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Wai 1750

Tribal connections, settlement patterns and resource use in the North-Eastern Bay of Plenty prior to 1860

Report Summary

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The Author

My full name is David Vernon Williams. My educational qualifications, employment record, and a list of major research publications are set out in the report. I have acted as an independent researcher contracted to undertake research on law in history and on Treaty of Waitangi related legal and historical issues since 1992. I am now a Professor Emeritus of the University of Auckland | Waipapa Taumata Rau. My distinctions include being elected a Fellow of the Royal Society of New Zealand Te Apārangi, and an Honorary Fellow of the American Society for Legal History.

I have made a range of contributions to Waitangi Tribunal hearings from 1977 to the present. Details of those contributions are set out in the report. On 31st March 2023 I was appointed a Member of the Waitangi Tribunal | Te Rōpu Whakamana i Te Tiriti o Waitangi for a three-year term.

Potential Conflicts of Interest

The only previous contributions that I have made to matters that might impact directly or indirectly on my work to fulfil this commission are: (i) I was contracted to provide assistance to the Tribunal as a report writer for a short period during the Wai 46 (Ngāti Awa Raupatu) inquiry; (ii) I wrote a report on "The role of the Crown in the trial and execution of Kereopa Te Rau, 1871-2" jointly commissioned by the Office of Treaty Settlements and Te Maru o Ngati Rangiwewehi in 2011 (including attendance at a hui with uri of Mokomoko) that resulted in a statutory pardon for Kereopa Te Rau; (iii) I was contracted to undertake an eminent historian review in 2021 of a draft Historical Account of Crown-Whakatōhea interactions commissioned by Te Arawhiti (but not involving any engagement with the Whakatōhea Pre-Settlement Claims Trust); and (iv) I prepared and presented in court an affidavit of expert evidence on tikanga and state law commissioned in 2020 by Ngāti Ruatakenga, a hapū of Whakatōhea, for the High Court proceedings in *Re Edwards (No 2)* under the Marine and Coastal Area (Takutai Moana) Act 2011. That affidavit is filed on the record of documents for this inquiry as Wai 1750, #A6.

The research for this tribal landscape report was completed prior to my appointment as a member of the Waitangi Tribunal on 31 March 2023. The completion and distribution of the report was not completed until 15 September 2023. For the sake of transparency, I record that three members of the Wai 1750 Tribunal panel are members of one or both of the panels to which I have been appointed since 31 March 2023: the Wai 3300 (Tomokia Ngā Tatau O Matangireia – Constitutional Kaupapa) inquiry and the Wai 3325 (Climate Change Priority) inquiry.

The Research Commission, Project Purpose and Project Scope

1. On 11 August 2021 the presiding officer of the Waitangi Tribunal for the Wai 1750 inquiry issued Memorandum-Directions indicating that I would be the researcher commissioned to write a tribal landscape research report for the North-Eastern Bay of Plenty inquiry, but that I would be commissioned on the basis that the tribal landscape of Te Ūpokorehe (within the very same district) would not form part of my commission. Subsequently, pursuant to Memorandum-Directions issued 30 August 2021, I was commissioned to undertake a tribal landscape report up to and including the period of early European settlement prior to 1860 (Appendix A of the report).

2. It is important to note from the outset that the commission's end date of 1860 precludes consideration of the dramatic and traumatic events of the 1860s that are of paramount significance in most of the historic claims filed by claimants alleging breaches of the Treaty of Waitangi and its principles that fall for consideration by the Tribunal in this inquiry. Issues arising after 1860 is the subject of other commissioned research reports as well as direct evidence from the claimants already heard in Ngā Kōrero Tuku Iho hearings or to be heard by the Tribunal in due course.

3. The commission stated that the Report must address:

    a) The origins and settlement history of the iwi and hapū within the inquiry district;
    b) How the various iwi and hapū defined their respective rohe (regions), and what were the relationships and interactions of iwi and hapū of the inquiry district with groups both inside and outside the Inquiry district;
    c) How iwi and hapū used land, waterways and other resources, including traditional food sources, and what were their significant sites; and
    d) The early contacts between iwi and hapū of the district and Europeans prior to the 1860s.

Methodology and approaches to research

4. After reviewing a number of tribal landscape reports prepared for the Tribunal, this report adopted the methodology of the report prepared for the Central North Island Inquiry district by Dr Angela Ballara (who was later a member of the Waitangi Tribunal). In her preface she mentioned the importance of Māori ways of preserving knowledge orally, with expert human repositories succeeding each other over the generations. In the Wai 1750 Ngā Kōrero Tuku Iho hearings the Tribunal already has provided considerable space for oral whakapapa and mātauranga evidence of that sort to be heard. Ballara went on to make some observations about her report that are entirely apposite to my report:[1]

    > This study has had to be based on documentary sources. … The major resource for mātauranga Māori in this report has been the records of the Native Land Court. Other primary material has been used where possible, but … the main source, is the evidence given in the Land Court, and such sources have in- built consequences.

[1] Angela Ballara, 'Tribal Landscape Overview, c1800-c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry District', September 2004 (Wai 1200, A65), pp xii-xiii.

> Most Tribunal members will be aware that the Land Court process itself was flawed from the outset, and caused distortions in oral tradition. … At least some witnesses giving evidence in the Court deliberately misused oral tradition to gain temporary victories, and ultimately, to gain title to land.
>
> Many others did not so much abuse the evidence, as tell the stories of the past selectively so as to favour their own claims in the Court. … But in any case the Land Court itself could not be the proper venue for mātauranga Māori; many matters were not discussed in the Land Court because of their tapu (sacred, untouchable) nature. …

This paragraph towards the end of the Ballara preface contains sentiments that I believe are incontrovertible, and are equally relevant to this report:[2]

> The attention of the Tribunal is drawn to the many moments when it has been necessary to say that there are on-going disputed matters between iwi and hapū, sources of disagreement over interpretation of the past that have persisted over the generations. No amount of scholarly work by Pākehā (or, probably any other city-based) historians is ever going to resolve these issues now, and probably no attempt should be made to impose any solution. The Tribunal and the claimants will have to acknowledge the differences of opinion and interpretation that there are, and work with them.

