small fishes from being set’. 521

In response to Edwards’ letter, Pomare telegraphed the Prime Minister and received a reply from the Minister of Marine. 522 The Minister stated that, although the Department of Marine did not intend to take proceedings against those fishing in this case, they had been issued with warnings and prosecutions would follow if they breached the law again. He also stated that, because the wire nets were illegal, they could not be returned to their owners. 523 In December that year, a petition signed by 59 local Māori was sent to the Government asking that ‘the fish, shell fish and birds of Aotea Harbour be reserved for us and our descendants for our support and maintenance and that licences granting sale of same be not

520. Document A148, p 34.
523. Minister of Marine to Private Secretary to Native Minister (and Prime Minister), 28 September 1928, on M Pomare to Prime Minister, 27 September 1928 (doc A148(a), vol 1, p 152).
Dick Te Huia of Moerangi explained that they wanted the harbour to be reserved because other fishermen were selling their catch and as such exploiting the resource, which the petitioners ‘strongly’ objected to. Te Huia further noted that ‘the whole of these waters [bar three European landowners] are surrounded by native lands which form the foreshore’. There is no record of a reply to the petition, though an internal memo notes that the Marine Department saw ‘no reason why this should be allowed’ and that Te Rohe Pōtae Māori had ‘nothing to fear in the matter of food supplies’. The memo concluded that the petitioners did not ‘deserve much consideration, for it is our experience that they are generally breaking the Fisheries Regulations.’

In July 1929, undeterred by the lack of a response, Marae Edwards again wrote to the Government, this time to the Native Minister Āpirana Ngata. Edwards asked that their ‘fishing grounds should be reserved and that the places where [their] nets used to be set should be again made available to use and that [they] should not be stopped by the law from using them.’ In August, after meeting with Edwards, Ngata wrote to the Minister of Marine and advocated the petitioners’ case. He emphasised that following the confiscation of much of their land, the Māori population in the area depended on the resource for their sustenance. He also called upon traditions and the responsibilities of manaakitanga, as well as the provisions of the Treaty of Waitangi, in an effort to convince the Minister of Marine to reconsider the petitioners’ requests. In his words:

The bulk of the Māori population of the Waikato district live in villages along the banks of the Waipa and Waikato Rivers. Owing principally to confiscation of their lands after the Waikato war, also to a natural reluctance and now a general inefficiency in keeping pace with the economic conditions of today ... there is great distress among the Waikato Natives. They have been enabled to subsist largely by their dependence on sea food supplies, which abound in the harbours mentioned above [Kawhia and Aotea]. You are of course aware that the Māori gatherings which are held on tribal occasions could not be fed without indigenous fish supplies, salt and fresh, and the Waikatos from time immemorial have drawn their supplies from these harbours ... Beneath all these runs the impression that at least a moral responsibility, entitled in special circumstances to tip the balance in favour of sympathetic treatment, was laid upon the Crown by the specific reservation in the Treaty of Waitangi of fishing rights and rights to mud-flats, shell-fish beds and so forth. But for the common law right of the Crown to territory below high water mark and out to sea, Māori communities might now be successfully claiming recognition and extinction with compensation of these rights.

Mr Edwards and his people are asking:

---

524. Dick Te Huia, Moerangi, to Maui Pomare, 15 November 1928, attached to M Pomare to Native Minister, 18 December 1928 (doc A148(a), vol 1, p 157).
526. Unknown official to Secretary for Marine, 15 January 1929 (doc A148(a), vol 1, p 162).
527. Dick Te Huia, Moerangi, to Sir Apirana Ngata, 26 July 1929 (doc A148(a), vol 1, p 163).
1) That the fishing regulations be amended in favour of their using a smaller mesh net . . . They say they had always used a small mesh until the breach in question was discovered.

2) That portions of the two harbours mentioned and of the mudflats be reserved for their use for food supplies.

3) That the regulations demanding a licence for the shooting of kuaka or godwit came as a surprise to them, as they have shot or caught this bird on the sands or mudflats without licence and without interference.

Whatever your Department may say to these claims, there remains the prime consideration of some provision for enabling the Waikato people to draw their sea-food supplies with as little disturbance of ancient custom as is consonant with the policy of the Department.528

In October 1929, the Inspector of Fisheries returned to Kāwhia and held a meeting with local Māori, where Marae Edwards acted as spokesperson. There, the Inspector explained that the rules surrounding mesh size had been set to ensure that juvenile fish were not caught. He also clarified that, when he and the Constable confiscated the net the year before, they did so because the netting itself was against regulation and not because they wanted to prevent Māori from fishing in the harbour altogether.529 According to the Inspector, Edwards ‘could not be convinced that the Fisheries Regulations were not some new Pakeha idea to deprive the natives of their food, that this was the very first occasion in his life that he had ever heard of such things as fisheries regulations’. Nonetheless, the Inspector informed the attendees that ‘there was nothing new about the Regulations, that the only thing new was the visits of the Inspector of Fisheries to out-ports’. He also stated that while he ‘regarded the Treaty of Waitangi with respect’ he saw it as an ‘obligation between the Pakeha and Māori [and] not a one-sided affair as Natives seemed to think’.530

The meeting culminated with Edwards requesting that the whole or parts of both Kāwhia and Aotea harbours be reserved exclusively for Māori. The Inspector replied that it would be ‘impossible’, noting two Pākehā who had fished in the area for substantial periods of time (one fulltime for 18 years, and the other every winter for 25).531 After ‘a lot of discussion on both sides’ a compromise was reached in which both parties agreed to Aotea Harbour being set aside as a native fishing reserve. Whare Moko of Aotea noted at the time that he believed there would be ‘ample fish’ for Kāwhia and Aotea natives, as well as Pākehā from the area who wished to catch fish for themselves.532 The Inspector informed the party that he would take the proposal to the Department, though he reiterated that fishing regu-

---

528. Native Minister to Minister of Marine, 14 August 1929 (doc A148(a), pp 164–165).
530. Inspector of Fisheries Auckland to Superintendent of Mercantile Marine Auckland, 17 October 1929, attached to Superintendent of Mercantile Marine to Secretary for Marine, 19 October 1929 (doc 148(a), vol 1, pp 167–171).

606
lations would still apply to all fishing in the district.\(^{533}\) In his report, the Inspector noted:

if it is decided to concede any area to Natives as a fishing reserve, in my opinion Aotea is the only place possible, though I cannot see since the natives have the same privileges as Europeans in fishing why they should have the native reserves, and I am afraid that this request, if granted, might easily be the thin end of the wedge.

However I think if the request is granted, these Natives will be satisfied, and they ought to be as Aotea has never been fished extensively at any time, and if fished according to regulations and professional fishermen excluded from its waters, the natives should have a source of food for many years to come.\(^{534}\)

While sympathetic to Te Rohe Pōtāe Māori requests, the Inspector clearly felt that any reserves granted should not impede the rights of licensed Europeans’ rights to continue fishing the area.\(^{535}\)

Along with the Inspector’s report, the Marine Department received a number of letters and petitions from Pākehā from Kāwhia and Aotea, protesting the proposal. One of the licensed fishers, from Aotea, hired a solicitor, seeking the ‘protection of his interests in the fishing rights’ that he had been exercising for three years and by that point formed his sole means of livelihood.\(^{536}\) In a letter to the Minister of Marine, the fisher’s solicitor noted his regular customers felt ‘very keenly the possibility of their being deprived of their fish supply, and [were] arranging to put in a petition in support of his rights.’\(^{537}\) He continued that there were ‘only about thirty Māoris living on the shores of Aotea Harbour, who very rarely fish’ and that many of them purchased fish from the fisher whose ‘three years’ experience with the Harbour has given him excellent knowledge of the fishing grounds in which a limitless supply of fish may be obtained, and which should prove a main source of supply for the Waikato district when completion of the metalling of the road is made.’\(^{538}\) The petition from his customers at Aotea was received later that month.\(^{539}\)

On 21 October 1929, Mr Edwards wrote to the Native Minister, describing the meeting with the Inspector:

Re Fishing. The Inspector of Fishery came to Kawhia this month to inquire into that matter. According to the remarks he made during his address, [the Inspector] is

---

534. Inspector of Fisheries Auckland to Superintendent of Mercantile Marine Auckland, 17 October 1929, attached to Superintendent of Mercantile Marine to Secretary for Marine, 19 October 1929 (doc A148(a), vol 1, pp 167–171).
averse to the reservation of the Kawhia Harbour, as there has never been any such reservation made in New Zealand in regard to fishing, and that he does not know of any such reservation, and because of that he does not see how any such reservation can be made in regard to Kawhia.

Re Fixed Net Fishing Places. That European will not agree to fixed net fishing places because of the fear of small fish being caught, and since it would contravene the by-laws in regard to fishing under the Act.

Re Reservation of Aotea Harbour. With regard to this harbour, he said perhaps this harbour can be reserved, i.e. persons may be prohibited from catching fish for sale or from operating in that harbour except to catch fish for their own personal use as food. He said he would send in his report in regard to this to the Minister of Marine.

Our real desire is that this matter should be adjusted by yourself and the Minister of Marine, so that it will accord with our wishes, since the Māori people here depend mostly on fish for their sustenance.  

Edwards’ letter was also forwarded to the Marine Department and on the 30th of October the Secretary of Marine wrote to the Chief Inspector of Fisheries, outlining the Department’s standing on the matter. In particular, the Secretary noted that there was nothing in the Fisheries Act providing for exclusive Māori use of fishing waters and therefore ‘Special legislation would therefore be necessary, but the passing of this would, I think, result in countless applications from natives throughout the country for reservations, and we would never be finished with them, and I do not think that it is advisable to take the power.’

He concluded that as there was only one Pākehā undertaking commercial fishing in Aotea, and that fishing appeared to be good, he was satisfied that ‘the natives should be able to obtain all they require if they care to go and fish, and that the reservation is not in the public interest.’

In November 1929, the Chief Inspector of Fisheries responded to the Secretary, agreeing with his assessment. He further noted that ‘something should be done to stop indiscriminate and wasteful netting by amateurs who come down in motor cars. I would like to see all net fishing licensed.’ No further actions were taken following the Chief Inspector’s reply.

Nearly a year later the Native Minister wrote to the Minister of Marine regarding a proposal from Mr Edwards to have three native fishing reserves established in Kāwhia Harbour. In his letter, the Native Minister outlined the proposed boundaries of each reserve and reiterated that Kawhia Māori were ‘dependent entirely on sea food supplies, and if the reserves asked for can be set aside for

---

540. Marae Edwards, Kawhia, to Native Minister, 21 October 1929 (doc A148(a), vol 1, p 177).
541. Secretary for Marine to Chief Inspector of Fisheries, 30 October 1929 (doc A148(a), vol 1, p 178).
542. Secretary for Marine to Chief Inspector of Fisheries, 30 October 1929 (doc A148(a), vol 1, p 178).
543. Chief Inspector of Fisheries to Secretary for Marine, 15 November 1929, on Secretary for Marine to Chief Inspector of Fisheries, 30 October 1929 (doc A148(a), vol 1, p 178).
them, they will be able to exist, especially during a lean year like this one. In a brief to his Minister regarding the Native Minister’s letter, the Secretary for Marine stated that even if the Fisheries Act included the power to grant sole rights of fishing to one group he thought that ‘it would be altogether unreasonable to do so’. While he acknowledged that the request was ‘based on the Treaty of Waitangi’ and recognised that ‘Article II affirms and guarantees to the Chiefs and Tribes the full exclusive and undisturbed possession of their lands, forests, fisheries and other properties which they may collectively and individually possess’, he claimed that ‘there never could have been any exclusive right to fisheries’. He further noted that the land Edwards requested was mostly tidal and therefore according to common law the Crown’s property. A fact, he asserted, Ngata also acknowledged. In summary, the Secretary stated that ‘there are plenty of fish for natives and settlers and, apart from the legal inability to do so, it would be quite unreasonable to exclude European settlers from their common law right to take fish off tidal flats’ and recommended that Edwards’ application be denied. The Minister of Marine agreed and dismissed the proposal. A similar request was also dismissed by the Minister of Marine in July 1931.

Despite these dismissals, local Māori continued to seek reserves in the harbour and in May 1935 Edwards approached the Acting Native Minister when he visited Kāwhia. Edwards described how their food supplies were being depleted by commercial fishing, noting that ‘as much as five tons per week were being taken and transported to New Plymouth’. He proposed that the harbour be divided into ‘two spheres for fishing operations’, where commercial fishing could occur in the western side while Māori and local Europeans could fish ‘for their own needs’ on the eastern side. He also asked that Tanewhango, a traditional pipi bed, be reserved for local Māori and Pākehā. The Acting Native Minister acknowledged Edwards’ concerns that Tanewhango was not ‘subjected as at present to denudation by the extreme wholesale methods now being adopted’ and further noted, as others had done before him, that Kāwhia Māori were highly dependant upon the harbour as a food source, stating: ‘I may say that the Natives at Kāwhia draw their food requirements largely from the Harbour, as owing to the fact that there are very few European employers of labour in the district most of the Māoris are without the means for the purchase of meat etc for their maintenance’. In response, the Chief Inspector of Fisheries asked the Inspector of Fisheries in Auckland and the Kāwhia Constable to further investigate the validity of Edwards’ claims. The Inspector did not support the implementation of fishing reserves and doubted that all five tons of fish described by Edwards was caught inside the

---

545. Native Minister to Minister of Marine, 25 September 1930 (doc A148(a), vol 1, p 183).
546. Under Secretary for Lands to Secretary for Marine, 15 October 1930 (doc A148, p 42).
548. Document A148, p 44.
549. Acting Native Minister to Minister of Marine, 30 May 1935 (doc A148(a), vol 1, pp 199–200).
551. Acting Under Secretary Native Department to Secretary for Marine, 5 June 1935 (doc A148(a), vol 1, p 202).
harbour. He asserted, somewhat contradicting himself, that prohibiting commercial fishers from fishing in up to two thirds of the harbour would run them out of business. Further, the Inspector claimed that local Māori were able to make a living off their land if they so desired, whereas Pākehā fishermen, who generally did not own land in the area, could not. He also claimed that pipi were harvested solely for filling orders from the Te Awamutu hotel.\footnote{552}

The Constable confirmed that the majority of commercial fishing was taking place outside the harbour and that an average of two tons of fish per week was sent to New Plymouth. He similarly noted that creating the reserves outlined by Edwards would have a ‘very detrimental impact’ on the commercial fishers, especially given that the proposed areas included ‘all the best fishing grounds’.\footnote{553} He suggested that if any restrictions were imposed, increasing the mesh size of the commercial nets would be more appropriate than prohibiting them from a reserve. He did, however, support a reservation on the pipi beds, noting that if the take continued at the same rate the supply would ‘soon be exhausted’.\footnote{554} The Chief Inspector, agreeing with the Constable, wrote to the Secretary for Marine and suggested that there be ‘no closure of an area for fishing by Pakeha’ but that the pipi beds should be closed to ‘commercial exploitation’ and that new regulations be introduced regarding net sizes.\footnote{555}

The Minister of Marine agreed with the Chief Inspector’s suggestions. In June 1935 he wrote to the Acting Minister of Native Affairs and described the fishing practices occurring within and around the harbour. In particular, he noted that it was ‘not advisable to prohibit commercial fishing within the harbour’ but that regulations should be imposed to restrict the mesh size of nets. Regarding pipi beds, he noted that ‘it is deemed advisable to close them to commercial exploitation and to allow pipis to be taken by persons for their own use.’\footnote{556} In July 1935 Orders in Council were issued, carrying out the Minister’s directions.\footnote{557}

During the 1940s, Kāwhia Māori formed the Rakaunui and Kinohaku Tribal Committees. John Kaati explained that they were formed in order to ‘stop the depletion of our harbour and the fisheries and [to] promote and safeguard the general welfare of the area.’\footnote{558} Between 1946 and 1948 the Kinohaku Tribal Committee sent letters to the regional parent body outlining their concerns that fish stocks in the area were depleting though no follow-up actions were taken.\footnote{559}

In November 1952 the Rakaunui Tribal Committee wrote to the Superintendent of the Marine Department, requesting once again that fishing reserves be

\footnotesize{552. Document A148, p 45.  
556. Minister of Marine to Acting Minister of Native Affairs, 28 June 1935 (doc A148(a), vol 1, p 208).  
559. Document Q16, p 2.}
established in parts of the Kawhia Harbour. The following April the District Fisheries Inspector and Māori Affairs Department District Welfare Officer met with representatives of the Rakaunui and Aotea Tribal Committees and several local commercial fishermen at Kawhia to discuss the request. In the meeting the Fisheries Inspector noted that in bad weather conditions commercial fishers could not go out to the open sea and as such surmised that there was very little chance that the Marine Department would agree to the proposal. The Welfare Officer also stated that if a reserve was created, it would be for the exclusive use of Māori. The petitioners, however, made it clear that they only wanted to exclude commercial fishers from the harbour and not prevent local Pākehā from catching for themselves. The Welfare Officer went on to note that ‘As the meeting progressed it became obvious that the setting aside of fishing reserves for the exclusive use of the Māori did not solve their problems’ and the meeting was concluded with little resolved. The two actions arising from the meeting were that the question of creating reserves would be deferred and that measures would be taken to educate amateur fishers and holidaymakers, who were accused of ‘needless wastage’, in ‘correct fishing practices’. Thereby, the concerns of Māori were effectively marginalised.

Another issue has been the impact of marine farming. In this district, between December 1981 to February 1982 two applications were made for marine farming ventures in Kāwhia Harbour. The first was for a Pacific oyster farm east of Motutarakatua Point. Two submissions were made during the ensuing period where objections to the application could be heard. The first submission was made by Ōtorohanga District Council and noted, amongst other things, that it ‘is known that Kāwhia Harbour is used for the recreation of gathering shellfish and perhaps this had been traditional with the Māori people’ and that ‘Council are concerned that the traditional fishing for flounder could be affected by the proposal to farm pacific oysters’. One of the applicants replied to the Council’s submission, claiming:

I have never seen anyone, inclusive of Māoris, picking shellfish in or near the area applied for, and the only shellfish present are a few very small pupu’s and cockles. Night spearing of flounders is popular in summer months along the foreshore and because of this the area applied for in the lease application is set some 100 metres

562. Gilliver to Secretary, Marine, 15 April 1953 (doc A25(a), vol 3, p 747).
563. W Herewini to Under Secretary, Māori Affairs, 30 April 1953 (doc A25(a), vol 3, p 749).
564. W Herewini to Under Secretary, Māori Affairs, 30 April 1953 (doc A25(a), vol 3, p 750).
565. Chief Engineer Otorohanga District Council to Director General of Agriculture and Fisheries, 21 July 1982, attached to Chief Engineer Otorohanga District Council to Secretary for Transport, 29 September 1982 (doc A148(a), vol 1, p 356).
from the foreshore, thereby allowing scope for the netting or spearing of flounders and ample room for small boats on the high tide.\textsuperscript{566}

After reading the applicant’s response, the District Council concluded that it was ‘generally satisfied’ with the application. The second submission in opposition was made by the Department of Lands and Survey, who stated that the farm ‘would provide a significant visual detraction from the amenities of the Kāwhia Harbour environment’ and could ‘adversely affect the use of the reserve in restricting recreational boating and other use of the shoreline’.\textsuperscript{567}

The second application for marine farming was for a mussel farm covering 10 hectares of the harbour. Three objections were received for the application and all were made with regard to the farm’s proposed location, which would potentially restrict boating and recreation activities.\textsuperscript{568}

The Tainui Māori Trust Board also made submissions in objection to both applications. In both cases, the Trust’s primary objection was that the Minister of Fisheries did not have jurisdiction to grant marine farming applications in the harbour. It claimed that the farms would ‘affect the traditional Māori fishing resources on Kāwhia Harbour’ and concluded that ‘For the Minister to accept jurisdiction to entertain and decide on applications in respect of such an area is to dishonour and ignore the provisions embodied in Article Two of the Treaty of Waitangi’.\textsuperscript{569} Regarding the Ussher application, the Trust Board objected to the farm’s proposed location, which was ‘in the middle of a traditional flounder netting and spearing ground’ and ‘close to beds of mussels, pupu, pipi, crayfish, and kina.’ It further noted that Pacific oysters could damage flounder nets and compete with native shellfish’s food supply. Referring to the Rutherford and Watts application, the Trust similarly claimed that the proposed site was ‘adjacent to a traditional pipi bed and [would] affect this bed in terms of access to the bed, and also in terms of competition for the same food supply’.\textsuperscript{570} In sum, the Trust argued that both proposed farms threatened Kāwhia Māori abilities to gather kai moana

\begin{footnotes}
\textsuperscript{566} NB Ussher, Kawhia, to Otorohanga District Council, 18 August 1982, attached to Chief Engineer Otorohanga District Council to Secretary for Transport, 29 September 1982 (doc A148(a), vol 1, pp 357–358).
\textsuperscript{567} Commissioner of Crown Lands Hamilton to Regional Executive Officer Ministry of Agriculture and Fisheries Hamilton, 5 November 1982 (doc A148(a), vol 1, pp 360–363).
\textsuperscript{568} Document A148, pp 60–61.
\textsuperscript{569} P Harris and E M K Douglas on behalf of chairman, Tainui Māori Trust Board, representing Kawhia Māori Committee ‘and the Tainui people generally’, to Ministry of Agriculture and Fisheries Hamilton, 23 July 1982, being part 2 (re Ussher) and part 3 (re Rutherford and Watts) of Submissions to Minister of Fisheries by Tainui Māori Trust Board, September 1982, attached to Secretary Tainui Māori Trust Board to Minister of Transport, 14 October 1982 (doc A148(a), vol 1, pp 292–297).
\textsuperscript{570} P Harris and E M K Douglas on behalf of chairman, Tainui Māori Trust Board, representing Kawhia Māori Committee ‘and the Tainui people generally’, to Ministry of Agriculture and Fisheries Hamilton, 23 July 1982, being part 2 (re Ussher) and part 3 (re Rutherford and Watts) of Submissions to Minister of Fisheries by Tainui Māori Trust Board, September 1982, attached to Secretary Tainui Māori Trust Board to Minister of Transport, 14 October 1982 (doc A148(a), vol 1, pp 292–297).
\end{footnotes}
and practice customs that they had done since the arrival of the Tainui waka to the harbour centuries earlier.\footnote{571}{Document A148, pp 62–63.}