At the beginning of her substantive report Ballara then went on to write of pitfalls and shortcomings in her work that I also wish to adopt as my own:[3]

> It will be essential for the Tribunal to hear about their identity and whakapapa from claimants' representatives, to correct any distortions that this study may introduce. Except in so far as it has already benefited from claimant advice, the best that can be said of this study is that it introduces the Tribunal to many of the peoples and problems of the [North-Eastern Bay of Plenty] in the nineteenth century.

5. It should be noted also that there were practical reasons that made it impossible in late 2021 and for much of 2022 to conduct consultation hui with members of claimant groups in the Wai 1750 district. There were severe constraints on organising in-person hui owing to Government measures to deal with the COVID-19 pandemic. Furthermore, I did not seek to conduct one-on-one interviews with individual claimants. There is a specialist skill set required for the recording and transmission of oral history information. I do not have that skill set. Therefore, my research into oral accounts of histories and whakapapa focussed on written records of oral accounts of histories and whakapapa. In any case, as a matter of principle, I believe it is of paramount importance that oral accounts of histories and whakapapa within the knowledge of living members of hapū should be presented directly to the Tribunal in the course of the inquiry. Though I mingled with claimants as much as has been possible within the parameters of COVID safety protocols at Ngā Kōrero Tuku Iho

[2] Ballara, 'Tribal Landscape Overview', pp xii-xiii.
[3] Ballara, 'Tribal Landscape Overview', p 2.

hearings, I have not sought to gather direct oral history for the purposes of this commission.

6. Neither in theory or in praxis is it reasonable for an historian to claim to be objective, neutral, or impartial. I agreed to undertake this research based on my qualifications and experience engaging with Treaty of Waitangi issues for many decades, virtually always working with Māori claimants. Necessarily that experience will colour my understanding of the history that I traverse in this report. For a discussion of historiographical debates about context and presentism I refer to a published academic article of mine on those contentious issues.[4] That said, I will do my best to present as fairly as possible and in a clear and coherent fashion all that I am able to find on the topics specified in the commission for the benefit of the Tribunal and all parties to forthcoming hearings.

Ngā Kōrero Tuku Iho hearings

7. I was grateful to be granted permission to attend all Ngā Kōrero Tuku Iho hearings that directly related to my project brief. It needs to be emphasised that this report is intended to complement claimant oral and written evidence. In assessing this commissioned written report, it should not be presumed that a written report (especially one written by an outsider 'expert') holds more authority than oral histories presented by claimants in understanding the tribal landscape prior to 1860, and in providing a context for the Treaty-breach claims into which the Tribunal is inquiring.

Tribal landscape issues arising from statements of claim

8. I was required by the project brief to consult statements of claim relevant to this research. My review of those statements of claim revealed that an important contested aspect of the oral history of the tribal landscape to be covered in this report concerns the deference due, according to many claimants, to multiple founding ancestors from several migrating waka traditions, as compared with claims that prefer to emphasise Muriwai as the primary founding tīpuna and affiliation to the Mātaatua waka as basic to Whakatōhea iwi identity.

9. Another issue is that a considerable number of statements of claim include assertions that the precise boundaries of Te Whakatōhea lands may be found in evidence from Te Hoeroa Horokai and Heremia Hoera in 1920. This evidence was presented to a hearing of a Native Land Commission in Ōpōtiki on 14 July 1920.[5] A matter for this report is how the boundaries there specified compare to other evidence concerning the pre-1860 tribal landscape.

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[4] David V Williams, 'Historians' context and lawyers' presentism: Debating historiography or agreeing to differ (2014) 84(2) *New Zealand Journal of History* 136-160.

[5] Heremia Hoera to Native Land Claims Commission, 14 July 1920, Recorded Minutes of Native Land Claims Commission, Whakatohea Confiscation, MA1 5/13/164, Archives New Zealand in *Raupatu Document Bank*, vol. 64, p 24636; Te Hoeroa Horokai and Heremia Hoera, evidence before the Native Land Claims Commission 1921 given on 14 July 1920 at Opotiki, in *Raupatu Document Bank*, vol 47, pp 18510-13.

Evidence from other inquiries and processes

10. A feature of the North-Eastern Bay of Plenty District inquiry, that is distinctively different from most (if not all) of the Tribunal's historical inquiries heretofore, is that there are contemporaneous parallel inquiries and processes with a focus on the same or similar historical issues and claims. There are Wai 1750 commissioned reports including those being considered in this hearing week 3. There is material, including historical accounts, produced in the context of direct negotiations towards a Treaty Settlement conducted between the Minister for Treaty of Waitangi Negotiations and the Whakatōhea Pre-Settlement Claims Trust (WPCT). There is also a considerable body of written and oral evidence presented to the High Court at Rotorua in 2020 under the Marine and Coastal Area (Takutai Moana) Act 2011. A lengthy judgment of Churchman J was delivered 7 May 2021.[6] All of this material has been perused in the preparation of this report. The primary source documentation relied upon includes in particular evidence from claimants presented to the Native Land Court in the nineteenth century, but also evidence to the *Re Edwards* High Court hearings, and evidence to Ngā Kōrero Tuku Iho hearings in this inquiry.