In September 1982, members of the Tainui Māori Trust Board met with the Minister of Fisheries to once again object to the marine farming applications and to formally request that ‘the Kāwhia, Aotea and, if possible, Whāingaroa harbours . . . revert to Māori communal control’. They asked that the Trust Board be allowed ‘to exercise its authority over these waters as the duly constituted and recognised authority’ and that the Minister encourage the Trust Board ‘to manage, conserve, and develop the fish, shellfish and other marine resources of these harbours on a tribal basis, rather than on an individual basis.’ In support of their claim, the Trust Board noted that the majority of the foreshore of the harbours was Māori-owned and that land below the high water mark was never alienated, that ‘innumerable historic and sacred sites’ were located in the area, and that allowing local Māori, who they claimed were unrepresented in the Harbour Authority, to control the harbours was crucial to ‘maintaining the integrity of the tribes’ resources.’\footnote{572}{Submissions to Minister of Fisheries by Tainui Māori Trust Board, September 1982, attached to Secretary Tainui Māori Trust Board to Minister of Transport, 14 October 1982 (doc A148(a), vol 1, pp 283–284).}

That October the Trust Board passed the same information on to the Minister of Māori Affairs and the Minister of Fisheries. The Minister of Māori Affairs replied to the Trust Board and wrote to the Minister of Transport strongly supporting the Trust Board being ‘accorded membership of bodies charged with administering these harbours’.\footnote{573}{Minister of Māori Affairs to Minister of Transport, 11 November 1982 (doc A148(a), vol 1, pp 322–323).}

The Minister of Transport, however, was less supportive and stated that ‘the management of foreshore and coastal waters should be undertaken by a representative local or regional body taking into account the views of all community interests and the users of a particular area’ rather than give control to ‘one section of the community’.\footnote{574}{Minister of Transport to Secretary Tainui Māori Trust Board, 25 November 1982 (doc A148(a), vol 1, pp 324–325).}

Again, the Trust Board responded that it would be best suited as Harbour Authority to serve both the Tainui people and the wider community and again the Minister declined its requests.\footnote{575}{Document A148, pp 73–77.}

In December 1982, the first marine farm application was denied, primarily due to the fact that it would obstruct the navigable channel at low tide, though the Tainui Māori Trust Board’s objections were a contributing factor.\footnote{576}{Document A148, p 67.}

In response, the applicants reduced the proposed area of the farm from 10 hectares to four, however, the varied application was later declined as well ‘on the grounds of economic viability of marine farming in the Kāwhia area’.\footnote{577}{Regional Executive Officer Agriculture and Fisheries Hamilton to Secretary for Transport, 19 June 1986 (doc A148(a), vol 1, p 346).}

The following November the Minister of Fisheries approved the second farm, subject to a certified plan being prepared. In January 1984, the Director of the Fisheries Management...
Division wrote to the Tainui Māori Trust Board informing it that its objection had not been upheld. The Director acknowledged that the harbour was a major food source for Kāwhia Māori but that it was ‘not considered that [the farm would] unduly interfere with the activities or heritage of the harbour.’

In 1996, more than 70 years after Te Rohe Pōtae Māori first began voicing their objections to commercial fishing in Kāwhia and Aotea Harbours, the Minister of Fisheries agreed in principle to a taiaoāpūre reserve covering both harbours. The reserve, which was proposed by Rohe Tautoko Takiari of Ngāti Te Waho and endorsed by the Tainui Māori Trust Board, the Maniapoto Māori Trust Board, and the Ngāti Raukawa Trust Board, was agreed by the Māori Land Court in September 1998, with the Judge commending ‘the considerable amount of local support’ it received. The judge further commented that, although scarcity of fish was not a prime factor in deciding the merits of a taiaoāpūre, the idea of improving the fishery would be welcomed by the local community. He explained:

During the course of the hearing and in the Proposal, submissions and objections there has been much emphasis on the scarcity of fish stocks within the Kāwhia and Aotea Harbours and the outer areas of the Taiaoāpūre. The Tribunal has had before it an abundance of evidence as to the rapid decline in fish stocks over the last 30 to 40 years. Surveys of fishing catches conducted in the west coast harbours since 1990 show that Kawhia Harbour has the lowest catch rate of all the harbours.

Following the Minister of Fisheries’ approval, the Kāwhia Aotea Taiaoāpūre was established in June 2000. However, it does not appear that any regulations have been implemented by the taiaoāpūre management committee since it was established. This is a common trend across the country, with the Wairarapa ki Tararua Tribunal noting that taiaoāpure in general are time-consuming and costly to establish and administer and often viewed by Māori as ‘toothless’. In May 2008, the Aotea Mataitai reserve was declared, followed by the Marokopa Mataitai reserve in January 2011. Commercial fishing in these waters has been prohibited as a result, though many Te Rohe Pōtae Māori remain aggrieved that the reserves took too long to be established.

Ian Shadrock, for example, gave evidence:

Things got so bad at Aotea that we were getting our seafood from town as there was nothing left in the harbour. For a people living right next to the moana, you can image how we felt about this. Without doubt our mana as people was suffering.
Eventually we got a mataitai and a taiapure. At certain times we can open and close the areas through a mataitai. However, it took the Crown years to legislate this protective measure. By the time it was passed into law, it was already too late.

Ministry of Fisheries have all the resources. We don’t. We have nothing to call upon except our people power. While we have a mataitai and a taiapure, at the end of the time it doesn’t really amount to that much. The truth is we don’t have any say economically or otherwise. Ministry of Fisheries still over rule us because they have the assumed authority to do what they like. All they gave us was a piece of paper but nothing of substance.\(^{582}\)

John Kaati similarly explained:

Today iwi still complain of over-fishing and continue to witness commercial exploitation by licensed fishermen who do not fear the legal process in place. Such offences carry a minor penalty that commercial fisherman are only too happy to pay if they are caught, charged and found guilty. We do not even know if the penalties are either imposed or paid. The amount of unpaid fines on the Courts’ website show a very large number of unpaid fines that may include unpaid fines resulting from illegal fishing.

The mataitai mentioned in this claim are so reduced in numbers, that to talk of Kawhia Moana, Kawhia Kai, Kawhia Tangata can be rather embarrassing when people come to Kawhia Moana for mataitai.

The loss can be laid at the feet of Crown inaction to maintain tangata whenua tradition under the treaty of Waitangi as it was guaranteed.\(^{583}\)

Pita Te Ngaru recalled the decline in fisheries at Te Kakawa (Aotea Harbour):

‘As children, with our grandfather we would go rama paatiki and on a good night, we would come back with 50 or more flounder in a couple of hours. Now, you are lucky to get a half dozen.’\(^{584}\)

22.5.5.2 Whāingaroa/Raglan

Whāingaroa/Raglan Harbour is a drowned river valley comprising a number of streams and rivers and a large estuary. The harbour was once an abundant source of a wide-range of kai moana, including ‘pipi, mussels, tio, titiko, kokota, tupa, patiki, kanae, tuna, mako, inanga, paua, kina, koura wheke and rimurimu’.\(^{585}\)

Prior to the arrival of European settlers in the mid-nineteenth century, several Te Rohe Pōtae groups shared authority over the harbour, where, ‘in order to survive within their environment, whanau and hapu established practices based on tikanga, to maintain resources both tangible and intangible. The evidence was that those practices, manaakitanga and kaitiakitanga, conserved taonga and

\(^{582}\) Document N27 (Shadrock, p 3.

\(^{583}\) Document Q16, p 5.

\(^{584}\) Document N49 (Te Ngaru), p 14.

\(^{585}\) Document A152, p 10.
ensured a balance was maintained between humans and others who shared the environment.\textsuperscript{586}

Māori exercised rangatiratanga over the harbour as Pākehā began settling the area. However, their exercise of rangatiratanga was challenged in the 1860s with the outbreak of war in the Waikato.\textsuperscript{587} Whāingaroa Māori strongly opposed British warships using the harbour as a staging point and Te Awaitaia of Ngāti Māhanga wrote letters to the Governor conveying their view.\textsuperscript{588} According to traditional kōrero, Te Awaitaita also paddled his waka into the harbour to challenge warships anchored there. In the end, the warship \textit{Eclipse} was allowed to anchor in the harbour, but near lands privately owned by Captain J C Johnstone and away from Putoetoe at the harbour’s centre.\textsuperscript{589} Thus, it appears that Māori retained practical authority in the harbour’s management for some years following Pākehā settlement. That changed in the 1860s when the Crown unjustifiably confiscated all land to the North and East of the harbour, punishing Te Rohe Pōtae Māori for their involvement in the Waikato War. The Tribunal reviewed and discussed this history in chapters 6, 7, and 8 of this report. As their lands were alienated due to confiscations and sales, Te Rohe Pōtae Māori also lost the ability to manage the harbour as their customs dictated. Following the confiscations, much of the land surrounding the harbour was converted from indigenous forest to grassland for farming. European settlers cleared much of the forest, especially on the flat and more gently sloping country and often right up to the edge of the streams draining into the harbour.\textsuperscript{590}

By the late nineteenth and early twentieth centuries as a result of war, land alienation and the extension of the Crown’s authority, Māori lost their dominant position with respect to the harbour. That is because the Crown, starting assuming authority slowly but surely by appointing harbour masters, and then constituting the harbour board to manage the harbour. In 1894, the Raglan County Council was designated a harbour board, which for the most part authorised the construction of jetties, wharves, and bridges around the harbour.\textsuperscript{591} Between the 1870s and 1910s, central government funded the construction of several jetties and wharves at Raglan Town, Te Akau, and Ruakíwi. The evidence is that Māori found it harder and harder to have a voice in the management of the harbour. Rather, Māori concerns with respect to the harbour were swept to the margins, and they were rarely consulted about harbour developments. An example of this pattern of failing to consult and have regard to the concerns of Whāingaroa Māori occurred when the Raglan County Council installed a boat ramp against the wishes of local Māori.

\textsuperscript{586} Document A152, p 14. Fisher notes that Tainui o Tainui ki Whāingaroa, Ngāti Tamainupō, Ngāti Te Huaki, Ngāti Kotara, Ngāti Hourua, and Ngāti Mahanga all occupied surrounding lands (p 11); doc A99, p 68.

\textsuperscript{587} Document A152, pp 14–15.

\textsuperscript{588} Document A152, p 15.

\textsuperscript{589} Document A152, p 15.

\textsuperscript{590} Document A152, pp 9, 52.

\textsuperscript{591} Document A152, pp 16–17.
The boat ramp impacted the habitat of crayfish and thus interfered with Māori fishing rights.\(^\text{592}\)

A further issue occurred when a number of marine farm applications were made from the 1970s onwards.\(^\text{593}\) The claimants were concerned that these farms could damage customary fisheries, particularly by introducing foreign species of shellfish to the area. They were also concerned that they would further undermine Māori relationships with the harbour, as seen at Kāwhia and Aotea. It seems that few of these applications resulted in any consultation with Māori.\(^\text{594}\)

In 1984, for example, KR Witchell applied for a marine farming permit to cultivate oysters in the harbour. His application was challenged by various tangata whenua groups, including the Tainui Māori Trust Board, the Tainui o Tainui ki Whaingaroa claimants, and the Gillett whānau, as well as a number of Pākehā residents.\(^\text{595}\) The objections were based on a number of different potential impacts, including the loss of access to parts of the harbour, the damaging effect to marine life and customary fisheries, and the detrimental effect to the scenery.\(^\text{596}\)

The Tainui Māori Trust Board, representing the Tainui o Tainui ki Whaingaroa claimants amongst others, also asserted that the Minister of Fisheries had ‘no jurisdiction to grant marine farming applications in Whaingaroa Harbour’, as it was in breach of the Treaty of Waitangi. The Board further claimed that the farm would ‘interfere unduly with an existing right of navigation; interfere unduly with an existing usage for recreational purposes of the foreshore and sea; adversely affect unduly the use by the proprietors thereof of any land adjoining, or in the vicinity of the area; and be contrary to the public interest’.\(^\text{597}\) Despite receiving letters in opposition from a wide range of Whaingaroa residents, the Ministry of Transport and Ministry of Agriculture and Fisheries, supported by the Raglan County Council, approved the application. The basis for their decision was that ‘piscatorial activity’ in the area was limited to floundering, which was available elsewhere in the harbour, that they were ‘not aware of any shell fish being in the area’, and that ‘there would be no great effect on boating or other recreational pursuits’.\(^\text{598}\) The Ministry of Transport further noted that the objections ‘in relation to the rights of the Māori people over the Raglan Harbour’ did not affect its ‘consideration of the proposal’.\(^\text{599}\)

\(^{\text{592}}\) Submission 3.4.115, p 25; see also doc m26 (Hamilton), p 4; doc m27 (Hounuku), pp 6–7.

\(^{\text{593}}\) Document A152, p 72.

\(^{\text{594}}\) Submission 3.4.115(a), p 46, para 8.17.

\(^{\text{595}}\) The Wai 125 claimants, also referred to as Tainui Awhiro, and consisting of Ngati Koata ki Whaingaroa, Ngati Kahu, Ngati Tahau, Ngati Te Kore, Ngati Pukoro, Ngati Te Ikaunahi, Ngati Tira, Ngati Heke, Ngati Rua Aruhe, Ngati Hounuku, Paetoka, and Ngati Te Karu: doc A152, p 73.

\(^{\text{596}}\) The Clarks, TS Allis, the Parrys, and others to Ministry for Agriculture and Fisheries, August and September 1984; G M Gillett to Ministry for Agriculture and Fisheries, no date (doc A152, p 73).

\(^{\text{597}}\) Tainui Māori Trust Board to Ministry for Agriculture and Fisheries, 21 September 1984 (doc A152, p 74).

\(^{\text{598}}\) 'Marine Farm Application: K R D Witchell: Raglan Harbour', 9 September 1985 (doc A152, p 74).

In August 1993, Witchell applied for resource consent to extend the marine farm by up to four hectares. Māori again challenged the application, citing a lack of consultation and that the extension would negatively impact their ability to collect kaimoana. Nonetheless, the permit was approved by the Waikato Regional Council. Local Māori then appealed the decision, noting in particular that the pacific oyster was already threatening indigenous species in the harbour. It was concluded that the resource consent would be in breach of the RMA and the appeal was upheld. While only one example of many marine farming applications in the late twentieth century, the Witchell applications demonstrate a familiar process for local Māori as they attempted to retain their voice in the harbour’s management. The application processes were often lengthy and frustrating, the regional authority often ignored their concerns and any successes they achieved were often limited. In this respect, the applications for marine farms have not ceased.

As with Kāwhia and Aotea Harbours, from the mid twentieth century onwards, commercial fishing also became a serious concern for Whāingaroa Māori. James Rickard, for example, claimed that the interests of commercial fishers were often prioritised over those of Māori:

Patikirau is across the harbour. When I heard this name, I thought it was representative of the huge amounts of flounder that could be caught there. I was told later that the term Patiki-rau was named for the quota that was put on maori by Pākehā to protect their commercial interests.

Māori were only allowed to take 100 flounder at a time and from that point on, the place was named Patiki-rau. I understand that this was the first quota placed in the area, and it is interesting that the Māori recollection was that it applied to them and not Pākehā.

Whāingaroa Māori were further aggrieved by changes to fishing laws in the 1960s, which were relaxed to encourage growth in the commercial fishing industry and permitted ‘dragging’ in the harbour. The method involved towing a net along the seabed and gathering everything in its path. The method was criticized by Māori as it often significantly damaged shellfish beds. This was the case at Pipirua mussel reef, a customary food basket which, from the 1920s to late 1960s, provided ‘truckloads of kutai to feed large gatherings of people at the Koronēihana’, the annual celebration for Kingitanga, as well as acted as a food source for snapper and a stingray habitat.

Despite Whāingaroa Māori complaining to the police and their member of Parliament, Iriaka Ratana, the reef was destroyed due to

601. Fisher notes three other marine farm applications in his report, in which one was declined, one withdrawn, and the other granted with support from Māori (doc A152, pp 73–6).
604. Document A152, p 70.
overfishing. James Rickard described one such case that led to the destruction of the reef:

In the [19]60’s, a Pākehā fisherman found out about Pipirua and applied for a license to take mussels. He was granted 17 sugar bags a week. The fisherman was not only greedy, he was also lazy. Instead of using sugar bags, he would come down with huge sacks and fill up 17 of them. Also, instead of just picking them at low tide, like we did, he would take his boat out and dredge the mussels at night. 

While Whāingaroa Māori were ultimately successful in getting the fishing licence at Pipirua revoked, it proved to be too little too late as the bed was destroyed and their attempts at repairing the reef failed.

By the late 1990s, Māori started to express their concerns that, in addition to exploitation by commercial fishing and marine farming in the Harbour, overfishing by non-Māori recreational fishermen was further damaging their customary fisheries. They claimed that, while Māori fishers were highly regulated, non-Māori recreational fishing was by comparison largely unmonitored by the Ministry of Fisheries (now the Ministry of Primary Industries). In a submission regarding a proposed Customary Fisheries Management Regime for the Whāingaroa Coastal Region, ‘Ngā hapū o Whāingaroa’ asserted that ‘Māori must have an input into the promulgation and monitoring of other fisheries and environmental policies or regulations, which impact upon Māori customary fishing rights.’ They also noted that there was a ‘need for central, regional and local government to accord Māori entities, special status to allow direct participation in the development, monitoring and review of other fisheries and environmental policies or regulations which impact upon Māori customary fishing.’ Their submission was rejected by the Ministry of Fisheries, though it is unclear why.

In 1997, Raglan residents, both Māori and Pākehā, contacted the Ministry of Fisheries to express their concerns that fish and shellfish were facing increased pressure from overfishing. They requested that a fulltime fishery officer be appointed to Whāingaroa to monitor fisherman in the area. The Ministry declined their request and suggested that members of the community should be encouraged to volunteer as honorary fishery officers instead. In 1998, a number of Māori trainees began training with the then only honorary fishery officer, Fred Lichtwark, at Poihakena Marae. The community evidently greatly needed the offi-
cers and increased regulation as Ministry of Fisheries officers seized 3,500 cockles from one group of fishers in 1997, 1,600 shellfish from another group in January 1998, 14,500 cockles from three people later that month, and a further 8,000 mussels from yet another group just a few days later.\textsuperscript{614}

During the 1960s and 70s, Whaingaroa also gained popularity as an international surfing destination, particularly Manu Bay located near the entrance of the harbour. Known by Māori as Waikeri, meaning ‘surging waters,’ the bay was the site of a major customary fishery.\textsuperscript{615}

However, as the bay’s status as a popular tourist location grew, its fisheries came under threat. In the 1960s the Point Riders Incorporated Society built a shed at the bay to develop their headquarters there. This was followed in the early 1970s by a concrete boat ramp, which recreational fishers had inserted into the bay.\textsuperscript{616} Malibu Michael Hamilton of Ngāti Maniapoto, Ngāti Koata, and Ngāti Mahuta told the Tribunal that the boat ramp ‘not only had a huge impact upon the surf, it also destroyed some of the kaimoana beds that were there.’\textsuperscript{617} He claimed that, ‘Eventually the place became so popular that the Council acquired the land and turned it into a reserve. Rather than protect the Māori interests in the land that they owned, it was just better to get it off them.’\textsuperscript{618} Tainui Māori similarly stated that ‘the unfettered access [to Manu Bay] has undermined the kaitiaki status of hapū and resulted in the stripping of kaimoana, depletion of food species and pollution of the waterways.’\textsuperscript{619}

From these early times, the harbour deteriorated substantially, and as a result of a number of contributing factors. The Crown knew or ought to have known in accordance with the circumstances of the time that the harbour was deteriorating. A Geological Survey report from 1926, for instance, notes that indigenous forest around the Harbour remained only in the steeplands.\textsuperscript{620} This large-scale land clearance had a dramatic effect on the amount of sedimentation entering the Harbour, which increased up to threefold in some areas.\textsuperscript{621} It is unclear exactly how much this rapid increase in sedimentation affected customary fisheries during this period, though the Ministry of Fisheries has noted that ‘arguably the most important land-based stressor’ to coastal waters is sedimentation and that:

Impacts may be direct on the species themselves, such as clogging of the gills of filter feeders and decreases in filtering efficiencies with increasing suspended sediment loads (eg cockles, pipi, scallops), reductions in settlement success and survival

\textsuperscript{615} Document A99, p 112.
\textsuperscript{616} Document M26, p 4; doc A152, p 71.
\textsuperscript{617} Document M26, p 4.
\textsuperscript{618} Document A152, p 71.
\textsuperscript{619} Document A99, p 113.
\textsuperscript{621} Document A152, pp 55–56.
of larval and juvenile phases (eg paua, kina), and reductions in the foraging abilities of finfish (eg juvenile snapper). Indirect effects include the modification or loss of important nursery habitats, especially those composed of habitat-forming (biogenic) species (eg green-lipped and horse mussel beds, seagrass meadows, bryozoan and tubewell mounds, sponge gardens, kelp/seaweeds, and a range of other ‘structurally complex’ species). 622

Furthermore, sediment generated from land erosion and clearance increased phosphorus content in harbour, which, when mixed with nitrogen from livestock excreta and fertiliser runoff, provided an environment that stimulated algae growth. Algae absorbs oxygen in the water as it dies and decomposes, restricting other estuarine life forms’ abilities to live in the harbour. In Whāingaroa Harbour, particularly high levels of phosphorus have been observed around river mouths, where fine-grained sediment is washed off pasture land into bordering rivers and streams. 623

Like Kāwhia and Aotea, DOC has described Whāingaroa Harbour as a rich source of shellfish, an important wading and shorebird habitat, a foraging ground for killer whales, an estuarine and diadromous fish habitat, and an important commercial, recreational and customary fishery. However, it was under pressure from in-filling due to catchment clearance, diffuse discharges of nutrients, pathogens and other contaminants, coastal development, invasive species, and over-fishing. 624

In the 1970s, the Raglan County Council, supported by the Ministries of Works and Development, Transport, and Health, began to develop a new sewage system. As discussed earlier, this impacted on customary fisheries and undermined Māori relationships with the harbour, including their ability to manage it as their customs dictated. 625

Thus, the claimants were concerned that their customary resources have been severely depleted due in part to commercial and recreational (over) fishing and pollution from agricultural runoff and sewage discharge from the Raglan Township, which is discussed in detail earlier in this chapter. Claimant James (Tex) Rickard described witnessing this change in his own lifetime:

In the time that I have lived here in Raglan, I have personally watched the steady decline of the fisheries within the harbour.

You could gaff eels out of the rivers by the Rakaunui block and the inlet used to be full of snapper, kingfish, butterfish, all sorts.

When it got dark, the harbour used to turn into a sea of lights resembling Queen Street in a way. These lights on the water were gradually replaced by lights on the land as the place developed and the ability to get kai out of the water diminished.  

Concerned about these and other activities, residents of the community set up a management group for Whāingaroa residents in the mid-1990s in response to ‘the perceived previous mismanagement of the Harbour by the Raglan Harbour Board and Waikato Valley Authority’. Beginning in 1995, meetings were organised with members of the community and representatives from the Regional and District Councils with the view to ‘discuss pollution and harbour management issues, to recognise the roles of different agencies involved and to explore options for resolving the environmental problems’. The Whāingaroa Harbour Project (also known as Whāingaroa – Raglan Harbour Care; Whāingaroa (Raglan) Harbour Project; and later renamed the Whāingaroa Environment Group) was established as a result of these meetings with the intent of addressing these concerns and were regularly consulted. That is to be compared to what was happening for iwi. At the time, a member of the Regional Council noted that the ‘design of the project certainly has to include the iwi element’, yet adequate consultation with Māori proved to be an ongoing oversight throughout the project. In a stakeholders meeting in April 1996 the Tainui Māori Trust Board noted that they felt excluded from the project and wanted to be kept involved. As a result, Mana Forbes of Ngāti Hikairo was employed by the Regional Council to ensure Māori were included in the project. However, despite Forbes’ involvement, the lack of Māori engagement remained an issue; in October 1996, a member of Manaaki Whenua, a Crown Research Institute, noted that they had ‘not been able to devise a generally acceptable manner for involvement of local iwi, and to ensure that their interests and concerns [were] integral to the project’.

The following February a hui was organised at Poihakena Marae which was attended by Māori from three Whāingaroa marae and representatives from the Regional Council and Manaaki Whenua. The Regional Council representative noted at the time that the hui was ‘very successful [and laid] the foundation for further discussions to plan cooperative activities’. The Project continued to hold meetings throughout the late 1990s, though these were not as well attended by Māori. It appears that Whāingaroa Māori were hesitant to engage with the project.

---

627. Document A152, p 42.
629. Document A152, p 44.
633. Document A152, p 48. It is unclear from the evidence which three marae were represented.
as earlier attempts at community organization had failed to adequately incorporate their perspectives on harbour management. As such, Māori tended to prefer to pursue projects on their own terms.\textsuperscript{635}

\textbf{22.5.6 Tribunal analysis and findings}

The Foreshore and Seabed Tribunal, when discussing the coastal marine area and in identifying what the Treaty guaranteed and protected in 1840, found that ‘Māori communities had rights of use, management and control over the foreshore and seabed that equated to the full exclusive possession promised in the English version of the Treaty.’\textsuperscript{636}

Previous Tribunals have also found that similar waterways such as estuaries, wetlands, or lagoons may be taonga. The Rekohu and Te Whanganui-a-Orotu discussed principles equally applicable to harbours. The Rekohu Tribunal found that in relation to Te Whanga (the large lagoon within the boundaries of the Chatham Islands) ‘Moriori and Māori had no concept of ‘owning’ in the English sense. They rather ‘possessed’ and ‘used’ for so long as the gods, and any enemies, allowed.’\textsuperscript{637} By possession, the Tribunal stated, it meant that Māori ‘saw themselves as having rights to use and as having an authority or right of control as against others.’\textsuperscript{638}

What they possessed was a water regime, consisting of bed, water, and contents, not merely dry land.\textsuperscript{639} The fact that the common law as it grew up in England, potentially recognising such lagoons or harbours as an arm of the sea and thus vesting in the Crown, was not an issue for the Tribunal exercising jurisdiction in terms of the Treaty. The Treaty guaranteed the active protection of such taonga.

The Whanganui-a-Orotu Tribunal went further as it could not accept the Crown’s argument that Te Whanganui-a-Orotu was an arm of the sea.\textsuperscript{640} It found that the bed of Te Whanganui-a-Orotu was not an arm of the sea and therefore it did not, as a matter of common law, vest in the Crown.\textsuperscript{641} Even if it could be considered an arm of the sea, the Tribunal considered that ‘for the Crown to rely on a principle of English common law to deprive Māori of their taonga, Te Whanganui-a-Orotu, would be a breach of the Treaty principle to actively protect the property of Māori.’\textsuperscript{642} We adopt all these previous findings for the purposes of this report.

We further find that Aotea, Kāwhia and Whāingaroa/Raglan and the Mōkau River mouth (discussed in section 22.5.5) were and remain important taonga of Te Rohe Pōtai Māori. They exercised rangatiratanga over them and that continued in

\begin{itemize}
\item \textsuperscript{635} Document A152, p 47.
\item \textsuperscript{636} Waitangi Tribunal, \textit{Report on the Crown’s Foreshore and Seabed Policy}, p 135.
\item \textsuperscript{637} Waitangi Tribunal, \textit{Rekohu: A Report on Moriori and Ngati Mutunga Claims in the Chatham Islands} (Wellington: Legislation Direct, 2001), p 277.
\item \textsuperscript{638} Waitangi Tribunal, \textit{Rekohu}, p 277.
\item \textsuperscript{639} Waitangi Tribunal, \textit{Rekohu}, p 278.
\item \textsuperscript{641} Waitangi Tribunal, \textit{Te Whanganui-a-Orotu Report}, p 200.
\item \textsuperscript{642} Waitangi Tribunal, \textit{Te Whanganui-a-Orotu Report}, p 200.
\end{itemize}
a practical sense until at least the late nineteenth century. On the ground, the work of the Crown, the harbour boards and other local authorities did not resonate until their enjoyment of their harbours or their associated fisheries were impacted by others. It was then that the lack of authority held by Māori to influence management decisions concerning the harbours and fisheries became clear. For example, it was not until the late 1920s when a fishery officer visited Kāwhia Harbour and enforced fishing regulations that were not known to local Māori fishermen that it became apparent to local Māori that their authority over the harbour was non-existent. This event is significant as it provides an early example of the Crown imposing a legal regime that was not known on the ground, and Te Rohe Pōtae Māori strongly resisting the imposition.\footnote{Document A148, p 91.}

There is no evidence before the Tribunal that Māori were consulted in any meaningful way regarding the establishment of the harbour boards, the delegations to local authorities of responsibility over the coastal marine areas, or the construction of public works such as jetties. Once these bodies began to operate, they were not required to consult with Māori either, unless they were affected landowners. We discuss what happened with the management of fisheries in section 22.6.

Having taken control, as with rivers, the Crown’s management regime led to issues concerning over-fishing, poor marine farming practices, and water quality issues. Māori treaty rights, tikanga and spiritual cultural values were often ignored or disregarded. The RMA now recognises and provides for their relationship with the harbours of the district, and their spiritual and cultural values but, as has already been noted, that legislation is subject to limitations.

In terms of their fisheries, attempts to establish reserves at Kāwhia, and later attempts to control Kāwhia, Aotea and Whāingaroa all demonstrate that Māori affected sought the Crown’s protection for their possession and rangatiratanga authority over that harbour from the 1920s through to the 1950s. The Crown did not agree to these requests.

It would not be until the 1990s that their efforts would be rewarded with respect to their fisheries with the establishment of the taiāpure for the Kāwhia and Aotea Harbours. However, there are limitations with taiāpure. That is why it was important in 2008 that the Aotea Mataitai Reserve was declared and in 2011 the Marokopa Mataitai Reserve was declared. Taiāpure were constituted under the Māori Fisheries Act 1989 and mataitai were constituted under regulations made pursuant to the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992. These provisions are now to be found in the Fisheries Act 1996. While no mataitai reserves were established at Whāingaroa, as was the case at Kāwhia and Aotea, Māori did have their rohe moana zone over the harbour successfully recognised.\footnote{Document A152, p 67.}

Therefore, we find that:

\begin{itemize}
  \item the Crown acted in a manner contrary to the principles of the Treaty of Waitangi from 1840 to 1991, namely the principles of good governance in
\end{itemize}
article 1 and rangatiratanga in article 2. It did so because it did not legislate to recognise and provide for the rangatiratanga or manawhakahaere, values, and tikanga of Māori associated with the harbours that are taonga of the district so they could be integrated into its legislative management regime.

To provide for the rangatiratanga of the claimants, Environment Waikato and DOC should be required to enter into a co-management regime with the claimants to manage the harbours. The establishment of the taiāpure and mataitai reserves do not absolve the Crown from that responsibility as these entities only control fishing.

Since 1991, the RMA has improved the situation as far as managing environmental effects on the harbours but has its limitations as described in section 22.4 and this issue needs to be addressed. To address that issue, section 8 of the Resource Management Act should be amended to state that nothing in the 1991 legislation should be done in a manner inconsistent with the principles of the Treaty of Waitangi or a new reference should be added to section 5.

22.6 Customary Non-commercial Fisheries

Te Rohe Pōtae Māori place great value on their ability to gather kaimoana from their freshwater and coastal marine environments. This resource is valued not only for its sustenance, but also for spiritual, historical or cultural reasons including extending manaakitanga to visitors. The English version of article 2 of the Treaty of Waitangi explicitly guaranteed Māori ‘the full exclusive and undisturbed possession’ of their fisheries. Any decline in Te Rohe Pōtae Māori’s customary non-commercial fisheries therefore is of concern to the claimants. This section discusses how the Crown’s fisheries management regime has impacted on their customary non-commercial fisheries. The biggest impacts have been the reduction of water quality in the rohe, overfishing, and the introduction of exotic species like trout that compete with indigenous fish.

22.6.1 Tribunal jurisdiction concerning customary non-commercial fisheries

In a memorandum during the hearing phase of this inquiry, Judge David Ambler determined that the Tribunal does not have jurisdiction to enquire into claims about commercial fishing or fisheries. That jurisdiction was removed after the enactment of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992. Section 9 deals with Māori claims ‘founded on rights arising by or in common law (including customary law and aboriginal title), the Treaty of Waitangi, statute, or otherwise.’ It covers those claims ‘whether in respect of sea, coastal, or inland fisheries, including any commercial aspect of traditional fishing.’ The provision notes that these claims have been acknowledged and satisfied by the benefits provided to Māori by the Crown under the Māori Fisheries Act 1989, the 1992 Act, and the deed of settlement. It then provides that such rights are ‘finally settled, satisfied and discharged.’ As a result of this enactment, The Treaty of Waitangi Act 1975 was

amended by inserting section 6(7) preventing the Tribunal exercising jurisdiction with respect to Māori claims to commercial fishing and fisheries.\(^\text{646}\)

Although the Act settled all Treaty right claims to commercial fishing, it did not affect claims relating to the Crown’s obligation to Māori in respect of non-commercial fishing and fisheries. In other words, certain aspects of the Crown’s fisheries management and administration, such as the Crown’s management of customary and recreational fishing, and the impact of commercial fishing on customary and recreational fishing are still open to the Tribunal’s consideration. We adopt Judge Ambler’s finding:

Allowing Māori to pursue in this Tribunal claims that the Crown’s commercial fishing regime is breaching Māori non-commercial fishing Treaty rights will not offend the purpose of the 1992 legislation, and in my view is consistent with it. I therefore rule that claimants in this inquiry can bring claims that commercial fishing has had or is continuing to have an adverse impact on their customary non-commercial fisheries.\(^\text{647}\)

22.6.2 Crown concessions

Crown concessions in this area were brief, merely noting that it ‘may not always have been the case’ that Māori interests and views in the environment and its resources were recognised by the Crown. It also acknowledged that at times Te Rohe Pōtae Māori did raise concerns regarding fisheries resources in the rohe.\(^\text{648}\)

The Crown acknowledged the importance of fisheries to Te Rohe Pōtae Māori and that tuna are a taonga species. Furthermore, it accepted that over time some species have declined. However, the Crown contends there is very limited technical evidence on the current state of customary fisheries resources in the district, other than for tuna.\(^\text{649}\)

22.6.3 Claimant and Crown arguments

Claimant counsel submitted that the Crown’s management of fisheries did not give proper weight to the reliance Te Rohe Pōtae Māori had on fisheries (particularly freshwater fisheries). They claim that until the Fisheries Act 1983 was enacted, the Crown had failed to give due regard to its statutory duty to ensure that nothing in terms of the management of fisheries affected any Māori fishing rights.

Claimant counsel also submitted that Māori have not ‘regained ultimate control over their customary fishing rights’. In the example of tuna fisheries they highlighted:

- DOC are responsible for the management of eel fisheries;
- there are only a few places in Te Rohe Pōtae where commercial eel fishing is prohibited; and

\(^{646}\) Memorandum 2.6.60; Treaty of Waitangi (Fisheries Claim) Settlement Act 1992, s 10.

\(^{647}\) Memorandum 2.6.60, p 12.

\(^{648}\) Statement 1.3.1, p 360.

\(^{649}\) Submission 3.4.283, p 67.
there is no indication that Te Rohe Pōtae Māori have any role to play in the management of the tuna fishery, ‘save for the Department’s obligation to have regard to Māori interests’. 650

The claimants submitted the Crown has sanctioned many environmental changes that have negatively affected waterways and which, by turn, have had a detrimental impact on their non-commercial customary fisheries.651 For example, it played an active part in the introduction and management of exotic fish and introduced commercial freshwater fishing to the rohe in the 1960s.652

In particular, Te Rohe Pōtae Māori claimed the Crown played a part in the decline of many marine species. The most evidence was received regarding tuna (eels) and whitebait and as such, the decline and management of these species is discussed in depth in separate sections. But claimants also raised claims regarding the decline of taonga species such as kāeo (freshwater mussels), peraro (soft shellfish), ngorongoro (baby mussels), and kōaro.653

For example, Tame Tuwhangai of Ngati Urunumia gave evidence that after the Crown acquired the block of land on which Lake Ngarongakahui (also known as Lake Ngarongohira) was located in 1901, ‘the lake and wetlands were drained’ for the construction of a tramway, destroying a significant source of kāeo and kōaro that had long sustained settlements dotted around the area known as Te Horangapai o Hikairo. The Crown did not consult Ngati Urunumia about this work, nor does it appear they considered the impact of destroying this foodbasket would have on local Māori.654

Homai Uerata of Ngati Kiriwai similarly noted the decline of ngorongoro and peraro in Kāwhia.655 He said that pollution and Crown-imposed rules have limited the ability of hapū to tiaki these species in recent times.656

The claimants’ concerns regarding the effects of pollution extends to their freshwater fisheries (which are taonga) and the introduction of exotic species.657 They list the following taonga species: tuna (eel), kanae (mullet), īnanga (whitebait), and kakahi (freshwater mussel) that were traditionally harvested.658 They submitted that environmental changes have had a significant negative impact on these fisheries.659 Some claimants were also concerned about the effects of exotic species being introduced.660

The Crown, it was submitted, was responsible for ensuring continued access to the resource but has failed to discharge this responsibility.661 Tuna is a particularly

653. Submission 3.4.115(a), pp 40–41; submission 3.4.218, p 2, 8; claim 1.2.81, p 22.
657. Submission 3.4.115, p 17.
658. Submission 3.4.115, p 17.
659. Submission 3.4.115, p 17.
660. Submission 3.4.218, pp 2–3.
661. Submission 3.4.115, p 17.
important species with both a customary and spiritual uses. Dams have obstructed the passage of eels, already in decline due to the lack of protection by the Crown. Despite objections to Crown Ministries from Te Rohe Pōtae Māori, such dams were still built. Such actions, the claimants argue, were in breach of the guarantees of the Treaty of Waitangi.

The claimants submitted the Crown has failed to protect their rights to tuna and has sponsored various activities leading to a decline in eel numbers. In particular the Crown:

- sponsored mass deforestation leading to soil erosion, siltation of waterways, reduced water levels, increased water temperature and destruction of the eel habitat;
- promoted agricultural changes leading to the loss of habitat through wetland drainage, and the degradation of water quality due to farm run-off;
- promoted the building of dams on the Mōkau River leading to the interruption of the migration patterns of tuna;
- sponsored introduction of exotic fish which causing competition and predation of tuna, as well as efforts to eradicate tuna from the waterways; and
- introduced commercial eeling in Te Rohe Pōtae waterways.

The claimants compare the position of eels to trout protected since the passage of the Salmon and Trout Act 1867. Tuna, they claim, are in a precarious state. The Crown is not managing tuna, they submitted, in accordance with the Rio Declaration 1992. They seek a ban on commercial eeling and point to 3 surveys showing their decline, the advice of the Parliamentary Commissioner for the Environment and the application of the precautionary principle.

In reply, the Crown recognised it may have been responsible for the ‘establishment of regimes and policies that permitted’ a range of activities (such as river control works, land use practices, dams, agriculture and drainage) that may have affected fisheries resources. Nonetheless, Crown counsel argued that this is not a breach of the Treaty in and of itself.

Rather, it was contended, it is consistent with the Crown’s right of kāwanatanga to regulate fisheries and its role must be considered in the context of the ‘local and national benefits’ that the activities such as fishing bring. The Crown submitted that its current management of fisheries is Treaty compliant and highlighted how the Ministry of Agriculture and Fisheries has worked with tangata whenua to develop regional forums to enable them to advance their interests in fisheries.

---

662. Submission 3.4.115, p 18.
663. Submission 3.4.159(b), p 21; submission 3.4.115(a), p 35; submission 3.4.115, p 18.
664. Submission 3.4.130(b), p 88.
665. Submission 3.4.130(b), p 90.
666. Submission 3.4.130(b), p 90; submission 3.4.115, p 18.
668. Submission 3.4.283, p 69.
management. It also noted that a number of taīpure and mataitai reserves have been established in Te Rohe Pōtæ and the Ministry assisted in establishing a forum for marae between Mōkau and the Manukau Harbour to self-manage customary fishing.

In respect of the decline of fisheries resources the Crown submitted:
- It is impossible to attribute any decline to a single factor, as it is affected by a range of complex factors, some of which are beyond the Crown's control.671
- The Crown has undertaken a range of initiatives to 'protect, manage and sustain' fisheries, and Māori interests in them.672
- ‘Substantial provision’ has been made for Māori interests in the management of non-commercial fisheries.673

For customary fisheries the Crown recognised its obligations under s 10 of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992.674 It accepted that freshwater habitats can be affected by a range of activities including river control works, land use practices, the construction of hydro-electric dams, agriculture, and drainage works.675 Where there is clear evidence of decline, the Crown submitted, reasons for such decline must be carefully assessed.676 The Crown further submitted that in some cases the Crown may be responsible for the policies, practices or legislation associated with impacts on fisheries, but this is a legitimate exercise of its kāwanatanga authority where it has had to consider the national benefits that may accrue to the community.677

Furthermore, although the Crown accepted that over time, 'the availability of some fisheries resources may have declined' it submitted that there was 'very limited technical evidence on the current state of customary fisheries resources' in the district.678 It also argued that the lack of evidence on any species apart from tuna limited the ability to make broad findings on the current state of fisheries in Te Rohe Pōtæ, how they changed over time, the cause of such changes, and the Crown’s responsibility for any of it.679

Although Crown counsel acknowledged the customary importance of tuna to Rohe Pōtæ Māori the Crown did not make any specific concessions regarding tuna except that tuna may be a taonga to specific iwi and hapū. In that circumstance, it recognised that it has an article two Treaty obligation to take reasonable

669. Statement 1.3.1, p 360.
670. Statement 1.3.1, p 360.
671. Statement 1.3.1, p 358.
672. Statement 1.3.1, p 359.
673. Statement 1.3.1, p 359.
674. Submission 3.4.283, pp 68–69.
675. Submission 3.4.283, pp 68–69.
676. Submission 3.4.283, p 67.
678. Submission 3.4.283, p 67.
steps to protect tuna. However, the Crown submitted the reasons for the decline in tuna may be beyond its control.