The Lyall and Walker books

11. All the bibliographies prepared for those researching the history of the Wai 1750 inquiry district highlight the importance of two books in particular. The first is *Whakatohea of Opotiki* published in 1979.[7] The second oft-cited monograph is *Ōpōtiki-Mai-Tawhiti, Capital of Whakatōhea: The story of Whakatōhea's struggle during the nineteenth and twentieth centuries* published in 2007.[8] I have studied both books with great care and drawn on them liberally in this report. However, those authors are very open about their focus on Whakatōhea as a whole and its identity as an iwi in the twentieth or twenty-first centuries. That focus is not pertinent to the scope of this commission and the commission concerns all hapū/iwi in the inquiry district and not only Whakatōhea. This report considers the changing hapū/iwi landscape of the region over many generations prior to 1860 and thus prior to the dislocations and re-alignments imposed on all Māori in the North-Eastern Bay of Plenty after 1865. It does not assume as a given the strengthening of iwi identities in modern times. Nor does it assume that the limited number of hapū recognised by Crown actors after the wars in Compensation Court hearings and in the allocations by Special Commissioner Wilson in Ōpape reserve and elsewhere in the confiscated lands district reflect the pre-1860 realities. Those are matters to be dealt with in other reports and in evidence by claimants. In the substantive chapters of this report, primary source documentation has been sought to assess whether there is support for propositions made in these published texts.

12. Usually, in writing up evidence given to Native Land Court title investigations, the primary source is cited first along with a reference to a secondary source if that might be helpful. Given that the whakapapa lists presented to the Native Land Court were very frequently shortened versions of descent from ancestors important to the witness, Lyall in particular has been an extremely useful source for fuller versions of entire descent lines drawn from evidence presented at multiple court hearings in the last

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[6] *Re Edwards (No. 2)(Te Whakatōhea)*, CIV-2011-485-817, [2021] NZHC 1025 (Wai 1750, #A 8).

[7] A C Lyall, *Whakatohea of Opotiki* (Wellington: AH & AW Reed, 1979).

[8] Ranginui Walker, *Ōpōtiki-Mai-Tawhiti, Capital of Whakatōhea: The story of Whakatōhea's struggle during the nineteenth and twentieth centuries* (North Shore: Penguin Books, 2007).

quarter of the nineteenth century. That whakapapa information is particularly important for efforts to understand the pre-1860 tribal landscape. The basic historiographical principle needs to be emphasised that primary sources (when accessible) ordinarily should be accorded greater weight than secondary literature evaluations. On the other hand, whilst endeavouring to extract historical information from primary sources rather than secondary sources, this report does make frequent references to published works of immediate relevance including Lyall and Walker's books when their information and comments are important.

Social formations: Fluid or fixed?

13. In chapter 5 of the report, adopting the methodology and approach advanced by Dr Angela Ballara, this report is wary of assuming pyramidical schemes of social organisation in pre-contact and immediate post-contact Māori social formations. As Ballara wrote, prior to the need for Māori to organise themselves into larger polities for dealings with the Crown and its agents 'Māori sources rarely if ever spell out neat, pyramidal schemes of ancient tribes and their sections, and neat chronological accounts of the defeat of earlier by later peoples.'[9] Thus, Toi and other ancestors (whose origins in the land long pre-date the arrival of ancestors such as Tūtāmure, Muriwai and Tamatea) are frequently cited as a contributing strand for customary entitlement claims put forward in the late nineteenth century. What Ballara insisted upon, and what the evidence I have perused suggests, is that 'before as well as after contact, Māori lives were moulded by multi-stranded whakapapa, hapū with more than one iwi affiliation, communities and settlements shared by multiple descent groups, and lands and resources claimed through an intersecting web of inherited, gifted or conquered rights (to mention only a few categories of land acquisition and control).'[10] These historical complexities have to be acknowledged however much Crown entities and some Māori leaders today crave for simplified versions of hierarchical large natural groupings.

14. There can be no doubt that an iwi included all the people who could derive their identity from particular eponymous, ancient, and founding ancestors. However, intermarriage offered multiple lines of descent so that people might belong to many different hapū, and – a point that the evidence reviewed for this report suggests needs to be emphasised – some of the hapū they might belong to would link them to more than one iwi. In agreeing with scepticism about the notion that the groupings of Māori social formations should be described in terms of a top-down pyramidical structure, the main focus of attention in this historical research has been the hapū. Hapū is a term to identify descent groups that would be best translated as 'tribe', not 'sub-tribe'. Certainly, 'hapū' might be applied to widely differentiated groups in terms of size and antiquity. Hapū were the corporate groups whose membership frequently acted as one body in political, social or economic affairs in ways that iwi or waka seldom or never acted. Though always vulnerable to fragmentation at times of stress, it is hapū that formed economic and military units requiring concerted action and it is primarily hapū who feature in accounts of occupation of land and defence of land. Hapū were usually more recently differentiated from their parent bodies than iwi and might take their names from ancestors living four to twelve or so generations before people living in the nineteenth century. Some large, older and more established hapū might be found scattered across

[9] Angela Ballara, 'Tribal Landscape Overview, c1800-c1900 in the Taupo, Rotorua, Kaingaroa and National Park Inquiry District', September 2004 (Wai 1200, A65), p 9.
[10] Ballara, 'Tribal Landscape Overview', p 172.

a number of sets of settlements and pā. Small or minor hapū could sometimes take their name from ancestors living only one to three or so generations before mature individuals living in the mid-nineteenth century or from quite recent events. An instance of the latter is the hapū Ngāti Patumoana emerging as a hapū name following a killing at sea of a Ngāti Ngahere rangatira woman as recently as 1830 or 1831.

15. It is of course an historical fact that in times of war hapū of an iwi would of necessity tend to come together for mutual defence. Sometimes several large hapū, close kin to each other, would concentrate all their branches in a single defensive location or advance together to defeat foes who threatened them all. The implications for customary entitlements to land when hapū joining together as an iwi for self-defence at a particular place became a thorny issue in Native Land Court proceedings that are discussed in detail in the chapter concerning the Takaputahi block.

16. This research project has inquired as deeply as possible within the time available into the tribal landscape of the very numerous hapū identified in historical materials as connected to Whakatōhea, the hapū of other iwi present in the North-Eastern Bay of Plenty district (apart from Te Ūpokorehe), and the nature of their histories, identities, settlement patterns and links to the land.