In relation to the fishing of tuna in the rohe, the Crown maintained the current indigenous fisheries framework provides a number of ways for Māori concerns to be considered and that this makes it Treaty compliant.

Although the Crown accepted barriers like dams may have affected tuna, it did not accept that its actions have been incompliant with the Treaty for three main reasons. Firstly, the Crown was not responsible for the decisions leading to the building of in-stream barriers. Secondly, substantial effort has been put into mitigating the effects on the passage of tuna at the two dams on the Mōkau River, and thirdly, the national interest justifies the construction of the dams as the hydro-electric power stations provide a stable supply of electricity, which is a vital component of the economic and social lives of all New Zealanders, including Māori.

The Crown also did not accept that its actions regarding the acclimatisation societies constituted a breach of the Treaty. It submitted that, although it is now clear that the introduction of exotic flora and fauna into New Zealand – some of which it facilitated – has had a detrimental effect on some indigenous species, such introductions were generally undertaken in good faith without the full knowledge of the ultimate effects on either the environment or on Māori cultural practices.

The Crown noted that salmon was introduced into the Pūniu River at the request of Rewi Maniapoto. Crown counsel pointed out that this example demonstrates that, in the nineteenth century, Māori and non-Māori had only a limited understanding of the potential consequences that introduced species would have on the environment. Trout and salmon are still recognised under the RMA in section 7(h) as special and protected species. On the whole, the Crown avoided commenting on the activities of the acclimatisation societies and the effects on Māori, save to point out that in some cases Te Rohe Pōtae Māori also desired the introduction of new animals into their rohe.

### 22.6.4 Fisheries and their value as taonga

As alluded to earlier in this chapter, fisheries were especially important for the livelihood and cultural identity of Te Rohe Pōtae Māori. In a spiritual sense the sea and freshwater were the domain of Tangaroa and Hinemoana. The fish and other species in the sea were their children, and claimants described the sea and other water bodies as storehouses of Tangaroa and Hinemoana.

---

680. Submission 3.4.283, pp 83–84.
681. Submission 3.4.283, p 87.
683. Submission 3.4.283, pp 69–70; statement 1.3.1, p 364.
684. Submission 3.4.283, p 59.
685. Submission 3.4.283, p 62.
Claimants emphasised to us how central these food sources were to their livelihood and cultural identity. Māori society placed great reliance upon the fishery resource, which was vital to Māori culture and economy in the period before European contact and settlement. As was true across the motu, fisheries were a central source of sustenance for many Te Rohe Pōtae hapū. Arguably the most important are tuna, or species of freshwater eel, which are especially abundant in the waterways of the inquiry district and are a prominent, vital part of everyday life for Te Rohe Pōtae Māori. Whitebait, including juvenile forms of species known as inanga and kōkopu, are similarly abundant in this district and another important source of food for tangata whenua. These species and their importance to Māori are discussed in more detail in sections 22.6.8 and 22.6.9.

In addition to tuna and whitebait, evidence in this inquiry pointed to an abundance of other fisheries relied on by Te Rohe Pōtae Māori. Evidence in this inquiry points to historically plentiful species such as kāeo (freshwater mussel) and kōaro (freshwater bully fish) in coastal wetland areas; the now-extinct upokororo (grayling), which inhabited in low-elevation rivers and wetland areas; kōura (freshwater crayfish) in wetlands, lakes, rivers, and streams; and pihārau or kanae (lamprey) in rivers, streams, and coastal areas.

Māori had and still have a well-defined property rights system with regard to both the coastal land and their associated fishing grounds. Each hapū or iwi owned a fishing area with carefully defined boundaries, and these were handed down from one generation to the next. Agreements were struck between coastal and inland hapū, who would not only trade the different species they had caught, but would also exchange seasonal fishing rights to their respective mahinga kai. A complex set of tikanga and rituals governed the relationships between the people, voyages, fisher-people, and the sea. These rituals included prohibitions or rahui of harvesting at certain times of the year. Daniel Hiki Rata, who grew up on a homestead near where Ōngarue River and Mangakahu Stream meet, related the tikanga his father taught him emphasising sustainability and the protection of the environment:

He taught me that the lands were sacred and that the environment was connected, constant, holistic but that it required guardianship and protection. Our ancestors only took what they needed from the lands, the sea and rivers. What they took was not for

---

688. Document A160, pp 36–37; see also, for example, transcript 4.1.1, pp 33, 67–68, 143; doc H9(c) (Roa), p 7.
689. Document M14(a) (Thomson), pp 7–8; doc A64(b), p 9.
691. Transcript 4.1.1, p 33; transcript 4.1.6, pp 281–282; transcript 4.1.15(a), p 519; doc S42 (Henare), p 15.
profit or to exploit, but for living. He said that we had to respect the balance of nature.
If you turned over a stone to check what was underneath, then to keep the balance
you had to turn the stone back. If you hunted for birds or caught fish, then you did so
to eat and not to sell. 696

These defined boundaries for each hapū’s kaitiaki responsibilities still have
enduring relevance today. In Te Rohe Pōtæ, this is partly reflected in the rohe
outlined by the hapū-initiated and -led forum Ngā Hapū o Te Uru, a body set up
to manage customary and non-commercial fishing along the west coast, including
the length of the coast along the inquiry district boundary. 697

Māori were expert in creating tools to get the most out of fisheries, and in Te
Rohe Pōtæ nets, pā tuna (eel weirs), barbed hooks, flax lines and traps were all
used extensively. Because of the high value Te Rohe Pōtæ Māori placed on tuna,
pā tuna in and of themselves were considered particularly important to tangata
whenua. 698 Other tools, like hinaki and puwai (baskets) and raiwiri (weirs), were
used in rivers and streams to catch all manner of freshwater species. 699 Māori also
used sun-drying as a method of preserving their catch for off-season periods. 700
Māori also even altered aspects of the natural environment to their advantage:
Ngāti Apakura settled inland near Lake Ngāroto, which they dammed to increase
its size and swell the numbers of tuna, freshwater crayfish and other freshwater
fish. 701 Māori knowledge of biology and ecology of fish species, and their fishing
techniques and technology was significantly advanced, and all remained largely
unchanged after European contact and settlement. 702

The renowned scholar Te Rangi Hiroa (Sir Peter Buck) in 1949 said 'No Māori
threw a baited hook into the sea or set a trap on chance but he knew definitely
the kinds of fish he was after and the time and place where he would meet with
success.' 703 During the hearings the Tribunal heard evidence echoing Te Rangi
Hiroa, underscoring the significance of the sea, freshwater, fishing grounds and
fisheries to the people of the region. Te Puna a Rona, a freshwater spring on the
Kāwhia Peninsula renowned for plentiful tuna and whitebait, was cited as the
reason Ngāti Hikairo’s tūpuna settled on the west coast. 704 Similarly, Maniapoto
hapū chose to settle near the Mōkau River because of its abundant food supply. 705
Michael Tumanowao Kete-Kawhenua described how fisheries were as central to
the identity and survival of tangata whenua as water itself: ‘our tūpuna would

697. Document m13(a).
698. Document A64, p 59.
699. Document A36 (Hemara et al), pp 20–21; doc A44 (Tuwhangai), p 14; doc A84 (Belgrave et
al), p 73; doc L7(b), p 7.
701. Transcript 4.1.1, p 33.
703. Te Rangi Hiroa (Sir Peter Buck), The Coming of the Māori, 2nd ed (Wellington: Whitcoulls
Ltd, 1982).
704. Transcript N38(a) (Cunningham), p 3.
705. Transcript 4.1.15(a), p 519.
not even dream of selling our mahinga kai wai. Kai awa, kai moana. We are the kaitiaki of the awa and always have been. We did not sell our awa. Our rangatira did not sell the moana. We kept our kai resources, because they are taonga to us.\textsuperscript{706}

\textbf{22.6.5 The common law and the Crown’s regulation of fisheries}

The common law recognised that in tidal waters all have a right to fish and that special rights to take fish must be sourced in statute. Thus, in the early years of the colony little regard was given to Māori fishing rights and interests but rather all people fished in these zones at will.

Eventually the Crown began to legislate for special rights both in the marine area and in terms of freshwater fisheries. In doing so, its legislation focused on species of interest to European fishers (like trout, oysters, and salmon) rather than species that were of interest to Māori (like freshwater crayfish, freshwater mussels, lamprey, mullet, pāua, and marine mussels). Unlike trout and salmon, species of customary interest ‘received little or no attention’ from the Crown and accordingly little or active protection measures.\textsuperscript{707} Those species which were of interest to both Pākehā and Māori, such as oysters, whitebait, and eels, received some attention in the legislation.\textsuperscript{708}

That changed in the 1890s. As noted by the Muriwhenua Fishing Tribunal, legislative examples where Māori interests were provided for are to be found in the Fish Protection Act 1877 (section 8); the Oyster Fisheries Act 1892 (section 14); the Sea-fisheries Act 1894 (sections 17 and 72); the Sea-fisheries Amendment Act 1896 (section 3); the Māori Councils Act 1900 (section 6); and the Māori Councils Amendment Act 1903 (section 4(1)). Section 77(2) of the Fisheries Act 1908 was to the same effect as section 14 of the Sea-fisheries Amendment Act 1903. Both of these latter statutes contained the words ‘nothing in this Act shall affect any Māori fishing rights’ but were restricted to sea-fisheries.\textsuperscript{709}

Controversy over fisheries has been a feature of the claims in Te Rohe Pōtae, initially when the Crown sought to impose fisheries laws on Māori and secondly with respect to the impact of commercial fishing on traditional fishing grounds, a matter discussed with respect to harbours in section 22.5. Usually Māori were unable to invoke section 77(2) of the Fisheries Act 1908 or the common law doctrine of aboriginal title to protect themselves from prosecution for taking fish species contrary to the provisions of the 1908 legislation and associated regulations.\textsuperscript{710} It took until 1986, before the full import of section 88(2) was understood. This occurred when Tom Te Weehi’s District Court conviction for taking under-sized pāua was overturned in the High Court on the basis that he was not bound by the fisheries regulations under which he was charged because he was fishing with the approval of tribal elders and was exercising rights guaranteed by the 1983 Act.\textsuperscript{711}

\textsuperscript{706} Document s44 (Kete-Kawhena), pp 11–12.
\textsuperscript{707} Document A148, p 257.
\textsuperscript{708} Document A148, p 257.
\textsuperscript{709} Waitangi Tribunal, Muriwhenua, pp 77–82.
\textsuperscript{710} Waitangi Tribunal, Muriwhenua, pp 77–88.
\textsuperscript{711} Document A148, pp 84–85.
Around the same time that the Te Weehi case was before the courts, there was also a national discussion surrounding the dwindling of fisheries stocks. In 1986, after consultation with the fisheries sector the Crown introduced a quota management system (QMS) to the commercial fishing industry in order to preserve certain fish stocks. The Fisheries (Amateur Fishing) Regulations were also introduced to manage non-commercial fishing. Regulation 27 allowed fish to be taken for hui or tangi, provided that fishery officers approved the issue of permits.

However, Māori sought a declaration in the High Court and in various claims to the Waitangi Tribunal that the QMS introduced by the Fisheries Amendment Act 1986 was unlawful and in breach of the principles of the Treaty of Waitangi or has no application to Māori fisheries (including commercial fisheries). By way of interim relief, they obtained a declaration from the High Court and Court of Appeal that the Crown ought not to take further steps to bring the fisheries within the QMS. Section 88(2) in the Fisheries Act 1983 formed the basis of this successful litigation leading to the enactment of the Māori Fisheries Act 1989 and the settlement of all commercial fisheries claims recorded by the enactment of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992.\(^{712}\)

### 22.6.6 Non-commercial fisheries

According to the Crown’s witness Terry Lynch, the overall aim of the Crown’s approach since this time has been ‘to enable tangata whenua to participate in fisheries management and to manage their customary fishing activities autonomously.’\(^{713}\)

After the 1983 Act was largely repealed by the Fisheries Act 1996, the Minister of Fisheries (Primary Industries) and the Chief Executive must specifically provide for Māori rights and interests in a number of ways.

Section 5 requires that the Act be interpreted, and all persons exercising or performing functions, duties, or powers conferred or imposed by or under it must act, in a manner consistent with:

- New Zealand’s international obligations relating to fishing; and

It requires that the Minister of Fisheries consult with Māori and other sector interest groups when undertaking certain functions under the legislation.\(^{714}\) He or she must also provide for the input and participation of tangata whenua having:
- a non-commercial interest in the stock concerned; or
- an interest in the effects of fishing on the aquatic environment in the area concerned; and
- have particular regard to kaitiakitanga.

This latter requirement also applies to the alteration of quota management areas (section 25); contents of statement of procedures (section 116); and temporary closures of fishing areas and fisheries (sections 186A and 186B).

---

The Act also provides for the establishment of taiāpure reserves under part 9.\textsuperscript{715} The object of this part is to make better provisions for rangatiratanga and the rights secured in relation to fisheries by article 2 of the Treaty.\textsuperscript{716} Taiāpure are managed by committees who are nominated by the local Māori community and appointed by the Minister of Fisheries in consultation with the Minister of Māori Affairs/Development.\textsuperscript{717} The committee can recommend regulations for the management of marine life in their taiāpure.\textsuperscript{718} In 1998, the two sections enabling the Minister to impose fishery closures, restrictions, or prohibition were inserted. This occurred after iwi representatives noted the original 1996 Act could not address situations where they considered a fishery should be temporarily closed.\textsuperscript{719}

The legislation provides for the promulgation of regulations for customary fishing.\textsuperscript{720} Regulations were enacted in 1998, namely the Fisheries (Kaimoana Customary) Fishing Regulations. The preamble of the regulations notes that the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 records that non-commercial fishing rights of Māori continue to be subject to the principles of the Treaty of Waitangi (which principles apply to Māori and the Crown) as set out in that Act. Section 10 of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 requires the Minister of Fisheries to recommend to the Governor-General in Council the making of regulations pursuant to section 89 of the Fisheries Act 1983 to recognise and provide for customary food gathering by Māori and the special relationship between tangata whenua and those places which are of customary food gathering importance (including tauranga ika and mahinga mātaitai), to the extent that such food gathering is neither commercial in any way nor involves commercial gain or trade. Section 186 of the Fisheries Act 1996 re-enacts the regulation-making provisions of section 89 of the Fisheries Act 1983. The preamble further records that the Minister of Fisheries has, in accordance with the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 consulted with representatives of iwi and hapu and other persons and organisations likely to be affected by the regulations and, following that consultation, has recommended the making of the regulations.

The regulations provide for the appointment of tangata kaitiaki/tiaki who are charged with the general administration of the regulations for their particular area and to participate in sustainable fisheries management including the development of iwi management and strategic plans for their areas/rohe moana.\textsuperscript{721} The regulations provide for mataitai reserves to be established and recognises traditional fishing grounds.\textsuperscript{722} In mataitai reserves, commercial fishing is excluded\textsuperscript{723} and

\begin{itemize}
\item \textsuperscript{715} Document T6, p.3.
\item \textsuperscript{716} Fisheries Act 1996, s174; doc T6, p.3.
\item \textsuperscript{717} Fisheries Act 1996, s184; doc T6, p.3.
\item \textsuperscript{718} Fisheries Act 1996, s185.
\item \textsuperscript{719} Document T6, p.6.
\item \textsuperscript{720} Fisheries Act 1986, s186.
\item \textsuperscript{721} Fisheries (Kaimoana Customary) Fishing Regulations, regs 5–10, 11–17.
\item \textsuperscript{722} Fisheries (Kaimoana Customary) Fishing Regulations, regs 18–26; doc A148, p 86.
\item \textsuperscript{723} Fisheries (Kaimoana Customary) Fishing Regulations, reg 27.
\end{itemize}
tangata kaitiaki/tiaki make decisions about the management of the reserves. Kaitiaki can promote bylaws which include additional regulation over and above that which is generally applied under amateur fishing regulations. Bylaws can include determining the species, the quantity, and the size of fish that can be taken, as well as the methods of fishing, the area of harvest, and any other matter that the kaitiaki consider necessary. Any bylaw must be approved by the Minister of Fisheries.

In addition to taiāpure and mataitai reserves, the Fisheries (Kaimoana Customary) Fishing Regulations also contain a provision for Māori to manage general customary food gathering. In essence, tangata kaitiaki/tiaki can be appointed to administer customary fishing areas (rohe moana) that lay outside of the mataitai reserves. The kaitiaki are able to authorise the taking of kaimoana for customary purposes according to local tikanga. A paper record of the authorisation is needed which can then be shown to a fishery officer. Details of these activities are then provided to the Ministry of Primary Industries on a quarterly basis.

When hearings concluded in 2014, the QMS remained the Crown’s ‘preferred management tool’ for species at risk of overexploitation, and there were then approximately 100 species subject to the QMS. In brief, the QMS works by setting ‘total allowable catches’ for species in the system. These total allowable catches are reduced if, or when, a particular fish stock falls below the desired level. The total allowable catch for some species includes a customary allowance, which is based on either the customary catch levels reported by tangata kaitiaki every quarter or an estimated customary catch. In some cases, the customary allowances for particular important customary species are set at the same level or higher than recreational allowances.

To recap, marine non-commercial customary fisheries can be subject to three different management regimes:

- taiāpure reserves for areas of special significance;
- mataitai reserves for areas of traditional significance; and
- general management for all other areas.

The evidence of the claimants was that the taiāpure reserve established at Kāwhia and Aotea has not lived up to the aims of the legislation, and has been difficult for Māori groups to establish and administer. In particular, the Tribunal heard how it is time-consuming and costly to establish a taiāpure and form a

724. Fisheries (Kaimoana Customary) Fishing Regulations, regs 27–32.
725. Fisheries (Kaimoana Customary) Fishing Regulations, reg 28; doc A148, p 86.
726. Fisheries (Kaimoana Customary) Fishing Regulations, reg 28; doc T6, pp 5–6.
727. Fisheries (Kaimoana Customary) Fishing Regulations, reg 29; doc T6, p 6.
728. Fisheries (Kaimoana Customary) Fishing Regulations, regs 11–13, 30.
management committee. John Kaati told us how it took ‘a marathon 15 years of meetings and consultation’ before a tāiāpure reserve could be approved in the Kāwhia Harbour.734 Furthermore, tangata whenua are required to negotiate with other groups with interests in the area. Claimants reported that this process requires them to concede so much in accommodating others’ interest that the results end up being a ‘hopeless compromise’. This appears to be a pattern nationwide with only seven tāiāpure reserves established around the country at the time of our hearings. Furthermore, none of the committees had been able to recommend regulations to the Minister of Fisheries, despite the legislation having been in force for over 15 years.735 While there have been these challenges, Te Rohe Pōtae Māori have successfully gained one tāiāpure reserve in the Kawhia and Aotea Harbours.

Similar difficulties to those experienced in relation to marine non-commercial fisheries were repeated in evidence on freshwater non-commercial fisheries. Although after 1990 the whitebait fishery became the responsibility of DOC, the responsibility for the eel fishery remained with MAF (and has since remained with MAF’s successors: the Ministry of Fisheries and the Ministry of Primary Industries). This occurred because tuna were subject to the QMS and total allowable catch regimes.736

The unavoidable outcome of management regimes being structured in this way is that there are multiple agencies administering fisheries within the freshwater sphere. The picture at the time of our hearings was that the Ministry of Primary Industries administered eel fishing, DOC administered whitebait fishing, and the Fish and Game Councils administered fishing for introduced species like trout and salmon (although the activities of the Fish and Game Councils were monitored by DOC). As noted, Regional Councils also operate in this space as they administer the water quantity and quality in freshwater fishing environments.737

Today, there are a number of statutes pertaining to the management of freshwater fisheries. The management of indigenous fish, noxious fish, and fish passage is carried out under the Freshwater Fisheries Regulations 1983. Customary fishing is controlled by the Fisheries (Amateur Fishing) Regulations 2013.738 Section 6(ab) of the Conservation Act 1987 also requires DOC to ‘preserve as far as practicable all indigenous freshwater fisheries, and protect recreational freshwater fisheries and freshwater fish habitats’.739

Crown witness Stephen Halley, an official from the Ministry of Primary Industries responsible for inshore fisheries management, acknowledged ‘the freshwater fisheries management regime in New Zealand is complex and regulatory responsibilities overlap between different agencies’.740 However, he maintained...
that the current regime was Treaty-compliant and provided opportunities for tangata whenua to be involved in the process.\textsuperscript{741} He explained fisheries management is guided by ‘Fisheries Plans’, which inform where MPI resources should be deployed.\textsuperscript{742} He stated tangata whenua and other stakeholders are provided with opportunities to contribute to the annual fisheries planning cycle.\textsuperscript{743} In particular, he noted MPI are required to hold a formal consultation process (like releasing initial position papers for public comment) and they also run iwi forums to gain input from iwi.\textsuperscript{744}

In Te Rohe Pōtae, the relevant body is Ngā Hapū o Te Uru, a representative forum of coastal hapū set up in 1999. Members of this forum saw it as a mechanism to exercise kaitiakitanga over customary and non-commercial fisheries.\textsuperscript{745} The marae involved in the forum are:

- Ngā Kaitiaki o te Pūaha;
- Pukerewa Marae;
- Weraroa Marae;
- Te Ākau Marae;
- Ngā Kaitiaki o Whāingaroa;
- Ngā Hapū o Aotea Moana;
- Te Ruawhango o Kāwhia Moana;
- Ngāti Māhuta ki Taharoa;
- Marokopa Marae; and
- Oparure Marae.\textsuperscript{746}

The forum was set up with assistance from the Ministry of Primary Industries, and is the official body that the Ministry consults with in relation to tangata whenua interests in and management of fisheries for Te Rohe Pōtae.\textsuperscript{747} This forum completed a Fisheries Management Plan for the period 2012–17, which was sent out to hapū for consideration.\textsuperscript{748}

However, claimant witnesses broadly described an encroachment by local authorities on the ability of hapū-initiated bodies and initiatives such as Ngā Hapū o Te Uru to exercise kaitiakitanga in relation to fisheries in their rohe.\textsuperscript{749}

Whether the Crown’s management regime has been Treaty compliant is now considered by reference to three case studies.
22.6.7 Trout and salmon – a case study in Crown regulation

22.6.7.1 The values associated with trout and salmon

Europeans valued trout and salmon fishing primarily as a sport for anglers, and saw these fish as clearly superior to other freshwater species. While indigenous freshwater species were vital to Te Rohe Pōtae Māori's economy and culture, Pākehā colonists in the mid-1800s deeply lamented what they saw as a paucity of freshwater fish. After a time in the new colony, settlers clearly began to understand the food value of abundant indigenous species such as eel, grayling, and whitebait; indeed, early settlers would not have survived without them. However, negative Pākehā attitudes towards indigenous freshwater species were likely reflective of ‘a combination of ignorance and the fact that fish present in our waters were different from those that the settlers had valued in England.’

Trout and salmon fishing was also linked to concepts of social stratification, with fly fishing generally considered ‘superior’ to coarse fishing. Under cross-examination from claimant counsel, historian Michael Belgrave linked colonists’ preference for trout and salmon to colonisation itself, and settlers’ attempts to ‘civilise’ New Zealand and its indigenous inhabitants:

A. [Settlers assumed] that if Māori are continuing to eat [indigenous flora and fauna] they might continue to the future but in the same way that you might go, you know, shooting in the weekend that European foods, European lifestyle, European economy would simply replace these Māori economies, in the same way that you could protect an eel weir one year and then 20 years later drain the swamps around it because you’re not actually trying to protect a Māori economy here or a Māori lifestyle, you are at best trying to provide a sort of temporary buffer until Māori get themselves properly civilised.

Q. And so the [civilising] included killing off the tuna stocks to protect the trout hatcheries and those sorts of things?

A. Yes, it does, because civilised people fly fish.

What freshwater fish scientist Robert McDowall described as the European settlers’ ‘obsession’ with trout and salmon persisted into the 20th century, and partly drove the introduction of trout, salmon and other foreign freshwater fish species to New Zealand waterways.

22.6.7.2 The Crown's management regime for trout and salmon

The Auckland Acclimatisation Society, established in 1867, introduced a range of exotic species into Te Rohe Pōtae, including birds, trout, salmon and plants. In particular, the Society went to great lengths to protect the introduced trout population including attempting to eradicate species like shags and tuna which
they believed preyed on the species. Like the rest of the country, Te Rohe Pōtāe’s ecosystems were completely transformed by the actions of the Society. This section looks at how the introduction and protection of exotic species like trout and salmon resulted in the serious depletion of indigenous fish stocks.

Although they were private organisations, acclimatisation societies enjoyed a close relationship with the Crown, who endorsed their actions and awarded them the legislative status of ‘most-favoured’ bodies. Such beneficial treatment can be seen in the provisions of the Salmon and Trout Act 1867 which allowed for regulations prohibiting harmful substances being introduced into waterways if young salmon or trout were present. There were no similar protections for indigenous fish, which were instead targeted for eradication. Both the Colonial Secretary and the Department of Internal Affairs were responsible for monitoring the societies’ activities and at no time did these Crown agents consult Māori or attempt to halt the societies’ efforts to eradicate tuna.

As discussed in more detail in the following section, the attempts to eradicate tuna from the rohe was, and still is, particularly disturbing to Te Rohe Pōtāe Māori – not in the least because tuna is a taonga that should be nurtured and protected. In addition, following the decimation of the native fishery, licensing laws were enacted that made it an offense to fish for trout without holding a licence which further excluded Māori from accessing many of their customary fishing grounds.

In 1867, the Salmon and Trout Act was introduced which allowed exotic species to be brought into the country. It was drafted in anticipation that salmon and trout ova would soon be reaching New Zealand. The Auckland Acclimatisation Society (which was formed at around the same time) championed the cause of the exotic species and performed much of the work of establishing the trout and salmon populations. The club’s membership was initially confined to Auckland, but soon grew to cover a much larger area, including virtually all of the Rohe Pōtāe inquiry district except the coastal area south of the Mākau River.

Acclimatisation societies were also supported by other legislation such as the Protection of Animals Act 1867, which included ‘the encouragement of acclimatisation societies’ as one of its purposes. Governmental support for the societies can be traced through successive laws such as the Animals Protection Act 1880, Animals Protection Act 1907, Animals Protection Act 1908, Animals Protection and Game Act 1921–22, and the Wildlife Act 1953.
In addition to their abilities to collect hunting and angling licence fees and expend the revenue, by 1912 acclimatisation societies were also assigned substantial powers to police and prosecute those who threatened any protected species. The societies were essentially ‘registered creatures of the state’ whose rangers had the powers to enforce the state’s laws. That the acclimatisation societies saw their role in these terms is demonstrated by the National Director of the New Zealand Acclimatisation Societies’ 1988 statement to the Waitangi Tribunal:

Acclimatisation societies . . . are not user groups in the popular sense, but rather are fish and game management agencies of the Crown that happen to be run on a day-to-day basis by the users. They are perhaps more akin to local government, discharging a statutory role under the control of democratically elected councils, which employ professional administrative and field staff to carry out the various duties and tasks.

Although the societies were afforded a great degree of self-regulation, however, the Crown ultimately retained legislative oversight of the regulations they could enact. In 1990, the acclimatisation societies were abolished, replaced by 12 regional fish and game councils and one national council.

Although this change narrowed some of the statutory responsibility of the councils (they did not continue to have responsibility for the preservation and protection of all protected wildlife), they were given quite explicit executive powers to decide on the policies and regulations which would apply in their districts and were given additional statutory support for the activities. For example, section 7(h) of the Resource Management Act makes the ‘protection of the habitat of trout and salmon’ a matter that administrators of the Act must have particular regard to. In practice this means that regional and district councils are obligated to involve fish and game councils in the preparation of policy and the processing of resource consent applications.

The Auckland Acclimatisation Society was established in 1867 and developed clubs or sub-societies in towns like Taumarunui, Piopio, Te Kūiti, Ōtorohanga, and Te Awamutu. Many of these sub-societies bred their own trout in hatcheries at Taumarunui, Ongarue, Waimihia, Piopio, Ōtorohanga, Te Kūiti, and Te Awamutu.
As the Crown highlighted, the introduction of trout was not always at the request of European settlers. Rewi Maniapoto, for example, approached the chairman of the Auckland Acclimatisation Society in 1877 asking him if any of the King Country rivers were suitable for salmon. The *New Zealand Herald* reported at the time that the chairman was ‘much pleased’ by the unsolicited invitation and eventually selected the Pūniu River as being the most suitable.\(^{768}\) Rewi was said to have promised his protection and indeed 40,000 salmon ova were released with assistance the following year.\(^{769}\)

Similarly, the Mōkau rangatira Epiha Karora also requested the Government supply him with Murray codfish to release into the Mōkau River in 1878.\(^{770}\) It cannot conclusively be determined what made these rangatira make such overtures, but in addition to being motivated by the idea of adding to the food baskets of their people, both leaders also made the requests at a time when Te Rohe Pōtae Māori were seeking reconciliation with the Crown and the trade and opportunities that that might bring.\(^{771}\) Ultimately, it was the Crown-supported acclimatisation societies that were responsible for establishing the great majority of exotic populations in Te Rohe Pōtae.

Following their release into the rohe’s waterways in the 1870s and 1880s, both brown and rainbow trout became well-established throughout Waikato River system by the turn of the century.\(^{772}\) The introduction of fish was closely related to the construction of the main trunk railway line, as this provided the means to transport chilled and oxygenated tanks of baby trout into Te Rohe Pōtae.\(^{773}\) Although active at this time, the Auckland Acclimatisation Society was particularly prevalent from the 1920s to 1940s, as the influx of settlers became increasingly established to turn their attention to recreation and sport fishing.\(^{774}\)

The Society tasked themselves with maintaining the trout population and in order to do this the Society organised the culling of indigenous species (like tuna and shags) that they believed preyed upon the population.\(^{775}\) The categorisation of tuna as vermin dangerous to the introduced trout fishery resulted in people being encouraged to destroy eels, at least as early as 1903.\(^{776}\)

The following excerpts of the Auckland Acclimatisation Society annual reports between 1929 and 1947 detail their attempts to remove eels from Te Rohe Pōtae waterways:

[1929] Te Awamutu Acclimatisation Club . . . has formed an Eel Club and their activities have been responsible for the removal of a number of eels from the rivers.
Some of the residents in the Waimihia River have been conducting an eel competition with beneficial results, and the Council considered encouragement should be given to this work, and made a donation of £2/2/- toward the prize fund.

One of the greatest enemies of trout is the eel, and the building up of better fishing depends largely on the energy with which this menace is tackled. Once a stream has been cleared of eels, some time elapses before the population increases again. All Sub-societies with small trout streams can, with comparatively little effort, make the waters safe for the annual fingerling liberations, and so ensure better fishing so long as this particular vermin is controlled.

Convinced that one of the deadliest enemies trout faced is the eel, the Council . . . have had a number of wire netting eel traps made . . . Many of our rivers are infested with eels and their destruction would probably mean a much larger number of fish available to anglers than can be provided by artificial stocking, no matter how heavy a programme is in operation. The clearance of eels for a river is of cardinal importance if good fishing is to be built up.

Last year the Society has continued its active war on eels, in order to conserve both trout and young ducklings.

Pio Pio and Aria Rod and Gun Club . . . During the year two eel drives were conducted, and some large eels destroyed. It is proposed to hold these drives monthly. A competition is in progress for the largest eel caught, also the greatest number.777

Ultimately, the eel drives ended when research showed removing eels from the rivers was actually detrimental to the makeup of the trout population desired by anglers.778 There is no evidence that Māori were instrumental in any of these eel drives and nor is there any evidence they were consulted in any significant way.

### 22.6.8 Tuna – a case study in Crown regulation

#### 22.6.8.1 Tuna and their value as taonga

Tuna is a taonga of great significance to Te Rohe Pōtae Māori. It was an important staple in the traditional Māori diet, and is a widely celebrated and revered kai rangatira for many hapū of Te Rohe Pōtae. As such the Crown has a duty to actively protect tuna.

Tuna have played a pivotal role in the lives of generations of Te Rohe Pōtae Māori, and they feature in many myths, legends, waiata and karakia that are associated with the species.779 What follows is a discussion of the evidence presented to us that demonstrates this.

Throughout Māori history tuna has been a vital source of readily accessible protein. This made them an invaluable part of the traditional diet.780 Importantly,

779. Submission 3.4.115, p 17.
the calorie content of eel is almost double that of kumara and is greater than many other fish species and it contains many minerals, vitamins and fatty acids which were essential to the well-being of inland Māori groups. As Harry Kereopa told us: ‘The tuna was the most valuable thing for our old people. They practically talked to the tuna. I used to see them. If it wasn’t for those tuna they would not be alive. They would have starved to death.’

Given its centrality in the Māori diet, it is no surprise that tuna came to occupy such a culturally important place to Māori groups, particularly to inland hapū. The cultural identity of hapū situated around the Ōngārue, Mōkau, Ōtorohanga and Kāwhia districts, in particular, was closely associated with being able to provide tuna. For some hapū, such as Te Ihingarangi, their very identity is connected to tuna and they are known as the ‘Eel People.’ Speaking of the significant decline in the numbers and size of tuna in the Mangapiko, Waipā and Mangauika rivers, Frank Kingi Thorne of Ngāti Hikairo said plainly ‘the tuna are gone, and so is our culture.’

Such cultural importance can be seen in the numerous creation stories, waiata and karakia that are associated with tuna. One story holds that Tuna (the deity) came as a gift from the heavens in a period of drought and ‘freshwater and salt waters were split along with the eel/tuna.’ In another, Maui is said to kill Tuna in retaliation for attacking his wife. After the deed was done, Maui cut Tuna’s body into pieces and cast the head into the sea and his tail into freshwater, with the pieces becoming the sources of freshwater and conger eels.

For Te Rohe Pōtae Māori, tuna are still revered as taonga. They regularly appear as taniwha, or representations of atua, who are capable of warning people who stray into tapu or dangerous areas, and are celebrated in carvings throughout the rohe. Harry Kereopa explained:

The tuna are a part of us, our culture. For instance, tuna are represented in some of our carvings. There’s a place near Hamilton. . . . When you get to this marae, you see all the lizards and tuna carved into the meeting house. I was told that this was the whare of Te Ihingarangi, when he lived up the Waipā. To me, the lizard represents the ngangara. A ngangara is something that causes trouble. The eel, it represents the ‘medicine’ to deal with the ngangara. You see food makes anything noa [free from tapu], and I believe that’s what the tuna was put there for – to whakanoa [remove tapu from] these ngangara. That’s how I looked at those carvings.
The reverence that Te Rohe Pōtae Māori traditionally had for tuna is evidenced by the practices and rituals that surrounded their management. The seasonal harvest of tuna required the labour of men, women, and children in order to fish, sort, and preserve the catch, which strengthened internal social and economic bonds. Such a large-scale activity also required strict rules to be followed and the sites were managed in accordance with tikanga Māori under the guidance of tohunga.

John Henry recalled: ‘In the early days the first fishermen down at the river there would say karakia, hang the first catch up in the tree for our old people and then they would fish . . . No alcohol was to be taken down there, you watched your language down there.’

These big seasonal harvests coincided with the tuna heke, or eel migration. Piko Davis described the spectacular sight of thousands of tuna descending through the rivers: ‘When they roll like a barrel in the water and all their skins light up too and it goes on for up to an hour. You can see the little lights flashing through the water as the eels moved out to sea.’

In addition to contributing to the internal cohesion of hapū, tuna could also help fortify bonds with external groups. Harry Kereopa explained that traditionally their tupuna gifted tuna to coastal hapū at powhiri, transporting them by waka in large hua [gourds]. The ability for whānau/hapū to provide their whanaunga with tuna was highly valued by Te Rohe Pōtae Māori. Indeed, the Tribunal was told how some groups were known for their ability to provide particular types of eel and how this brought status to the individual or group. Harry Kereopa remembered that when he was a child: ‘There were so many tuna then that we were able to select the ones we wanted. When it came time to give the tuna to the old people, it would be presented in a certain way so as to enhance the mana of that old person. These things were important to us.’

He spoke of his tipuna knowing where to find black, yellow-bellied or silver-bellied eels and how hapū could provide visitors with the right kind for the occasion. He related an earlier practice regarding harvesting tuna for different groups. For example, a story he was told: ‘when people come from, for example Ngapuhi . . . the eel catchers [would] go to a certain place to catch the eels for that crowd . . . That is the old Māori way of knowing the wants of each individual. That was the tohunga’s job.’

In addition to knowing where to go to catch particular types of eels, Mr Kereopa also spoke of how different tuna had to be caught in particular ways. He recounted a pātere [chant] he knew which described placing a bird in a hinaki and saying

---

797. H. Kereopa, interview, 12 March 2011 (doc A76, p.357)
a particular karakia in order to catch a 'special tuna for a particular hapū'. He described how giving this special tuna to particular manuhiri helped to cement their relationships with other hapū.\textsuperscript{798}

Clearly, access to a ready supply of tuna was incredibly important for Te Rohe Pōtæ hapū and being able to provide guests with the fish not only showed that they were self-sufficient, but also they managed their environment in a sustainable way.\textsuperscript{799}

Such sustainable management was explained to us by Homai Uerata who told us how particular ‘rua tuna’ found in the Te Kauri and Awaroa Rivers are taonga to Ngati Kiriwai and they were generally left unfished, to ensure the tuna fishery as a whole remained healthy. He stated:

They were a storehouse, a pataka tuna for generations [and] we never took a lot of food from there. We preserved them for special occasions for rangatira and for important guests generally. This has been our tikanga. We generally harvested for ourselves in other parts of the rivers and would usually only fall back on harvesting these rua tuna for whanau if food resources were scares. In this way we did not over-fish the eels. We were kaitiaki, we managed them sustainably, and we were able to offer these as our local delicacies to others. We would like these areas protected into the future.\textsuperscript{800}

Don Jellyman, New Zealand’s preeminent freshwater eel scientist, notes that pre-European Māori had intimate knowledge of the local cycles and habits of eel. This in-depth knowledge is evidenced by the highly developed categorisation that Māori had for tuna, and the many names that reflected this. RR Strickland, for example, recorded 181 different names were used for eels throughout New Zealand.\textsuperscript{801} Some of these names reflected hapū/iwi differences, but a lot of them were used for eels at different developmental stages or from different habitats. Piko Davis, for example, noted they ‘had a different type of eel in those caves . . . They weren’t slimy, they were a light greeny colour’.\textsuperscript{802}

Similarly, George Searancke noted:

Long fin, short fin as they call them but I think it was more the taste of the tuna and what the tuna ate, that’s what they were seeking. Because a lot of tuna that dwell in muddy waters have got that muddy taste. You get the tuna in fresh water they have a nice, fresh, clean taste. The old people weren’t dumb, they knew what they were doing . . . \textsuperscript{803}

From the earliest years of colonisation, the importance of tuna to Te Rohe Pōtæ Māori was something that European writers also recognised. In 1930, James Cowan

\begin{itemize}
\item \textsuperscript{798} Document E14(c), p 26.
\item \textsuperscript{799} Document A76, pp 349–350.
\item \textsuperscript{800} Document P4(d) (Uerata), p 4.
\item \textsuperscript{801} Document A76, pp 340–341.
\item \textsuperscript{802} Piko Davis, interview 2 February 2011 (doc A76, p 356).
\item \textsuperscript{803} George Searancke, interview 2 February 2011 (doc A76, pp 356–7).
\end{itemize}
summarised the value that eels had to Te Rohe Pōtae Māori and the lengths that various hapū went to protecting and harvesting the resource. He stated:

They were of enormous value to the Māori, those raupo and flax swamps and their shining, shallow lakes. Wars were waged for the possession of the immensely-desired tuna, the kinds called puhi and whitiki. The silver eels of the Kawa, smoke-dried and packed in baskets, were sent far over the country as a commodity in barter, and they were especially valued by the tribes living on the sea coast, and envious tribes came hundreds of miles simply to get those eels. The ancient owners of this country over which the railway now runs between Kakepuku and Kawa Mountains were the Ngati-Unu tribe. The principal rauwiri were all given names, and their ownership was strictly defined. Various hapūs of Ngati-Maniapoto had rights in the great swamps, and periodically set their nets and eel-baskets and made great hauls. A rauwiri was constructed by driving stout stakes into the bed of the creek and filling up the interstices closely with fern, thus confining its waters to a V-shaped channel; the eels, when making their migrations in huge numbers, were caught in nets made of flax and in traps called hinaki, cleverly-made receptacles, closely woven of the tough elastic creeping plant called mangemange. The Mangawhero Creek, which meandered along from these lagoons to the Waipā River, was the great eel river, and in it and its small tributaries, creeping from the depths of the marsh, the rauwiri were constructed, and the owners thereof ever kept jealous watch to see that no greedy plundering party interfered with their rights. The names of all of these fishing V’s are preserved. Many other names were given to me, with details of their building and ownership, all indicating the importance the tuna occupied in the economic scheme of the Māori.

As mentioned earlier, Māori utilised many different fishing techniques to catch tuna. These varied according to tribal tradition, location, season and habitat but included: pā tuna (eel weirs), hinaki (eel traps), toi (eel-bobbing without hooks), korapa (hand-netting), rapu tuna (feeling with hands and feet, then catching with hands), rama tuna (by torch light), patu tuna (eel striking), mata rau (spearing), and koumu (eel trenches).