17. Some key issues looked out for during the research included:

i. the appearance and disappearances of hapū from mai rā anō to 1860 and the origin of hapū names;
ii. whakapapa from the earliest tangata whenua, as well as ancestors arriving in the later canoes;
iii. the size and strength of hapū (if knowable);
iv. the impact of contact with Europeans (including, after 1840, Crown representatives) for the emergence of larger hapū or iwi as primary identifiers for groups;
v. the revival of hapū names in Native Land Court hearings later in the nineteenth century;
vi. evidence that branches of the same hapū could be widely separated by geographical location;
vii. the extent to which iwi and waka groupings, or 'great names' were regarded as the ultimate source of identity;
viii. the extent to which, owing to multi-stranded whakapapa, hapū might claim more than one iwi affiliation.

Boundaries: Fluid or fixed?

18. In this inquiry district Te Whakatōhea-affiliated claimants have expressed a strong attachment to precise territorial boundaries of their iwi. In many instances, hapū claimants in their Statements of Claim have stipulated that their hapū boundaries coincide with the iwi rohe. The description of that rohe is based on the evidence of Te Hoeroa Horokai and Heremia Hoera to the Jones Native Land Claims Commission in 1920 at Ōpōtiki. The 'pou' mentioned in their evidence of boundary markers include non-traditional structures such as a swing bridge and a trig station to assist in the very precise delineation of the iwi rohe. The same boundary markers are the basis of the iwi

rohe in the historical account for Te Mākeotanga – Deed of Settlement, 27 May 2023, clause 2.6 and Attachment 1, Tāhatu: Area of Interest. Figure 3 at p 86 of my report presents in map form slightly different versions of the iwi rohe based on the 1920 evidence.

19. The claims of Ngai Tai are within my terms of reference. Though not yet filed in the Wai 1750 proceedings, there is a map of an area of interest identified by Ngaitai Iwi Authority in its 2013 Deed of Mandate to enter into Treaty Settlement negotiations. It displays a series of long straight lines from the coast to the interior. Given that the coastal starting point for Ngai Tai in the west is from Tirohanga (and thus includes the entirety of the Ōpape reserve), there is a very substantial overlap with the various Te Whakatōhea claimants' understandings of their ancestral rohe. See the map at Figure 6, p 89.

20. The pre-1860 context is the sole objective of this research commission. In traversing evidence given to the Native Land Court in the nineteenth century, and then looking at the fixed boundaries discussed above, there must be a very large question as to whether there ever were fixed hapū or iwi rohe boundaries when tikanga was the only operative law of the land. When no-one had yet heard of the requirement to provide surveyed maps of blocks for Native Land Court hearings, could tangata whenua have imagined that a colonial court would utilise boundaries on maps to ascertain and then extinguish all customary entitlements and interests in large blocks of land? It is suggested that maps and boundary markers are a latter-day outcome of colonisation and colonial legal practices that forced a reconfiguration of ancient knowledge and wisdom about tikanga to fit into the different modes of thinking required for 'success' in the Native Land Court.

21. Though 1860 was ninety years after first contact with Europeans and twenty years after the Treaty of Waitangi, tikanga remained the only effective law of the land (in what is now known as the North-Eastern Bay of Plenty) until after 1860. European traders and missionaries had to operate in ways that accommodated the fact that the mana of rangatira and the operation of tikanga prevailed. There were no Crown agents or officials living in the district. This was not a world governed by Native Land Court procedures requiring maps and fixed boundaries. My report cited, in support of the views taken here, a memorandum by Chief Judge E T J Durie for the Ngāti Awa Raupatu Tribunal panel that is directly relevant to this current project:

> The question of where boundaries lie between contending iwi, assumes such boundaries existed. The Tribunal is not entirely convinced that iwi were arranged in state-like institutions with borders of approximate definition fuzzed only by contestable zones.[11]

22. Thus, the approach taken in assessing the pre-1860 context in this report reflects on the following issues concerning boundaries – fluid or fixed:

(i) the unlikelihood that iwi or hapū in the North-Eastern Bay of Plenty were divided from one another by strictly defined and rigidly observed territorial boundaries, within which they had exclusive rights;

[11] 'Directions, Memoranda', 11 November 1994 (Wai 46, #2.59, para 5.12, p 18).

(ii) the extent to which hapū or iwi may have exercised authority over core territories that were edged by zones of overlapping occupation;
(iii) the possibility that within established core areas of a hapū or iwi there might be 'kainga pockets' in the territories of other hapū or iwi;
(iv) evidence that hapū were forever enlarging, fragmenting, and migrating, often as a consequence of warfare, but perhaps just as often following internal, domestic disputes, and that no group was necessarily fixed in one location for all time;
(v) the impact of 'conquering rampages' by taua from outsider hapū/iwi on the hapū/iwi tribal landscape within the district in the pre-colonial period;
(vi) the response of hapū and iwi within the district when notions of fixed tribal boundaries were introduced after contact with Europeans, and especially with Crown officers, in the period up to 1860 but prior to the dramatic dislocations caused by wars and raupatu in the 1860s.

Contextual issues

23. In chapter 7 the report canvasses some contextual issues. For an historian, it is obviously important that, so far as possible, twenty-first century understandings of tribal origins should not skew research trying to ascertain pre-1860 understandings. The research included consideration of whakapapa and traditions presenting waka migration narratives for origins, journeys, return journeys, and arrival points for hapū/iwi who now reside in and around the North-Eastern Bay of Plenty district including Te Rangimātoru, Arautauta, Ōtūrereao, Nukutere, Mātaatua, Te Arawa, Tainui, Horouta, etc. In some traditions I expected the first comers would be known and named as being descendants of Toitehuatahi (or alternate Toi names) and other first comers; in others I expected the emphasis would be on one or more migrating waka traditions as the foundation for named hapū and iwi who remain in place to the present. In line with the general approach taken to the research and writing of this report as outlined above, and unlike in the writings of Pākehā ethnographers in the past, this report makes no attempt to establish a "correct" version of conflicting traditions. It sets out the complexities of the lineages and traditions that have been recorded in the past and that may continue to be of significance in the present and future.