Piko Davis noted that hinaki could be lowered into big water holes for as little as five minutes before they were filled with tuna. This type of activity took advantage of the limestone karst landscape of the southern part of the rohe, with some whānau using them for longer periods of time to collect and store fish. Mr Davis also noted that he and his cousins would go to other areas and dig holes until they hit water and found tuna. When this occurred, they would reach in and

---

gather tuna up, transferring them into other holes they had dug where they would leave them until they had enough to share with everybody.\footnote{John Henry, interview, 1 February 2011 (doc A76, p 352).}

However it was the pā tuna sites that were perhaps the most significant site of tuna-related activity in Te Rohe Pōtae with the rights to use particular pā tuna connected to whakapapa and passed down through generations.\footnote{Document A76, p 351.} Considerable technology went into constructing pā tuna and their intricate nets and frame changed over time to increase the efficiency of the catches.\footnote{Document A76, pp 347–348.} Writing in 1918, Downes described historic pā tuna in the Whanganui River catchment area (including the Waipā) as elaborate, often adorned with carvings and exceedingly strong. He explained:

> Along all these streams (most of them navigable) the Māoris in former times erected enormous eel-weirs, which have now been destroyed by floods or removed to admit of navigation by launches and barges . . . the main posts [could be up to] 2 ft in diameter, with roughly carved tops. How the old Māoris, without mechanical means of driving, ever got these heavy posts into position is not known, but it must have been a strenuous work.\footnote{Thomas Downes, \textit{Notes on Eels and Eel-weirs}, 1918, \url{http://rsnz.natlib.govt.nz/volume/rsnz_50/rsnz_50_00_003470.html}.}

George Searancke explained that hapū didn’t live on pā tuna, rather they travel at specific times of the year when tuna were in abundance to catch and dry them there.\footnote{George Searancke, interview, 2 February 2011 (doc A76, p 351).} The claimants around the Mōkau River catchment also have vivid memories of pā tuna located on smaller rivers, close to waterfalls, where tuna would congregate.\footnote{Jim Taitoko, interview, 1 February 2011 (doc A76, p 353).}

However, pā tuna were not only important sites to gather the resource, they also performed other functions like locating settlements of individual whanau and forming boundaries between groups. These boundaries were also recognised by Native Land Court surveyors and at times were used to divide the land into blocks.\footnote{Document A76, p 379.} In addition, they were important sites to observe and monitor the stock and make decisions on the future use of the resource.\footnote{Document A76, p 350.}

Much like the modern ecological practice of monitoring ‘indicator species’ to make conclusions about the wider environment, Te Rohe Pōtae Māori monitored tuna to get a picture of the overall health of the environment.\footnote{Document A76, p 379.} Often this occurred at pā tuna, but as Harry Kereopa explained, it also occurred during the tuna heke when tangata whenua would watch tuna and make changes to the rivers and streams that needed to be made. He stated:

\begin{footnotesize}
\footnote{808. John Henry, interview, 1 February 2011 (doc A76, p 352).}
\footnote{809. Document A76, p 351.}
\footnote{810. Document A76, pp 347–348.}
\footnote{811. Thomas Downes, \textit{Notes on Eels and Eel-weirs}, 1918, \url{http://rsnz.natlib.govt.nz/volume/rsnz_50/rsnz_50_00_003470.html}.}
\footnote{812. George Searancke, interview, 2 February 2011 (doc A76, p 351).}
\footnote{813. Jim Taitoko, interview, 1 February 2011 (doc A76, p 353).}
\footnote{814. Document A76, p 379.}
\footnote{815. Document A76, p 350.}
\footnote{816. Document A76, p 379.}
\end{footnotesize}
They chanted in the water – the Waimiha river – for the safe passage of those tuna to the sea and for them to come back to fill our swamps. The chanting would go on for hours and hours. It would cease only when that which needed to be done was done. This included looking after the rivers and streams. Besides being an important food source, the tuna was a taonga because the tuna made the old people look after the environment.\textsuperscript{817}

\textbf{22.6.8.2 Tuna in Western science}

According to western taxonomy, there are two main species of eel in New Zealand, the endemic longfin eel which is found nowhere else in the world (\textit{Anguilla dieffenbachia}) and the shortfin eel (\textit{Anguilla australis}). In recent years a third species, the Australasian longfin (\textit{Anguilla reinhardtii}) has become more prevalent in New Zealand waters.\textsuperscript{818}

The status of tuna in New Zealand is dire, with both main populations known to be in decline.\textsuperscript{819} The status of the longfin eel is particularly worrying, with the Parliamentary Commissioner for the Environment considering it to be endangered.\textsuperscript{820} The reasons for the decline in the populations are varied, but they include destruction of habitat, degradation of water quality, historic eradication attempts by supporters of acclimatisation societies, overfishing by commercial fishermen, and their migratory paths being obstructed by dams.

The complexity of their lifecycle also poses significant challenges to their management. Tuna do not reach sexual maturity for many decades and have to travel thousands of kilometres to breeding grounds in the tropical Pacific Ocean when they are ready to breed. It is thought that shortfins spawn near Samoa, and longfins spawn in deep ocean trenches near Fiji and New Caledonia.\textsuperscript{821} After spawning, the eggs and larvae travel on prevailing currents to New Zealand and approach the coast at about 9–12 months old. Here they transform into transparent glass eels and enter New Zealand’s freshwater rivers and streams in very large numbers between July and November each year. Upon entering freshwater glass eels become pigmented and are known as elvers (from one to five years old).\textsuperscript{822}

Both species spend the majority of their lives in the freshwater rivers and lakes. However, longfins prefer to live in fast flowing water with rocky bottoms further inland and short fins prefer the slower moving water of lakes, swamps, and estuaries.\textsuperscript{823} In order to migrate to their upstream habitats tuna employ extraordinary climbing abilities and can climb waterfalls as high as 20 metres.\textsuperscript{824} As they are slow
growing, it takes many years before they undertake the reverse migration back to the spawning grounds. The average age for a longfin to migrate is 23 years for a male and 34 years for a female.

22.6.8.3 Crown’s management regime for tuna
As discussed earlier, the responsibility for managing the freshwater fisheries is shared by a number of organisations, including the Department of Conservation, regional councils and the Ministry of Fisheries/Ministry for Primary Industries.

The Department of Conservation has the responsibility to ‘preserve so far as is practicable all indigenous freshwater fisheries, and protect recreational freshwater fisheries and freshwater fish habitats.’

Regional Councils are also charged with some responsibility for the species as the management of most waterways falls under the RMA. The Ministry of Fisheries also became responsible for the management of the fishery when tuna were brought into the QMS in 2004. Under the Fisheries Act 1996, the Ministry of Fisheries are bound ‘to provide for the utilisation of fisheries while [also] ensuring sustainability’. At the time of the hearing, freshwater fisheries were managed under the draft Ministry for Primary Industries National Fisheries Plan for Freshwater 2011 (the Freshwater Plan).

Perhaps the greatest point of difference between the claimants and the Crown is over whether or not tuna should be able to be commercially harvested and what their status in the QMS should be. Claimants were clear that the total allowable commercial catch of tuna in the QMS should be zero. In other words they believe that the commercial fishing of tuna should cease. They told us that, although it had been 10 years since tuna had been introduced into the QMS, they had not seen any improvement in eel numbers and that despite their repeated calls to the Minister of Primary Industries for the practice to end (and the Parliamentary Commissioner for the Environment recommendation that it should cease) tuna are still able to be commercially harvested in New Zealand.

In contrast, the Crown submitted that its management of the tuna fishery through the QMS is Treaty compliant. It did so on two main bases. First, the Crown witness Marc Griffiths highlighted the management objective of the QMS as ‘to secure social, economic and cultural benefits from each eel species by maintaining adequate spawning biomass to provide for high levels of recruitment, and protecting, maintaining and enhancing eel habitats.’ Secondly, Stephen Halley (fisheries manager at the Ministry for Primary Fisheries) noted the process whereby tuna were introduced into the QMS provided for input, participation, and consultation. He stated that, when the ‘total allowable catch’ was set, the Minister

of Fisheries implemented a strategy to improve stock structure and abundance and to stop the short-term decline in the fishery. He explained that the Minister did not consider a more significant reduction in the overall catch to be necessary because periodic reviews of the stock’s status would be available annually. Mr Halley also explained the total allowable commercial catch for both species of eel were based largely on previous fishing history and represented a 8.25 per cent reduction for the total allowable commercial catch of shortfin eel, and a 17.8 per cent reduction for longfin. Halley stated the number of commercial fishers decreased following the introduction of the QMS, though he did not say by what percentage.

It is true that following the introduction of the QMS there was a reduction in the total number of eels landed. However, this has been linked to the depleted state of the fishery, rather than to the success of the fishery management. Mr Halley acknowledged the Crown was aware of this concern. Mr Halley also noted that significant concerns were expressed by stakeholders, particularly tangata whenua, in 2006–07 about the health of the shortfin and longfin stocks and that scientific information at the time conclusively found that the then current exploitation levels for longfin eels represented a high risk. He explained that in 2007 the Ministry for Primary Industries responded to this threat by developing options for reducing catch limits and consulted stakeholders about these options. As a result, a number of reductions were made to commercial catch limits – four of which were in the claimant area. However, following the 2007 reductions, the commercial catch remained substantially under-caught.

The Te Ihingarangi claimants argued the Minister for Primary Industries made the wrong decision in continuing to allow commercial tuna fishing. They submitted that under section 9 of the Fisheries Act 1996, the Minister needs to take into account certain environmental principles such as, ‘associated or dependent species should be maintained above a level that ensures their long-term viability; biological diversity of the aquatic environment should be maintained; [and the] habitat of particular significance for fisheries management should be protected.’ The claimants submit that ‘in order to allow the continuation of commercial fishing of tuna [the Crown] must first protect the habitat of the tuna’ and it is not doing that.

At the time of the hearings it was still possible to fish for tuna in waterways passing through the conservation estate if permission from the Department of Conservation was attained and there only appeared to be one place that eel-fishing could not occur in Te Rohe Pōtae. This was the Taharoa Lakes which had been closed in 2005 by the Minister of Fisheries to protect the customary fishery.
However, as the discussion of the ironsands mining operation in section 21.5.2 shows, by 2005 the damage to the eel population was already seriously degraded.\footnote{Document A148, p 262.}

At the end of the hearings the Tribunal was told that the Minister for Primary Industries was considering introducing new management measures which were likely to include reviewing catch limits for longfin eels and introducing abundance targets to increase the rate of rebuild.\footnote{Document T7, p 20; submission 3.4.283, pp 92–93.} The Department of Conservation was also looking at options to increase the protection of the longfin eel which included establishing protected areas, protecting and restoring habitat, and reducing the impact of fish passages on migratory fish species.\footnote{Document T3, p 34; doc T7, p 20.}

\section*{22.6.8.4 Pressures on the tuna population}

The claimants’ evidence was that there has been a marked decline in numbers of tuna since the inclusion of tuna in the QMS.

Michael Burgess, for example, noted that when he was growing up, he could go down to the awa and catch eight or 10 good-sized eels, and now you’re lucky if you catch two – three tuna.\footnote{Document Q6 (Burgess), p 7.} The decline of such an important taonga is understandably deeply troubling to Te Rohe Pōtae Māori, and it is clear that the claimants have a great sense of injustice over the Crown’s lack of protection. As Harry Kereopa states, the kaitiaki role his hapū have over tuna compels them to protect the fish: ‘As I have already said, my hapū has the kaitiaki role over the tuna in our rohe. We have a responsibility to the tuna to look after them. In the past, they have looked after us. Especially during the depression of the 1930s. At the moment, we are failing as kaitiaki of the tuna. The tuna are fast disappearing.’\footnote{Document L14(c), p 31.}

The decline of tuna numbers, he explained, means that Te Rohe Pōtae Māori can no longer carry out the same activities that they used to, and the lack of the traditional resource has had a severe negative impact on the people. He stated: ‘The reduction of tuna has badly affected our people. We cannot feed our manuhiri like we used to. Our people even started losing weight and getting skinner. It was the number one diet. At smoko you got tuna.’\footnote{Document L14(c), pp 23–31.}

The claimants’ sense of DOC’s relative inaction relating to diminishing tuna populations was in part echoed in the evidence given by Crown witnesses. Meirene Hardy-Birch, Director of Conservation Services for the Central North Island region, said that due to limited resources DOC had historically focused on terrestrial pest management rather than freshwater fisheries. Under Tribunal questioning, Hardy-Birch appeared to agree DOC’s actions in relation to tuna and freshwater fisheries were very limited for roughly the first 20 years since DOC assumed statutory responsibility for freshwater fisheries. Crown witnesses admitted that there were few examples of DOC targeting specific areas or catchments where tuna populations were reported to be low or non-existent; indeed,
the examples they could provide that might have had a positive impact were not specifically put in place for tuna but for other species. Hardy-Birch maintained that in the last five to 10 years, DOC has increasingly focused on freshwater bodies and their fisheries and are committed to working with Māori to improve the state of waterways and water bodies. Marc Griffiths indicated that, according to data collected by DOC, shortfin and longfin eel populations had likely increased since the early 2000s.

While this renewed commitment to tuna and freshwater fisheries in general is promising, it is concerning that a central taonga of Te Rohe Pōtae Māori has not received more sustained attention from DOC historically. Although the Crown is not solely responsible for all of the actions resulting in the decline of tuna, it has sponsored, and continues to sponsor, a number of activities that are detrimental to the health of these fisheries. Most significantly, the Crown sponsored and encouraged large-scale drainage projects in the early twentieth century which led to the loss of significant tuna habitat, and more recently, the Crown introduced commercial fishing into the rohe which has been linked to the severe decline of the eel population.

Not only did the Crown not provide for Māori tino rangatiratanga when these decisions were being made, or indeed properly consult Māori about these changes, but they also continued to support these activities in the face of strong protest by Te Rohe Pōtae Māori and the result is that tuna are now endangered. Put simply, the Crown sponsored activities that have led to the near extinction of a taonga.

There are a number of pressures affecting the health of the tuna population. Even though activities like swamp drainage are historic they continue to affect the population as eels take many decades to replenish their stocks. Other pressures, such as the degradation of water quality, dams, and commercial fishing, continue to put pressure on the vulnerable populations.

Although the claimants feel powerless to stop the worst of the negative effects on tuna without the Crown’s strong intervention, they have been fierce advocates for the protection of tuna. For example, in addition to bringing their claims to the Waitangi Tribunal, many claimants have also been involved in implementing rahui in their rohe, removing commercial eel nets (even when this resulted in legal action), lobbying for and participating in surveys conducted by NIWA, making submissions to the Ministry of Fisheries regarding the QMS, attending hui to discuss the plight of the tuna, and participating with the local council on the issue. The overall picture that emerges is that the Crown’s response has been lacking.

The loss of the eels’ habitat is one of the most significant problems facing the health of tuna today. As discussed in the section on drainage schemes, vast areas of the inquiry district were included in schemes that transformed lowland swamp into agricultural land.

However, it is not just the immediate loss of the pā tuna that is of concern to the claimants today. As Jim Taitoko noted, and is borne by the science, the loss of the

---

eels’ habitat is a major impediment to conservation attempts to improve the health of the tuna population today:

The thing that’s actually missing here is the fact that there is no habitat to address the young elvers because they live in swamps. There’s not a lot of swamps. There’s very few swamps around that can address that elver as young eels and they stay in those swamps for about a year, 18 months and they come out as these little fellows... 

In addition to the loss of habitat, the degradation of the water quality in the rohe has had a negative effect on the health of tuna. Studies of the Waikato and Waipā catchments in 2010 and 2013 both reported a decline in customary fisheries, including eel, in both areas. The researchers concluded one of the contributing factors was high suspended sediment levels due to landslips and stream bank erosion on the Waipā River, which can in part be attributed to the conversion of native forest and scrub to pasture.

The effect that poor water quality has on tuna is something that the claimants are well aware of. Harry Kereopa gave evidence:

Our rivers and streams have been greatly affected by soil erosion. They are not as deep as they used to be. The rivers and streams seemed to have filled up. The old homes the eels used to live in have disappeared because of the now shallow waterways. The water is always a brown, dirty colour. We have gotten used to the rivers looking like this but in our old people’s day, the rivers were the proper colour... The rivers and streams of the Mokauiti and Ohura Valley areas... are always brown in colour and full of silt. There is an enormous amount of soil erosion now in that area... the tuna fishery has suffered from this. The tuna have disappeared and the ones that are there, they taste like mud and are practically inedible.

Mitchell Kereopa noted the same issue with erosion: ‘I also notice that our water in our streams is a lot murkier than it used to be. I think this is as a result of the soil erosion in our area. The soil finds its way into the streams and turns to silt. The silt makes the water go murky. I think the tuna have a harder time in the water now.'

Tangata whenua concerns are supported by scientific research undertaken in the rohe. A fisheries report prepared on fish passage in the Mākau River catchment in 2000, for example, noted the negative effect the environmental modification was having on all native fish, not just tuna as the conversion of most of the landscape into pasture was having the following effects on stream ecology:

- water temperatures are more variable with summer temperatures reaching much higher levels;

---

849. Submission 3.4.115(a), p 32; doc A150, p 98.
most of the fish cover is provided by masses of introduced water plants, and undercut unstable banks;
water flow fluctuations are marked with devastating winter floods, and dry summer conditions (which are both stressful to aquatic life);
there is an accelerated and ongoing loss of soil into water which has turned clear forest streams into bogs at the bottom of gullies;
water fertility and algal growth is increased by accelerated erosion, nitrate leaching and other forms of nutrient loss from farmed soils; and
there are daily swings between low and high oxygen levels which is a stress for fish.

In addition, Harry Kereopa queried the extent to which the historic milling operations had affected the rivers and the tuna in the area. He stated that not only had the destruction of the bush negatively affected tuna (for example, the loss of the canopy changed the water temperature patterns, and holes along the river and stream banks that the tuna lived in were destroyed), but that ‘mountains’ of sawdust were dumped into the waterways and blocked up the streams and rivers for years. He believed that as it rotted, it released toxins into the streams which negatively affected the tuna and their environment.

As noted earlier, the introduction of exotic marine species into Te Rohe Pōtae also resulted in the serious depletion of indigenous fish stocks, including tuna, because of the competition and predation that the new species presented. However, it was not only predation by exotic species that tuna have had to contend with, more disturbingly most settlers considered tuna to be vermin and concerted efforts were undertaken by acclimatisation societies across New Zealand to eradicate the fish from the country’s waterways. Various Crown departments supported these eradication attempts without any apparent consultation with Māori which, to the claimants, is a clear breach of the Crown’s duty to actively protect their taonga. They further submitted that when tuna was being killed on such mass scales, the Crown had a responsibility to step in and protect tuna and that the damage done to the population is a ‘harrowing legacy for them to inherit and address.’

The fact that section 7(h) of the RMA still specifically requires administrators of the Act to have ‘particular regard to . . . the protection of the habitat of trout and salmon’ while there is no express equivalent for the protection of tuna, suggests that there is still a legislative inequity in the treatment of tuna versus exotic fish.

Dam building in Te Rohe Pōtae has also affected the control Te Rohe Pōtae Māori have over their relationship with tuna, and the health of the tuna population. It has done this in three main ways. First, pā tuna at Mōkau were damaged with the building of dams at Wairere, secondly the dams contribute to habitat loss, and thirdly the dams block the paths of tuna migrating to and from the sea.

852. CP Mitchell and IA Kusabs, Fish passage and issues at the Wairere Falls and Mokauiti hydro-electric facilities, May 2000 (doc A148, p19).
855. Submission 3.4.159(b), pp 42–43.
There are two main dam sites in Te Rohe Pōtae which have associated barriers: the Wairere Falls Power Station on the Mōkau River and the Mōkauti Power Station on the Mōkauti River. The claimants submit the Crown should have sought the input of local Māori when the infrastructure was built on the waterways, and it was wrong for the Crown to approve plans to build the barriers despite their protests.  

Claimants told us how three pā tuna on the Mōkau River were destroyed by the building of the Wairere dam on the Mōkau River. As Jim Taitoko recounted:

> When they did it, they dug this river out and they heightened the dam which took out the three pā tuna that we’ve got along here. So we lose those. Three pā tuna. When the flood’s on, it backs up beyond the bridge there so even when the water’s low . . . you can’t go fish there like you used to.

Hydroelectric dams are also known to have a substantial impact on habitat of longfin tuna. It is estimated that up to 50 per cent of the habitat is no longer fully available because of the effect that hydro-dams have on the water available for aquatic life, and on the barriers they create for migrating tuna.

In fact, the in-stream barriers at dam sites pose a significant risk to tuna as most dam sites are impassable for tuna migrating downstream and they generally enter the dam’s turbines and get chopped to bits. The massive dams can also obstruct the passage of glass eels and elvers migrating upstream.

Neither of the dams initially provided for a fish passage to allow migrating tuna to pass by the barriers, and this remained the case for most of their operation. Recently, however, considerable effort has been put into mitigating the effects on migrating tuna at the two dams. At the Wairere Power Station, trap and transfer has been used since 1985 in an attempt to assist elvers migrating upstream, which involves trapping elvers below the dam and releasing them at a site above the dam so they bypass the barrier completely. Between 1995 and 2009, the number of elvers trapped and released was between 155,000 and 330,000. However, most of these are estimated to be shortfin elvers. For example, in the 2008–09 season, 216,675 elvers were transferred, of which only 16,708 were estimated to be long-fin. Two ramps, and one elver ladder are also in place at the Wairere Falls site which allow migrating elvers to climb next to the dam and safely make their way upstream. Recent attempts to assist with the downstream migration at Wairere have also been made, with a small number of tuna trapped and transferred from

---

857. Submission 3.4.194, p 5.

656

Downloaded from www.waitangitribunal.govt.nz
2002 onwards. However, these numbers are much smaller than those migrating upstream: the lowest being 217 transferred in 2007, and the highest 1306 in 2009.\(^{864}\)

Similar attempts have been made at the Mōkauiti dam with trap and transfer programmes beginning in 2008. Just like at Wairere, the percentage of longfin eels transferred was very small. For example, just 2% of the 82,137 elvers that were caught in 2008 were estimated to be longfin tuna. The numbers of migrating elvers trapped at Mōkauiti are also much smaller than those at Wairere, with 21,157 transferred in 2009–10 and just 3350 transferred in 2010–11. A fish pass and a temporary channel were also installed for the 2008–09 season which, at the time of the hearings, was considered to be an ongoing development with a number of adjustments needing to be made. Elvers were observed using the channel in 2008–09.\(^{865}\)

However, it is uncertain how effective these measures have actually been, as there does not appear to be any monitoring of upstream populations, despite the assertions by power companies that the impact on tuna migration is mitigated. There is little data to support this claim, and in fact, much data shows the opposite to be true, particularly regarding the longfin tuna.\(^{866}\)

This is particularly worrying when the impact that commercial eel fishing has had on the tuna population is taken into account. Introduced to New Zealand in the 1960s, commercial eel fishing has had a severe impact on the health of the population. The introduction of commercial eeling was a disturbing development for Te Rohe Pōtae Māori, who continuously and vehemently protested against it. For the claimants, commercial eeling represents an unsustainable commercialisation of a taonga, one which they fear, and which the science suggests, is harvesting tuna at a rate faster than it can replenish itself.\(^{867}\)

Crown witness Stephen Halley gave a history of the commercial eel fishery in New Zealand and explained how when it was first introduced there was little regulation of the fishery. He stated that when it began in the 1960s, there was an open entry policy which meant that there were no restrictions on the granting of permits to commercial fishers. This also meant that there were no limits on the catch of each permit holder, or on the total quantity of eels that could be commercially harvested (both regionally and nationally). He noted that following the first commercial catch recorded in 1965, catches rapidly expanded to reach a national peak of around 2000 tonnes in 1972.\(^{868}\)

Harry Kereopa captures the resentment that tangata whenua feel over the effects of the commercial fishery:

> We first noticed that eel numbers were going down during the 1960s. From about the early 1970s onwards, we began to notice a sharp drop in eel numbers... When the commercial eel fishing started, no one told us, even though we were known as the 'Eel

\(^{864}\) Looking at the period 2002–11: doc A76, p 294.
\(^{865}\) Document A76, p 293.
\(^{866}\) Document A76, pp 289–291.
\(^{867}\) Submission 3.4.159(b), p 45.
\(^{868}\) Document T7, p 12.
People'. After a while we noticed these big nets in our streams. We didn't know whose they were. Then some pakehas would turn up and haul the nets out, full of tuna. One day I read some information about a commercial eel fisherman taking 10 tons of tuna from our rivers in just 3 months. For a while up until then, we had noticed the tuna disappearing. We could not explain it. But when we heard about how much the commercial eel fishermen were taking every year, we knew that they were heavily responsible. As the eel numbers dropped lower and lower over the years, the resentment of our people towards the commercial eel fishermen grew more and more. And yet the commercial eelers still fish in our rohe, even though eel numbers are as low as they are.

Jim Taitoko further explained the tangata whenua response to the start of the commercial fishery:

From '78 onwards, the commercial eelers came in and wiped it out. We chased out a lot of them, some of us went to court over it, but we can't stop them going on other owners' lands if they would wish to go on there, we can't stop it. So we'd stop them on our pieces. The others own the majority of the river so the majority of the river gets wasted. Now 15 nets on one side, 15 on this side within a certain stretch of river was what they used to use. So we'd let the eels out. For years we did that.

The open-entry fishery and lack of monitoring went on until 1978 when the first cap on fishing was introduced in the South Island. However, within the claimants’ rohe, the first constraints were not put in place until 1981 when a minimum catch size of 150 grams was introduced. This was subsequently increased to 220 grams in 1992 and a moratorium was placed on new licences in 1988. Mr Halley noted that in addition to these regulatory controls, commercial fishers themselves have also implemented a number of initiatives including voluntarily agreeing in the late 1990s not to increase the commercial fishing catch beyond the late 1980s level, and in 1995–96 to not land female longfin eels. Put simply, and as claimant counsel argued:

The claimants’ waterways were intensively fished unmonitored for almost 40 years [which] this led to a significant depletion in their tuna fishery. . . . There were no catch limits and there was no cap on the number of licences issued. The lack of constraint on the eel industry in the early days caused irreparable harm to the claimants.

The claimants’ concerns are supported by scientific evidence. C P Mitchell and I A Kusab, for example, surmised that the commercial fishing of tuna not only

871. Submission 3.4.159(b), p 46.
872. Submission 3.4.159(b), p 46; doc T7, p 12.
874. Submission 3.4.159(b), p 46.
results in a decrease in the overall numbers but is particularly devastating for large longfinned eels, which move around a lot and generally have a greater risk of being caught. Unfortunately, they note, longfinned eels also grow particularly slowly and cannot be quickly replaced. Additionally, the size of eels generally decreases after commercial fishing, as the removal of large adult tuna removes the ecosystem’s top predators and increases the competition from a large number of other small fish for the available food. They concluded that even if commercial fishing is totally stopped, the restoration of the natural population regulation processes and size structure would take a long time.  

Mr Halley accepted that commercial fishing during the 1980s and 1990s affected the customary harvest: ‘Commercial fishing at this time also reduced the availability of larger eels which were preferred for customary use by Māori. This made it more difficult for Māori to harvest the quantity of fish they needed for customary purposes in their own rohe.’

It is clear that commercial eeling has had a devastating impact on the tuna populations in Te Rohe Pōtae, and New Zealand more widely. But although the Crown has responded to calls for the reduction of commercial eeling, the claimants submitted that its management response has not gone far enough to protect tuna. For example, it was not until 2004 that a tuna QMS was introduced, and even then the claimants argue that the long-awaited quota was so excessively high that it was rendered virtually meaningless. In contrast, the Crown submitted that its management of the commercial eel fishery has been responsible and has taken into account the needs of both customary and commercial fishers and the needs of the tuna population itself.

However, the claimants’ dissatisfaction with how the Crown is managing tuna is backed up by the results of a number of different studies. Dr Mike Joy, for example, has advocated for a total ban on the commercial fishing of longfin eel and has stated that, because eels spawn only once in their lifetime, the Ministry of Primary Industries is unable to model the fishery and it is inappropriate to base any quotas on the data that they have.

Other studies over the last two decades have shown a decline in the eel population in Te Rohe Pōtae. In December 1999 and December 2002, NIWA conducted fisheries surveys of the Waimiha in response to difficulties expressed by customary fisherman to ‘catch enough tuna of suitable size to satisfy cultural needs’ that they attributed to the over-exploitation of the sites by commercial fishers. They surveyed the number of tuna found at both commercially fished and unfished sites and in both surveys found the catch rates of tuna were low compared to other parts of the North Island. They also found that there were fewer larger tuna at the commercially fished sites and higher numbers of smaller tuna. Together this

875. CP Mitchell and IA Kusabs, Fish Passage and Issues at the Wairere Falls and Mokautiti Hydroelectric Facilities, May 2000, p 17 (doc A148, p 256).
878. Submission 3.4.15(b), p 43.
indicated that tuna stocks in the commercially fished sites were depleted. In order for suitable-sized tuna in customary sites to be maintained, NIWA recommended that intensive commercially fishing be restricted and juvenile stocks replenished. They concluded that given the long life cycle and apparent poor recruitment to the Waimiha area the only means of rapidly restocking the area was for juveniles to be transferred there.\textsuperscript{879}

In April 2013 the Parliamentary Commissioner for the Environment released a report on the stock status and management of the longfin eel. It raised questions regarding the long-term well-being of the longfin eel and concluded that the Crown’s management of the population was insufficient to ensure their long-term survival.\textsuperscript{880} It determined that the long-finned eel is an endangered species and included a number of strong recommendations to the Minister for Primary Industries and the Minister of Conservation.\textsuperscript{881} These included that the Ministry for Primary Industries suspend the commercial catch of longfin eels until their stocks recovered and that the Department of Conservation increase the protection for longfin eels. They also recommended the Ministry for Primary Industries establish a fully independent expert peer review panel to assess the status of the longfin eel population.\textsuperscript{882} This review was carried out by a panel of international experts in November 2013.\textsuperscript{883} The authors concluded the longfin eel population was in decline from the early 1990s to the late 2000s and had been substantially reduced due to commercial fishing. But this had recently levelled off due to the reduction of catches with the introduction of the QMS. Although the status of the shortfin eel was uncertain, the panel agreed that the shortfin was not as depleted as the longfin.\textsuperscript{884}

Although the Ministry for Primary Industries appear to find relief in the fact that catches reduced after the QMS was introduced, the evidence suggests this is because the fishery is under collapse and there simply are not enough eels to catch to ‘fill’ the quota.\textsuperscript{885} The monitoring system used by the Ministry was also criticised by Alexander during the hearings. He noted that the key feature of their published statistics is that the health (or otherwise) of the eel fishery is measured by tonnage captured (that is, how many fish they are able to catch), which is much more a reflection of the fishing effort. He recommended that more relevant parameters concerning tuna health are population structure, the size and age of captured eels, the size of tuna heke, and the availability and quality of the habitat. It is noted that the Ministry does not record these parameters.\textsuperscript{886}


\textsuperscript{880} Document T3, p33.

\textsuperscript{881} Submission 3.4.115, p19; doc A148(b), p13.

\textsuperscript{882} Document T5, p5; doc T7, p19.

\textsuperscript{883} Document T5, p5.

\textsuperscript{884} Document T5, p6; doc T7, p19.

\textsuperscript{885} Document A76, p289.

\textsuperscript{886} Document A148, p261.
The claimants are alarmed by the Crown's insufficient monitoring of their taonga. For the claimants, ‘it is clear that MPI do not know what the sustainable level of tuna is.’ Which was a point that a number of technical witnesses appeared to agree with. David Armstrong, for example, stated during cross examination that the Government had never examined whether or not commercial fishing was unsustainable. Likewise, Alexander explained that ‘the government have said in the past that unless evidence was provided to the contrary, their quota management system for tuna was sustainable.’ When asked whether or not he had ever seen any evidence from the Government that addressed whether or not their management was sustainable, he stated that he hadn’t because it appears the Crown is ‘looking . . . for the opposite.’

22.6.9 Whitebait – a case study in Crown regulation

22.6.9.1 Whitebait and their value as taonga

While tuna was the most valued freshwater species in this district, whitebait (often smaller, juvenile forms of shoal fish such as inanga, kōaro, and kōkopu) is also considered a taonga by Te Rohe Pōtae Māori. Traditional history tells that Ngātoro-i-rangi, the tohunga who directed the Te Arawa canoe and a tūpuna of Ngāti Apakura, created inanga and kōkopu by scattering pieces of his clothing into the lake at Taharepa, near Taupō.

Alongside tuna and other freshwater species, whitebait was a central feature of the Māori diet from early settlement. Whitebait are most often found near river mouths and in freshwater bodies at low elevation and close to the sea, and there are many such sites in Te Rohe Pōtae. The species was abundant throughout much of Aotearoa New Zealand, but the geography of Te Rohe Pōtae created uniquely ideal habitats for whitebait, making it not only abundant but more readily accessible. Kāwhia Harbour and its surrounds, and the Mōkau, Awakino, and Marokopa Rivers were variously highlighted by claimants and expert witnesses as important whitebaiting spots in the district. Additionally, the low-gradient and gentle flow of waterways in the area meant that historically whitebait flourished relative far inland, with the presence of whitebait recorded as far as 200 kilometres up the Waipā River. It is little wonder whitebait became a key staple of the diet of Te Rohe Pōtae Māori.
22.6.9.2 The Crown’s management regime for whitebait

The whitebait fishery is managed slightly differently to other New Zealand fisheries. The key piece of legislation is the Whitebait Fishing Regulations 1994 which limits the size and number of nets that can be used by individual fishers and restricts the time that fishing can take place. The fishing season occurs between 15 August and 30 November, from 6am to 9pm during daylight saving time and 5am to 8pm during New Zealand standard time. Because the Act prohibits whitebait fishing from bridges or vessels, most whitebaiters prefer to operate their nets from stands built on the shore. As these structures are placed on the river bed, they generally require a consent under the Resource Management Act. The Act has provisions for Māori with Section 18 allowing whitebait to be taken for hui and tangi.895

Historically, the Department of Land and Survey and the Waitomo District Council have had a hand in managing the fishery in Te Rohe Pōtae, but at the time of the hearings the Department of Conservation was responsible for the licensing of the structures on land forming part of the conservation estate and the Waikato Regional Council was responsible for licensing structures on the riverbed.896 It appears that neither organisation has the resources to actively enforce the minimal regulations that exist and that this has been a problem for at least 30 years. The following section describes how the whitebait fishery has come to be managed in the present day.

DOC now administer whitebait regulations and licences on the conservation estate and the Waitomo District Council administer licences on the riverbed.897 In 1983, the Waitomo District Council received a grant of control for the waters and foreshores of the Awakino, Marokopa and Mōkau Rivers and a subsequent by-law was passed which defined its authority to license whitebait stands. Over the next two years the demand for whitebait stands grew, and competition began to arise amongst whitebaiters on the Mōkau River. In 1985, competition led to conflict and the Council began to issue licences under the by-law. In October of the same year, the Council wrote to the Marine Division of the Ministry of Transport seeking to repeal the by-law as they considered the cost of dealing with the huge number of licence applications to be prohibitive. The Ministry replied that it could not repeal the by-law as whitebait jetties fell under the category of structures in the Harbours Act 1950, and were therefore part and parcel of the Council’s grant of control.898

The Council’s lack of managerial oversight did not go unnoticed by other agencies, and the Council soon found itself in conflict with the Department of Lands and Surveys who owned large parts of the scenic reserve land along the Mōkau River. In February 1986 the Marine Division organised a meeting between the Waitomo District Council, the Commissioners of Crown Lands for Hamilton and

New Plymouth, and the Ministry of Agriculture and Fisheries to discuss several issues. The Commissioners of Crown Lands raised the following concerns:

- there were a number of ‘illegal’ stands on the river;
- the Council had issued licences to stands abutting the scenic reserve without consulting the Commissioners;
- some stands extended too far out into the river and were creating a navigational hazard;
- some licensees appeared to believe that they possessed the rights to 50m strips of land alongside their stands;
- the river was starting to be used by commercial operations; and
- there was a ‘seeming lack of control of safety being exercised’.\(^99\)

However, it does not appear that the meeting was a success as the Department of Lands and Survey protested again that year that the Council was issuing scenic reserve licences without consulting them.\(^90\) The Department took this protest to the Marine Division and informed the Waitomo District Council that they were preparing a management plan for the scenic reserve which would attempt to balance the recreational activities of the whitebaiters with the interests of other users of the reserve. They stated that, since stands located on reserve land did not provide licensees with any additional rights, other users were legally able to occupy the stands if they wished. The Council were not impressed and complained to the Marine Division that Department staff were informing applicants that the Council had no authority to issue licences. In October 1986, Lands and Survey suggested to the Marine Division that the Director-General of Lands could take over the Council’s grant of control for the lower reaches of the Mōkau River.\(^90\) The conflict between the Council and the Department of Lands and Survey appeared to be spilling over to the whitebaiters themselves and police began to take ‘an active interest in what [was] going on’. The situation was so bad at the end of 1986 that the Waitomo District Council stated if it did not improve it would consider relinquishing its grant of control.\(^90\) It did just that in October 1987.\(^90\)

For the next decade management of the whitebait stands shifted between the newly established Department of Conservation and the Waikato Regional Council (who under the RMA were assigned control of structures on riverbeds). The transfer of control between these two organisations suggests that the stands remained costly and time-consuming to monitor and in 1998 the Waikato Regional Council decided to remove the need for resource consents by creating permitted activity rules. When these came into effect in 2007 the Council stated that the reason for this was that whitebait stands have a minimal environmental impact. These rules include things like, the stand must be at least 30 metres away other stands, be located at a point in the river that is no less than 10 metres wide, not extend too far

\(^{900}\) Document A149, p 28.  
\(^{901}\) Document A149, p 28.  
\(^{902}\) Document A149, p 29.  
out into the river, not impede the flow of water, and be maintained appropriately.\textsuperscript{904} Under the permitted activity rule, establishing and operating a stand is relatively straightforward and aside from the initial contact with the stand-operator, no further monitoring of stands occurs unless they are removed, destroyed or sold. However, this is dependent on the owner informing the Council of the change.

The situation at the time of the hearings for this inquiry was that the Regional Council no longer monitors stands on the Mōkau or Awakino Rivers for compliance. And although the Department of Conservation impose restrictions on the season and time of day that whitebait can be taken (and perform inspections each season),\textsuperscript{905} recent scientific research suggests that these restrictions may not be consistent with whitebait migration and breeding patterns and therefore may not be effective in the sustainable management of the population.\textsuperscript{906}

Many claimants related evidence that, in their observation, whitebait populations had dwindled significantly.\textsuperscript{907} Merv Ranga discussed the decline of the whitebait population at a spring in Kāwhia that had long been a source of kai:

Puna o Rona used to be littered with whitebait and eels and formed the perfect habitat for these species. Both eels and whitebait used to come up through Paringatai to Puna o Rona where we would be able to catch them. However, in the last 40 years, the water quality has rapidly deteriorated. These days there is no activity around Paringatai because the natural habitats of the wildlife have no place to take hold. The reason for the deterioration is partly because of the amount of vehicles on the beaches, which has increased since the culvert was built at Paringatai about 1972, and partly because of the noxious weeds that grow in the springs (such as Asian lily and green ginger). These days, neither the whitebait nor the eels are capable of getting up to Puna o Rona.\textsuperscript{908}

Other claimants cited the loss of vegetation, particularly native vegetation, as a reason for an increase of run-off polluting rivers and streams, destroying whitebait habitats.\textsuperscript{909}

Whitebait stands line the banks of the Mōkau River (starting just after the bridge near the river mouth and extending several kilometres inland).\textsuperscript{910} Māori have raised a number of concerns regarding how whitebait fishing on the River is managed and how this impacts on the customary fishery.

Mōkau ki Runga and Ngā Hapū o Poutama are both concerned with the high number of whitebait stands and the lack of monitoring from both the Waikato Regional Council and Department of Conservation. In particular, they believe that there are as many as 200 unregistered stands along the River, that there is potential

\begin{itemize}
\item \textsuperscript{904} Document \textit{A149}, p 30.
\item \textsuperscript{905} Document \textit{t1} (Birch), p 18.
\item \textsuperscript{906} Document \textit{A149}, pp 31–32.
\item \textsuperscript{907} Document \textit{p13} (Hapeta), p 2; doc \textit{s6} (Rata), pp 22–23; doc \textit{s44} (Kete-Kawhena), p 11.
\item \textsuperscript{908} Document \textit{ju1(a)} (Ranga document bank), pp 3–4.
\item \textsuperscript{909} Document \textit{m11(a)} (Wilson document bank), p 4; doc \textit{m14(a)} (Thomson document bank), p 8.
\item \textsuperscript{910} Document \textit{A149}, pp 26–27.
\end{itemize}
for recreational fishers to make a financial gain (some stands sell for as much as $10,000 each), and that tangata whenua have not been adequately consulted over the fishery management. More largely, they are worried that there is no limit on the amount of whitebait that can be caught.\footnote{911} Expert witness Dr David Alexander said given there was a ‘great deal of pressure’ on the whitebait population in Te Rohe Pōtae due to pollution, the impacts of potential overfishing on the whitebait fishery is of great concern.\footnote{912}

\section*{22.6.10 Tribunal analysis and findings}

The Crown’s regulation of fisheries occurred slowly but surely in Te Rohe Pōtae. Generally, until the late nineteenth century, Māori were left to deal with the management of their fisheries. However, once the authority of the Crown was extended throughout the district, and as its legislative management regime embedded, Te Rohe Pōtae Māori mana whakahaere and their relationships with their fishing grounds and their fisheries were affected as they lost control over their taonga. Rather than integrate their tikanga and values and their desire for fishing reserves, the evidence demonstrates that between 1840 and the 1980s, the Crown set up a system almost entirely under its control. There was, of course, the provision in the Fisheries Act 1908 that nothing in the legislation should have affected Māori fishing rights, but the Crown did not willingly enable or provide for those rights in statute.

The Crown’s management regime marginalised Māori concerns about the decline of their fisheries due to habitat loss, commercial exploitation and overfishing until the 1980s. It took national litigation concerning Māori fishing rights generally to ensure the Crown responded with a more integrated management regime.

The Crown’s historic focus on trout and salmon over indigenous freshwater species reveals the process and priorities of the Crown’s management regime for fisheries. It demonstrates that the Crown rarely considered whether Māori interests in freshwater fisheries should be provided for in accordance with their Treaty and common law rights and interests. It did not for example, constitute a Māori fisheries agency such as the acclimatisation societies to advocate for and protect indigenous species. While the introduction of exotic species, in and of itself, does not constitute a Treaty breach, a failure to monitor the impact of such species on indigenous flora and fauna can be when continually brought to the Crown’s attention. If monitoring had been undertaken it would have been quickly ascertained that trout and salmon prey on juvenile native species in the district, and some remedial work could have been completed much earlier.

In contemporary terms we note that section 7(h) of the \textit{RMA} recognises trout and salmon as species that those exercising powers and functions under the Act should have particular regard to. However, no express equivalent exists for tuna or

\footnote{911. Document A149, pp 31–32.}
\footnote{912. Transcript 4.1.19, pp1797–1798 (David Alexander, hearing week 13, Waitomo Cultural and Arts Centre, 13 June 2014).}
other indigenous species and ultimately, the reference to trout and salmon affords those species some priority over indigenous fish species under the 1991 Act.\textsuperscript{913} We ask: why is this the case?