24. Pūrākau discussed in this report are sourced from written resources that recount oral histories and traditions. In a narrow Eurocentric perspective adopted by some historians, much that follows would be denied the name 'history' because the peoples, places and events are not verifiable in the manner that academic historians usually prefer their work to be scrutinised and assessed. That is not the approach that is adopted here. Rather than engaging with academic debates about myth or folk history, pūrākau encompass more than simple notions of creation and origin, 'myths' and 'legends.' They include contemporary re-telling of whakapapa, the origins of hapū names and place names, the location of taonga, and such like, passed down from the past to illustrate something about the present and the future.

Native Land Court

25. Most of the material included in this report is drawn from the minute books of the Native Land Court. However, the chapters of this report do not focus on the tenurial revolution institutions of the colonial state. The report by Jane Luiten on 'Nineteenth-century Land Alienation and Administration within the North-Eastern Bay of Plenty

Part Two: Lands ‘a waho’’ is of singular importance and is being presented in this hearing week 3 of the inquiry. This tribal landscape report draws heavily on the same evidence that Jane Luiten considers. However, it does not focus on whether the findings and judgments of the Native Land Court were good, bad or indifferent from a Treaty of Waitangi jurisprudence point of view. Rather, the search is for glimpses of the indigenous voice concerning hapū and iwi origins that may be gleaned from the evidence recorded in the Native Land Court’s written minute books. They contain a huge body of evidence concerning whakapapa, pūrākau of origins, migrations and settling within the blocks subject to title investigation hearings. Claimants put forward evidence as to whom they acknowledged to be the founding ancestors that justified their customary entitlements in the land. They asserted customs and usages specific to the block and/or to the larger rohe. The evidence usually makes explicit, often in a formulaic manner, what were the tikanga bases for the claims made. My focus is on the way claimants and counter-claimants framed arguments in support of their customary rights and entitlements, for the bases in tikanga of claims that were advanced, and for information on resources and locations utilised by hapū over the centuries.

26. What is concentrated upon in this report is the importance of evidence about the inland blocks of land, and the assertions of many (but not all) claimants that the coastal areas confiscated after 1865 were an integral part of a single landscape from the mountains to the sea. There was heavily contested evidence in many nineteenth century hearings as to the relationship between the coastal areas (by then confiscated) and the inland blocks that became the subject of Native Land Court title investigations. Ngai Tai witnesses tended to concentrate on evidence directed to their asserted conquest of the specific inland block under investigation without reference to adjacent lands. On the other hand, claimants from the various hapū now affiliated to Te Whakatōhea presented a range of conflicting narratives. Though the narratives were conflicting they all assumed that their customary entitlements to lands inland were closely linked to the coastal areas bordering the interior. They relied heavily on continuity of occupation evidence and denied the finality of any alleged conquest by Ngai Tai at an earlier point in time.

27. Grievances about the raupatu of fertile flat country along the coast in the 1860s must necessarily be a hugely important part of this inquiry, but it ought not to be concluded that the steep hill country inland was of little use to Māori (even if it was, as it turned out, of little use for long-term pastoral farming by European settlers). It is important also to remember that the flat country close to the coast was not always fertile open country. Forests covered the entirety of Te Ika a Māui, including the coastline adjacent to Te Moana o Toi, when the first human migrants arrived on these shores. Those original tāngata whenua and later waka migrants modified the landscape to create the forest-free coastal strip that existed around 1840.

28. What can be demonstrated, from evidence to the Native Land Court about the inland mountainous areas and from evidence given at Ngā Kōrero Tuku Iho hearings, is that the inland areas were a hugely valuable source of food and resources that helped to sustain the population including those who resided for much of the year along the flat country of the coastline. Inland resources were important to the health and well-being of hapū members over many centuries and remained so right up to 1860, even if less so in the peaceful period of coastal trade and relative prosperity in the last twenty years of the remit for this report after 1840.

Pre-1860 total population estimates

29. This report's review of population estimates suggests that no more than 5,000 or 6,000 would have been the total population in the North-Eastern Bay of Plenty inquiry district at the time of contact with Europeans. This a rather small total number of people living in a region of considerable size and fertility. The obvious point to be made is that the islands now known as Aotearoa or New Zealand, and the Ōpotiki district in particular, were very sparsely populated compared to the present. There was an abundance of food in the seas, rivers, coastlands and mountains to feed the population. Effort would be required daily, but it would not be a matter of extreme difficulty to sustain low numbers of people in dispersed locations by gathering, planting, harvesting and storage from season to season. Tikanga conceptual regulators and values on occupation | ahikāroa, and principles of reciprocity and balance | utu, would be well able to maintain and sustain peoples on their lands in reciprocal relationships with their kin.

Origins of hapū and their rohe: Ōamaru block

30. Chapter 8 of the report is the first of the chapters that consider evidence given in Native Land Court hearings concerning inland blocks. To assess that evidence the chapter begins with some comments from Tā Hugh Kāwharu on ambilineality as a form of kinship affiliation of cognatic descent in Māori social formations that relies on self-defined affiliation within a given social system, meaning individuals have the choice to be affiliated with their mother's or father's group. In the Ngā Kōrero Tuku Iho hearings the Tribunal heard evidence to the same effect from Dr Te Riaki Amoamo. He spoke of hapū affiliations that might be called 'taharua' or 'karangarua', which he loosely translated as *bilineal*. In whakapapa terms this applied when one's parents are from two different hapū and it gives you the right to stand to speak, or represent your whānau, on both marae.