The case for tuna should be more straightforward. The Crown is already aware that they are a taonga of Te Rohe Pōtae Māori and it needs to do more to protect them. It is important to reiterate that the Crown recognised tuna may be a taonga to specific iwi and hapū and in that circumstance it has an article two Treaty obligation to take reasonable steps to protect tuna.\textsuperscript{914} This Tribunal finds tuna are a taonga to these hapū and iwi. The Crown’s witness, Stephen Halley from the Ministry of Fisheries, recognised the important relationship. He stated: ‘It is recognised that the eel fishery is part of a wider relationship between Māori and the freshwater environment. Maintaining the health of the fresh water is, therefore, not only important for the sustainability of the eels and other freshwater species, but also for the well-being of Māori.’\textsuperscript{915}

The Crown has not implemented a management regime that provides that same degree of mana whakahaere for the claimants over tuna. Considering the health of the tuna population, the status of tuna as a taonga to Te Rohe Pōtae Māori, and the Crown’s lack of targeted policy towards the recovery of the tuna, it is clear that the Crown has not afforded tangata whenua concerns and values the same priority as those concerned about trout and salmon.\textsuperscript{916} Furthermore the Crown has prioritised the commercial exploitation of tuna at the expense of Te Rohe Pōtae concerns for the health of the species and their ability to harvest sufficient for customary purposes. Michael Burgess, for example, told us that ‘there were big eels there once, but with the impact of commercial eeling in our rohe, you’re struggling to get any tuna let alone big ones.

The claimants want an end to commercial eeling and more stringent protection for the tuna habitat. As noted in the Environmental Research Institute study (2013):

   Respondents felt that, given the long lifecycle of eel, even more stringent management measures for commercial fishing interests may need to be adopted to ensure that greater quantities of eel become available for customary use. Management objectives identified by iwi include placing a rahui over fish stocks, until they have recovered to a state that satisfies customary requirements; reducing the upper size limit for eels from 4 kg down to 2.5 kg; increasing the regulated minimum size from 0.220 kg to 1 kg, removing longfin from the QMS; and increasing the size of eel escapement tubes.\textsuperscript{917}

A similar story of not adequately protecting a taonga species relates to whitebait. In short Māori have raised concerns regarding the declining population of

\textsuperscript{913} Document A148, p 261.  
\textsuperscript{914} Submission 3.4.283, pp 83–84.  
\textsuperscript{915} Document T7 (Halley), p 11.  
\textsuperscript{916} Submission 3.4.115, p 19.  
\textsuperscript{917} Document A150, p 65.
white-bait, and the lack of regulation and monitoring of the species in the district. They have also expressed concern regarding the elevation of profits associated with the buying and selling of whitebait stands over taking action to improve habitat and decrease exploitation. Their concerns have not been adequately addressed under the current management regime and this is impacting on the well-being of the community. Daniel Rata, for example, told us how his community began to be affected by a decline in customary fisheries in the 1980s:

The whitebait catches were getting smaller and smaller and smaller. Tuna catches also became less and less. Sometimes we didn't catch anything at all. The river remained dirty and smelly and we stopped going to our favourite places for whitebait and tuna. My Dad did not talk much about those places after that.

As the evidence of the claimants demonstrate, augmented by the case studies, there has been a general decline in fish stocks in Te Rohe Pōtae. This has made the claimants question the Crown's ability to provide for their rangatiratanga or mana whakahaere over their fisheries and fishing grounds. Some of this decline can be attributed to commercial fishing and habitat decline. The claimants have particularly focused on over-fishing and they remain concerned that offences under the fisheries legislation and the RMA 1991, carry only minor penalties that commercial fisherman are only too happy to pay if they are caught, charged and found guilty. John Kati expanded on the idea: 'The commercial regulations set by successive governments over the generations were not designed to maintain fish resources at a sustainable level. Commercial fisheries used this as a way to exploit the situation and take excessive amounts of fish.'

Stephen Halley, a witness for the Crown, reminded the Tribunal that just because a species is a taonga does not, of itself, mean that the general fishing sector's interests (including commercial fisherman) should not also be provided for. We agree. However, if a taonga fishery is not able to provide for all interests, then Māori customary non-commercial fishing interests should be recognised first. An example of where this has occurred relates to the Crown response to the protection of toheroa where there is no commercial or recreational fishing quota permitted. That is because Māori never willingly relinquished their possession and authority over fisheries, rather it was progressively wrested from them. Any management regime for fisheries must incorporate the ability to respond in this way and currently the QMS does not do so without significant legal issues being raised.

Therefore, we find that the Crown acted in a manner contrary to the principles of the Treaty of Waitangi from 1840 until the enactment of the Māori Fisheries Act 1989, namely the principles of good governance in article 1, the principle of rangatiratanga in article 2 and the principles of partnership, reciprocity and mutual benefit. It did so because it did not legislate to recognise and provide for the rangatiratanga, relationship, values and tikanga of Te Rohe Pōtae Māori associated with their taonga fisheries and fishing places in the district so they could be integrated into its legislative management regime. It also failed in its duty to actively protect their taonga species and their fishing places, leading to the decline of a number of
species caused by commercial fishing, over-exploitation and environmental effects on habitat.

In terms of the contemporary situation and provision made for the mana whakahaere of the claimants with respect to their marine fisheries, we note that there is one taiāpure over two of the three most important harbours in the district. We note that there are issues with taiāpure, for as the Wairarapa ki Tararua Tribunal noted:

While a number of taiapure have been established around the country since 1989, very few, if any, have reached the stage of having had regulations implemented to manage their customary fisheries. Taiapure provisions have been in place for 20 years, so it is clear that a serious rethink is required . . .

We agree and note that taiāpure were negotiated as part of a historical fisheries settlement, so no doubt improvements can also be negotiated between the parties to that settlement with variations provided by statute at the local level as in Te Rohe Pōtae.

The appointment of tangata kaitiaki/tiaki and the management of customary fishing reserves and rohe moana areas under the Fisheries (Kaimoana Customary) Fishing Regulations is also a vast improvement for the expression of Te Rohe Pōtae Māori rangatiratanga. At the local level this certainly provides the opportunity for practical mana whakahaere. We remain concerned that no progress regarding a Mataitai Reserve has been made with respect to Whāingaroa at the end of our hearings.

With respect to freshwater fisheries, DoC, the Regional Council, and the Ministry for Primary Industries remain firmly in control of the management regime as a whole and it maybe time to review that by adopting a similar management regime as the mataitai reserves for lakes, rivers, streams, creeks etc in Te Rohe Pōtae. This will obviously also have to be negotiated between the claimants and the Crown.

22.7 Prejudice

It is clear from the evidence examined in this chapter that water and water bodies are of immense cultural, spiritual, and practical importance to Te Rohe Pōtae Māori. Prior to the arrival of Pākehā, Te Rohe Pōtae Māori developed numerous principles and protocols, based on tikanga, to carefully manage and protect these water bodies, which in turn provided nourishment for whānau, hapū, and iwi throughout the district.

In the decades following the Crown’s arrival to the district and the formalisation of a series of legislative and statutory regimes in which it progressively assumed greater control of water and water bodies, Te Rohe Pōtae Māori were stripped of the rangatiratanga that they had exercised for centuries, as well as the mana whakahaere they were entitled to.
The Crown’s assumption of the management of water bodies went hand in hand with their subsequent widespread degradation. As Pākehā settlement increased in the district, so too did water pollution from sedimentation due to land clearance work, pastoral production, mining, industry and human waste from settlements and towns. Despite the efforts of many Te Rohe Pōtae Māori to address this continued grievance, such as by imposing stricter controls on local and regional authorities, there has been little success.

Perhaps most distressing to Te Rohe Pōtæ Māori today is the loss of their food basket, their ‘source of spiritual and physical sustenance’. The Crown’s assumption of authority over fisheries, combined with the marked decline of taonga species (particularly tuna) as a result of commercial fishing and habitat destruction, has led to the severe detriment of Te Rohe Pōtæ Māori, who can no longer gather kaimoana as they had for generations before.

The cumulative prejudice of these factors, the diminishing of Te Rohe Pōtæ Māori tino rangatiratanga and mana whakahaere, the destruction and degradation of their traditional water bodies, and the significant decline of taonga species have caused serious and long-lasting prejudice to Te Rohe Pōtæ Māori, the legacies of which continue to this day.

We therefore recommend:

- That the Ngā Wai o Maniapoto (Waipā River) Act 2012 be amended to cover all the waterways and river mouths and harbours of Ngāti Maniapoto. This legislation to include co-management with DOC of customary freshwater fisheries species, particularly eels and marine species found in river mouths and harbours.
- That, in relation to other iwi of the district, the Crown consider special legislation to address their Treaty claims with respect to waterways, river mouths, and harbours.
- That a mataitai be constituted with respect to Whāingaroa Harbour.

22.8 Summary of Findings

Our key findings in this chapter have been:

- Where water formed a part of a waterway or water-body Te Rohe Pōtæ Māori considered a taonga and where possession could be established on the evidence as at 1840, Māori had the full rights of possession and management or mana whakahaere over that water and waterway according to their own tikanga or customary law and in accordance with their own cultural preferences.
- The Crown’s early legislation, contrary to Māori approaches to managing water, focused upon the rights of landowners, public navigation, introduced exotic fish species, recreation and regulating development.
- The Crown generally instituted its system of water management without regard to the Treaty of Waitangi or its principles, Māori tikanga or values.

918. Document 14, p5.
That pattern was set in the 19th century legislation and it continued into the 20th century until 1991. The Mōkau River Trust Act 1904 stands out as a rare exception to the Crown's pattern of management.

- The Crown vested in itself the sole right to use water for the purposes of hydro-electric generation. In doing so it assumed the right to control access and to charge for the use of water.
- Even where it was made aware of potential impacts on rights and interests in land, it pursued its own course and either it kept excess Māori land taken under the Public Works Act as for the Wairere dam or it failed to take into account potential impacts on Māori land as with Aorangi B blocks and the Mōkaiutī dam.
- Having taken possession of or authority over water and waterways/bodies, the Crown also delegated management responsibility to regional and local authorities without including or making provision for Te Rohe Pōtae Māori tino rangatiratanga or mana whakahaere. This is contrary to the principles of the Treaty, namely the principles of good governance in article 1 and rangatiratanga in article 2, and we find that the Crown's actions and omissions from 1840 to the passing of the RMA 1991 are inconsistent with their Treaty obligations.
- The Crown's local government restructuring commencing in the 1980s and the passing of the RMA 1991 has provided some opportunity for improved recognition of Te Rohe Pōtae Māori tino rangatiratanga or mana whakahaere, though this recognition remains extremely limited and has not been well implemented by the Crown or those bodies with delegated Crown authority.
- The historical management of waterways/bodies has been tantamount to treating them as sewers or drains into which pollutants such as sewage could be discharged. This has led to the significant decline in water quality in many waterways/bodies in the district and has significantly impacted on Māori spiritual and customary values and use. Because the RMA 1991 is not retrospective, the Crown, its agents, and long-term consent holders cannot be held accountable for the historical management of water pre-1991.
- Although the Crown has worked to address the pollution of rivers and streams in Te Rohe Pōtae, there was no evidence that this had been successful in any significant way, and some evidence indicating that the Waikato Regional Council's water management regulations were insufficient and in need of review.
- For all waters and waterways/bodies (with the exception of the Waipā River) there is a disconnect between the legislative framework for the management of environmental effects as regard water and waterways/bodies and the way that Te Rohe Pōtae Māori want their tino rangatiratanga and kaitiaki responsibilities exercised.
- Despite provision in the Fisheries Act 1908 that nothing in the legislation should affect Māori fishing rights, the Crown did not willingly enable or provide for those rights in statute. Māori concerns about the decline of their
fisheries due to habitat loss, commercial exploitation and over-fishing were thereafter marginalised in the Crown’s management regime until the 1980s.

- The Crown’s fishery management regime does not adequately provide for mana whakahaere for the claimants over tuna, which is a taonga of Te Rohe Pōtai Māori. Furthermore, the Crown has prioritised the commercial exploitation of tuna at the expense of Te Rohe Pōtai Māori concerns for the health of the species and their ability to harvest sufficient tuna for customary purposes. This is the case for other species, such as whitebait, as well.

- The appointment of tangata kaitiaki/tiaki and the management of customary fishing reserves and rohe moana areas under the Fisheries (Kaimoana Customary) Fishing Regulations is a vast improvement for the expression of Te Rohe Pōtai Māori tino rangatiratanga. At the local level this certainly provides the opportunity for practical mana whakahaere. We remain concerned that no progress in this respect has been made with respect to Whāingaroa at the end of our hearings.

- Overall, there has been a general decline in fish stocks in Te Rohe Pōtai. Some of this decline can be attributed to commercial fishing, over-exploitation and environmental effects on habitat. This amounts to a Crown failure to abide by its duty to actively protect taonga species and mahinga kai important to Te Rohe Pōtai Māori.

- Māori never willingly relinquished their possession and authority over fisheries, rather it was progressively wrested from them.

- The Crown failed to legislate provisions recognising or providing for Te Rohe Pōtai Māori’s tino rangatiratanga, relationship, values and tikanga related to taonga fisheries and mahinga kai until the enactment of the Māori Fisheries Act 1989. This failure is contrary to the Treaty principles of good governance, rangatiratanga, partnership, reciprocity, and mutual benefit.
CHAPTER 22 APPENDIX

NGĀ WAI O MANIAPOTO (WAIPĀ RIVER) ACT 2012 PREAMBLE

Ā muri kia mau ki te kawau māro. Whanake ake, whanake ake
Na Maniapoto
(1) This tongi whakamutunga speaks of a strength and unity of purpose that has been said to characterise the history of the Maniapoto Iwi.
(2) The tongi has guided the Maniapoto Māori Trust Board since its establishment in 1988 and will continue to do so as the Board strives to achieve the aspirations and development objectives of the Maniapoto people.
(3) The Board was constituted under its own legislation and is a Māori Trust Board within the meaning and for the purposes of the Māori Trust Boards Act 1955.
(4) The Deed in relation to Co-Governance and Co-Management of the Waipā River is the second negotiation that the Board has concluded for the benefit of Maniapoto. The first negotiation was the settlement of the commercial interests of Maniapoto in fisheries and aquaculture in 2007.

Ko te mauri, ko te waiora o te Waipā ko Waiwaia. Ko Waipā te toto o te tangata! Ko Waipā te toto o te whenua, koia hoki he wai Manawa whenua! Ko Waipā tetehi o nga taonga o Maniapoto whanui.
(5) The genesis of the co-governance deed was the deed of settlement between the Crown and Waikato-Tainui signed on 22 August 2008 (and subsequently replaced by a new deed on 17 December 2009) in respect of the Waikato River.
(6) The Waipā River is acknowledged as a significant contributor to the Waikato River. Accordingly, the Crown and Maniapoto initialled an agreement in principle on 4 September 2008 for co-governance and co-management of the Waipā River. The agreement in principle was subsequently replaced by a co-governance agreement signed on 3 November 2009.
(7) On 27 September 2010, the Crown and Maniapoto signed a deed in relation to co-governance and co-management of the Waipā River.

Te Mana o te Awa o Waipā
(8) The Waipā River is of deep, cultural significance to Maniapoto. It is a taonga to Maniapoto and respect for it lies at the heart of their spiritual and physical wellbeing and their tribal identity and culture.
To Maniapoto, the essence and wellbeing of the Waipā is Waiwaia, a spiritual guardian of all things that are the Waipā River. Its importance to Maniapoto is boundless.

To Maniapoto, the Waipā River is a single indivisible entity that flows from Pekepeke to its confluence with the Waikato River and includes its waters, banks, bed (and all minerals under it) and its streams, waterways, tributaries, lakes, fisheries, vegetation, floodplains, wetlands, islands, springs, geothermal springs, water column, airspace and substratum as well as its metaphysical elements with its own mauri.

Maniapoto have a deep felt obligation to restore, maintain, and protect the quality and integrity of the waters that flow into and form part of the Waipā River for present and future generations and to the care and protection of the mana tuku iho o Waiwaia.

To Maniapoto, their relationship with the Waipā River, and their respect for it, gives rise to their responsibilities to protect Te Mana o Te Wai and to exercise their kaitiakitanga in accordance with their long established tikanga.

Te Mana o te Wai

Te Mana o Te Wai is paramount to Maniapoto. Historically, Te Mana o Te Wai was such that it would provide all manner of sustenance to Maniapoto including physical and spiritual nourishment that has over generations maintained the quality and integrity of Maniapoto marae, whanau, hapu and iwi.

The obligations are intergenerational and extend to Nga Wai o Maniapoto — all waters within the Maniapoto rohe — whether the waters are above, on, or underground.

Te mana tuku iho o Waiwaia

The obligation to the care and protection of te mana tuku iho o Waiwaia extends to instilling knowledge and understanding within Maniapoto and the Waipā River communities about the nature and history of Waiwaia.

Te Awa o Waipā — i nga wa o mua

The relationship between Maniapoto and the Waipā River is historic, intellectual, physical, and spiritual and is expressed by the people of Maniapoto in various ways—

(a) The awa was a playground, a place to fish for inanga and for tuna, for freshwater crayfish, watercress, taraute and parera. During World War II and rationing, the awa was the source of kai. Significant tuna pa structures could be seen if the river level dropped during a dry spell. The 1958 flood changed that.

(b) The Waipā is a sacred river where the tohi rituals were performed, where the umbilical rites were observed and where the purification rituals were undertaken.

(c) The river chants its farewells to our departed ones, its murmuring waters bid welcome to our newborn and to our illustrious visitors from afar.
(d) Like an atua I wing my way into the heavens above! I gaze down below! There below lies my river Waipā, cutting her way over the breast of my native land. My eyes brim with tears at the vision of splendour, 'tis the love for my river that meanders away. My eyes gaze intently upon the deep pools of the river they are the myriad lairs of Waiwaia; the atua who gathers food for the people. The rocks of the river are an easy pillow for my head. The deep stretches of the river are a bed that rejuvenates my spirit and body. I am sustained by the river, by taking the waters of the ancients, drawing the waters from the atua, by procuring the very water of life!

(e) The rippling waters are clearly heard by my ears. Within the rippling I hear the murmurs of the past, of days gone, of times long ago! Thus the heart is prompted to proclaim, 'The river is an institution of tradition, an institution of knowledge, a festal board of treasured wisdom!'

(f) Waipā she is the life blood of the people. Waipā she is the life blood of the land, verily she is! Indeed she is the unfailing spring of the earth! She is the water that anoints the thymos of man to bind to the tribe the waters of life that issues forth from the lineage of the atua. She is the water that blesses the umbilical cord to ensure the health of the descend-ants of Maniapoto. 'Tis the water that permanently renders the knot of the navel cord secure and fast.

(g) The source of my river is at the foot of Rangitoto, it is Te Pekepeke! Let her flow on she is the Kauhanga-nui (the Great passage) the Kauhanga-roa (the Long passage)! The waters ploughed by the paddles of the many flotillas of Maniapoto of times passed. Let her flow northwards to where the currents do mingle within the Waikato there before the countenance of my King.

(h) Flow on oh waters to the north and to the west! Go out from Te Puaha to Tangaroa who lies broken upon the shore, and to the courtyard of Hine-kirikiri. Go on! Go on depart for distant place far away!

(i) Describing the likeness of Waiwaia . . . as having an amazing appearance . . . the ripples of the water reflecting in the sun under the moonlight . . . Rainbows that appear in the waterfall . . . But the most important part of Waiwaia is that it is the water itself and without it man could not survive.

Te Awa o Waipā – i enei ra

(17) The pollution, degradation, and development of the Waipā River have resulted in the decline of its once rich fisheries and other food sources which had for generations sustained the people of Maniapoto, and their way of life, and their ability to meet their obligations of manaakitanga; and the decline has been a source of distress to Maniapoto.

(18) The deterioration of the health of the Waipā River, while the Crown has exercised overall responsibility for the management of the Waipā River, has been a source of distress for the people of Maniapoto.
(19) The acquisition of land along the Waipā River has disassociated the people of Maniapoto from their River. It has led to the flooding of particular culturally significant sites and impeded and altered the natural flow of the Waipā River; this is a further source of distress to Maniapoto.

(20) Kei enei ra, kua kore haere te mana o nga tupuna, kua ngoikore te mauri o te awa. He ahakoa taku noho patata tonu ki a ia i tenei ra tonu nei, kua kore ahau me aku huanga e haere ki te awa ki te mahi kai, ki te kori, ki te whai oranga wairua ranei.

(21) Hei whakamutunga ake i enei kupu korekore noa aku, me kaha tatou ki te whakahoki i te oranga tinana, te haringa ngakau, te pikinga wairua ki to tatou nei awa. Pai marire.

A new era of co-governance and co-management

(22) Maniapoto and the Crown agree that protective measures are necessary to safeguard the Waipā River from further deterioration and that co-governance and co-management arrangements provide a foundation for the restoration and maintenance of the Waipā River.

(23) Maniapoto do not accept they have ever relinquished their authority or rights over the Waipā River, or its tributaries.

(24) The Waipā River is a significant contributor to the waters of the Waikato River.

(25) Maniapoto acknowledge that the restoration and maintenance of the Waipā River, as part of a larger catchment, needs to be coordinated with the management of the Waikato River. This whole of river approach is consistent with the desire of Maniapoto to keep intact the mauri of the Waipā River in its entirety.

(26) The Crown believes that it has responsibilities in relation to the Waipā River on behalf of the regional community and the nation as a whole.

(27) Maniapoto and the Crown maintain their own viewpoints in respect of the Waipā River that converge in the objective to restore and maintain the Waipā River.

(28) Maniapoto and the Crown aspire to a lasting and meaningful relationship based on shared and reciprocal principles.

(29) The Crown acknowledges its relationship with Maniapoto under the Treaty of Waitangi and the co-governance framework and co-management arrangements for the Waipā River are a reflection of this Treaty relationship.
Dated at Wellington this 15th day of December 2019

Deputy Chief Judge Caren Fox, presiding officer

John Baird, member

Dr Aroha Harris, member

Professor Sir Hirini Mead knzm, member

Professor William Te Rangiua (Pou) Temara, member