31. Certainly, in the research for this project I have ascertained numerous examples of claimants and their witnesses offering more than one affiliation to identify themselves depending on the time, place and context. A prime example is the rangatira Tiwai Piahana (also known as Piahana Tiwai and as Tiwai Pearson). It is suggested that every one of the following different self-identifications (as cited in my report) are perfectly valid for the setting in which each statement was made by that important rangatira:

> My name is Tiwai Piahana – I belong to N'Patu, I am also a Chief & formerly belonged to N'Ngahere, but at the death of a woman called Hineaua [Hineiāhua] I became the Chief. We changed our name to N'Patu – leaving a portion of N'Ngahere as They were.
>
> I am of Whakatohea, i.e. of Upokorehe and I reside in Opotiki. … I claim [this land] as a Raumoa. My ancestor Raumoa lived there.
>
> My people Ngatipatu worked at Waiohape.
>
> I am a chief of Whakatohea.
>
> I am a Queenite.

32. Somewhat remarkably, Tauhā Nīkora, one of the lead claimants in both Tāhora No 2 and Ōamaru blocks, presented his claims at first as being on behalf of Ngāti Rua but then in the course of the lengthy hearings for both blocks he changed his affiliation and claimed to be representing Ngāti Patu.

Treatment of Native Land Court evidence

33. The decisions of the Native Land Court are not customary evidence as such and many of its decisions were swayed by considerations of Crown policies and objectives that distorted how customary entitlements evidence was treated. Important reflections on the Court decisions can be found in detail in the Luiten Part Two report. It is evidence about whakapapa connections, and about occupation over the long term, that must be of most relevance for this report. A significant quantity of that evidence has been examined in the Native Land Court's Ōpōtiki minute books for discussion in chapters 8 to 10. They set out in some detail information drawn from each of the four southernmost blocks of land that were the subject of title investigations in the Native Land Court in the latter part of the nineteenth century. The four blocks were Ōamaru, Takaputahi, Whakapaupākihi and Whitikau. The aim in each chapter is to seek to gain an understanding of how the ancestors of today's claimants described themselves in the latter part of the nineteenth century at a time when the older ones giving evidence were alive prior to 1860 and prior to the traumas of the 1860s. These chapters highlight the whakapapa lists put forward by claimants and witnesses, and especially note whom of their ancestors were defined as important founding ancestors for each hapū, what areas the claims covered, and what bases in tikanga emerge from the contents of their evidence and the manner in which it was being presented – always bearing in mind that their evidence was being presented to a colonial court institution rather than in the more tikanga-friendly context of a hui-a-hapū or hui-a-iwi.

34. One of the major findings of this report is that the pre-1860 tribal landscape is distorted by any assumptions that the confiscated coastal lands were in some way distinct and separate from the inland bush blocks and their ample resources. There may well be dispute as to which rangatira and which hapū was entitled to enter land-use transactions with the missionaries from 1839 onwards, but the important point in the Ōamaru evidence is that the land in Ōamaru was a part of a rohe that 'would have gone to the sea.'

35. The key points of the considerable evidence about the ancestor Tarawa, for the purposes of this report, relate not to the historicity or otherwise of the pūrākau about his dramatic arrival on these shores, but the fact that an ancestor at least sixteen generations removed had lived in these inland parts, that there were other prior inhabitants already in the district, and that Tarawa was an ancestor from whom many hapū in the inquiry district can and do trace a direct line of descent. Many of the kaiwhakakahaere/conductors and their witnesses in Native Land Court hearings about the four inland blocks considered themselves to be of Te Whakatōhea, asserted that their coastline was at the least from Paerata/Opotiki to Awaawakino (contrary to Ngai Tai claims), and that their lands spread from that coast a long way south, at least to the inland territory around where Tarawa and Manawakīaitū lived out their days at the maunga Moutohora (or Motohora)

near modern day Motu village after Tarawa failed Tuwharanui's testing of his atua status.

36. One of the most transparent aspects of the tribal landscape for Ōamaru is that, in the choices made by each claimant and their witnesses, the permission that tikanga gives to trace ancestry by ambilateral and ambilineal descent readily allows choices to people as to how they wish to frame their identity. Strikingly, within this one hearing the claimant Tauhā Nīkora commences the claim as belonging to Ngāti Rua but later reframes himself as being of Ngāti Patu and then of Ngāti Rakautahi. Another point is that, though all engaged in the court hearings in opposition to each other's claims, they no doubt would be well able to find kinship links in their whakapapa to all the other members of their iwi in the room where the court sat at Ōpōtiki if whakawhanaungatanga was the uppermost consideration. When presenting whakapapa for the purposes of ascertaining customary entitlements to lands and resources, and the power to sell it if they were declared owners by the Native Land Court, then the emphasis was on differentiation of one hapū from another.

37. As to the ancestor upon whom a claim in this one area of land might be sourced in the evidence, and the various waka of those ancestors, there were multiple options. Without elaborating on the ways that the whakapapa were interconnected, it seems important to note how numerous are the ancestors who appear as the beginning point of whakapapa evidence by claimants: Tārawa, Rangipuraho, Ranginui a Te Kohu, Ruatakena, Uru Ariki, Te Rangitaukapiti, Taritoronga, Warokino, Tapuarongo (with Aponga, Kapuranga and Kahumaku), Toi, Muriwai, and Te Rangi. All of these founding ancestors were thought to be of crucial significance by one claimant or another for the various hapū claims. They draw attention to ancestors living many generations apart from each other in some cases. Whilst some wished to draw attention to the oldest traditions relating to Toi, Tārawa and Muriwai, others invoked ancestors much closer in time to themselves and their hapū.

38. Since the post-raupatu land allocations by the Compensation Court and special commissioner Wilson, and then later the statutory creation of the Whakatōhea Māori Trust Board, only a very small number of hapū have been recognised by Crown agencies and officials. Most of the statements of claim of participants in this Wai 1750 inquiry have identified themselves with one or more of that small number of hapū. Evidence from the Ōamaru hearing suggests, however, that the oft-quoted possibility that there were twenty-two hapū in Whakatōhea's past must be an under-estimate of the total. My count of the hapū mentioned in the minute book narratives, in relation to this one inland block, found at least twenty-six named hapū entities. How large each hapū might have been and how many of them were hapū that had ceased to exist is a matter for conjecture. What is clear is that multiple hapū identities were an important aspect of life in social formations in this inquiry district prior to 1860.

39. What is also a matter of interest is that not all of those hapū recognised by the Crown in the 1870s receive a mention in this third volume of the Ōpōtiki Minute Book in evidence for a block of land immediately south of the Ōpape reservation. Then, on the other hand, the Court – presided over by Judge Wilson, who was himself the Crown's Special Commissioner in the 1870s – recognised (and then extinguished) the customary entitlements of some hapū not recognised by the Crown in the 1870s. The Court's rather arbitrary conclusions on customary entitlements are set out in the Luiten report. What

I would note is that of the seven hapū granted land in the Ōpape reservation, just four are named in the portioned blocks within Ōamaru: Ngāti Ira, Ngāti Patu, Ngāi Tama, and Ngāti Ngahere. Hapū not named in the 1870s but recognised by the Court in 1888 were Ngāti Rangi, Ngāi Tamoko, Ngāti Rakautahi, and Whakatane. Not named as such by the Court as having entitlements in this block were three hapu who had been fully or partly recognised within Ōpape: Ngāti Rua, Ūpokorehe, and Ngāti Muriwai. Of those three hapū, Ngāti Rua is the subject of a great deal of attention in the evidence but is not recognised as such in the title determinations. Ūpokorehe is mentioned a small number of times in relation to the Whakatane claim but that is beyond my remit. Ngāti Muriwai is not mentioned at any point in the evidence or the title determination, though Muriwai as a foundational ancestor was mentioned many times.

40. The *take* put forward as the basis of claims were not uniform. The following phrases were used: 'ancestry, conquest and permanent occupation'; 'ancestry, no conquest, but constant occupation'; 'ancestry, conquest and irregular occupation'; 'we occupied the land by discovery'. Each of these *take* were thought by the claimants putting them forward as sufficient for recognition as having customary entitlements in the block. Some of the claims related to the whole block, others to parts of the block. Most of the evidence was of occupation activities moving from place to place within the area. There was substantial evidence of hunting and gathering activities for birds, eels, berries, fernroots and such like though little focus on cultivations in this hilly area. There were references to many pā sites, but less evidence of fortified pā in this hilly inland area stretching up to Motohora. Whilst there were many claims to parts or to the whole of Ōamaru by various claimants, there were several instances of evidence pointing to the fact that Ōamaru was not a distinct territory. Rather, it was but part of the wider tribal domain of many hapū extending from the hills to the coast. The most plausible understanding of the evidence in its entirety is that the exercise of customary activities by many hapū covered the one large rohe from Motohora at the southern point of inland Ōamaru right through to the coast – regardless of what confiscation lines and block survey maps still suggest to the contrary.

41. This report concludes that it is inconceivable that each hapū had just one discrete area of customary entitlement and that if its members travelled further afield then they would be somehow "trespassing" on the whenua of another hapū. Certainly, it is inconceivable that a block of some 104,480 acres – which was the immediate hinterland for numerous hapū living for much of the year, but not all of the year, in coastal locations – could have been in the 'customary ownership' of just one or two hapū. By way of a counterfactual scenario, if some of Ōamaru had been retained in Māori ownership for a number of years after the title investigation and partition in 1888, would Ngāti Rangi owners in Lot 6 be "trespassing" on the lands of Ngāti Ngahere owners in Lot 5 or Ngāi Tamoko owners in Lot 7 as they travelled up the Pākihi stream? Would Ngāti Ngahere owners in Lot 5 be "trespassing" on Ngāti Ira land if they sought to access their large block from the Waioweka river rather than the Pākihi stream? It is suggested that it would be equally incongruous to ask, in respect of the pre-1860 era, if members of those hapū, all of whom gave evidence of exercising resource gathering activities in the block, were not entitled to be there at all.

Relative interests of Whakatōhea hapū in Takaputahi No 1

42. Chapter 9 turns to the relative interest hearing for Whakatōhea claimants within Takaputahi block in 1895. It concerns a Native Land Court hearing specific to the claims and customary interests of the various Te Whakatōhea hapū only. Though all the claimants explicitly identified an affiliation with Whakatōhea as an iwi, hapū claimants put forward very different perspectives about how to interpret their tribal landscape pre-1860. The individualisation of customary tenure hapū and iwi lands into shares which was the result of this hearing as ordered by the court (rendered nugatory by the later Native Appellate Court decision against all Whakatōhea hapū and in favour of Ngāi Tai interests) tells us nothing about tikanga pre-1860. However, the arguments about which hapū held customary entitlements in the block does tell us a good deal about the nature of tikanga contestation. A tikanga-compliant outcome according to some witnesses placed the outmost stress on hapū as the primary unit of society responsible for maintaining and sustaining tangata whenua on their whenua. Regardless of ancestry through the various lines of ancestors acknowledged as important over the centuries of living in a rohe, and regardless of the closeness of whakapapa connection to other hapū in an iwi confederation, absolutely essential to recognition of customary entitlements must always be proof of ahikāroa | actual occupation and use over the years on that specific land: 'no occupation and therefore no rights.' Rather than broadening the possible beneficiaries to be listed for Takaputahi by embracing all those who descended from Tūtāmure wherever their kainga were, Ngāti Rua witness Tuakana Āporotanga now insisted on the later ancestor Ūpokohapa as the appropriate founding ancestor.

43. A tikanga-compliant outcome from the point of view of other witnesses was that no hapū could defend its lands by itself. Whether acting in defence against persistent enemies such as Ngai Tai over many, many years; or deciding on flight or fight when Ngāpuhi and Ngāti Maru raiders affected their lives for a decade or two; or deciding which of the competing new Christian missions to adhere to, and whether to offer sites of occupation for churches and missionaries' homes; or whether and how to engage in commodity sales, shipping and trade in peaceful times from the late 1830s – in respect of all such decisions, if there had ever been such a thing as hapū autonomy and self-reliance in the past, those times were no more. Hapū had to combine their forces in an iwi and work together for their mutual benefit. Tikanga had to evolve. In Takaputahi the iwi had decided to work in unity to win a case because working independently as competing hapū claimants in the earlier Native land Court hearings for Whitikau had proved disastrous and had led to awards to Ngai Tai claimants (who did indeed work together for their collective common good). That all hapū had supported the take for the land in this case was akin to the hapū coming together to fight battles against Ngai Tai, Ngāti Awa or whoever in the past. If hapū had not combined together to defend tribal possession of the coast in the Waiaua area by force of arms in the past, there would be no Ngāti Rua lands either at Waiaua or inland to Takaputahi, Whitikau and Whakapaupākihi. So, what might be a reasonable assessment of the criteria for customary entitlements to land and resources pre-1860? Without ahikāroa could there be no customary entitlements at all? The Ngāti Rua claim was that they were the only hapū occupying the territory at Waiaua, so they and only they were the holders of customary entitlements in Takaputahi. Theirs was an exclusive entitlement. In the past, after other hapū had assisted in a successful defence of land, then they would return to their own kainga and continue to hold their customary entitlements at their own places.

44. Others, whose intermingled descent lines made them close relatives of Ngāti Rua, pointed out that all involved were descendants of Tūtāmure by one descent line or another, that it was the Tūtāmure ancestry that bound them all together, and so all should be treated equally as members of Te Whakatōhea iwi. One statement by Rewita Niwa in the Takaputahi hearing was a flat rejection of the notion of discrete hapū boundaries: 'I don't know of any particular portions of this land belonging to particular ancestors. This land I always heard was a hunting ground belonging to the ancestors there are no boundaries in it.' Yet the evidence of that same Rewita Niwa for Ngāi Tama in the Ōamaru hearing (quoted in the previous chapter) spoke of his ancestor Warokino making the first division of the land among the different hapū. In tikanga there are no hard and fast precedents. There are conceptual regulators, generalised principles, and underlying values, but application of those principles and values will play out on a case-by-case basis. Tikanga is neither rigid nor static. If Tuakana Āporotanga went to Ōtara where Rewita and his people had had their pā, their kainga and their hunting grounds, might Rewita have insisted on primacy of Ngāi Tama in that rohe? What might Mini Tamaipaoa have said in response to any Ngāti Rua argument for equality of entitlements within her Ngāti Ira heartland around Waioweka?

45. There is an interesting consideration in this Takaputahi evidence as to whether Ngāi Tamako and Ngāti Rua were one hapū or two. These were said to be separate names for the same people, or was Ngāi Tamako a name that came to be distinctive owing to the fact that, in the difficult times of the inter-tribal musket wars, some members of a hapū lived for a time elsewhere in Ngāti Porou lands to earn money from flax scraping, whilst other members of the hapū kept the home fires alight in the hope and expectation that all could be reunited on their ancestral lands when peace came in the future? As with much else in this report, on many issues there were contestable versions of how tikanga could or should play out from one context to another.

46. Evidence given in this hearing is of significance for understanding the evolution of tikanga to enable the hapū of the district to engage with new ideas (especially in the conversion of the majority of the people to one or other of the competing Christian denominations) and to engage with new people (especially shippers, traders and missionaries). The tikanga on reciprocity that had governed the enmities between war-faring neighbours in the past was displaced in the 1830s with notions of peaceful co-existence so that fortified pā no longer needed to be built as Christianity had come. In each hapū most members became adherents of either the Protestant mission or the Catholic mission and attended the services of the denomination their hapū had chosen. It is also apparent that those chosen by the CMS mission to be lay readers and by the Catholic mission to be catechists now had some standing in dispute settlements within and between hapū. The most important example of that was the mediation by catechists accompanied by Dr Edward Shortland and the missionary Wilson to define where the Whakatōhea/Ngātai boundary should be placed on the coastline. It is noted later in the report that initially at least not all rangatira accepted this mediated outcome, but neither did warfare return in defence of contested iwi versions of the boundary between them. The tikanga that governed allocations of use-rights to land in the centuries past obviously had to evolve to enable friendly co-operation with incoming Pākehā who wished to trade and to settle on defined pieces of land. That does not at all entail an acceptance that Māori in this district happily agreed to any arrangement consistent with the notions of sale and purchase and of alienation as understood in English law. The evidence in this hearing and that for Ōamaru suggests that the pre-1840 old land

transactions involving the Church Missionary Society were engagements involving mutual and reciprocal obligations between hapū and missionaries. The deeds signed contain lists of individuals who agreed to arrangements labelled 'sales' in English translations. The witnesses in the Takaputahi and Ōamaru hearings, though, described those who entered into those transactions as members of specific hapū. Their evidence included contestation as to which hapū were the prime movers in the land transactions, but no hint whatsoever as to the intentions of the individuals qua individuals appending their names to deeds. There is certainly no suggestion that those named in the deed were individuals acting on their own behalf and with an understanding of English notions of alienation. After 1840 and up to 1860, this was a district where life was lived without the presence (for good or ill) of any resident Crown officials and with very few resident Pākehā. It is not at all plausible to assume that English law notions of once and for all permanent alienations by sale and purchase, for consideration offered and accepted, might have infected and transformed or displaced mātauranga-a-hapū and tikanga-a-hapū.

Whitikau and Whakapaupākihi blocks

47. Chapter 10 of the report concerns evidence in four separate, but linked hearings to the Native Land Court concerning Whitikau and Whakapaupākihi, the southernmost inland blocks within the Wai 1750 inquiry district. That evidence demonstrates an unbridgeable gap between the perspectives of Ngai Tai and those of the several Whakatōhea hapū claimants. Many battles between these close neighbours, by means of physical warfare and killings in times gone by, were now transferred to the battleground of litigation in a colonial court. Both sides were nothing if not intransigent in the positions they took on evidence as to who won which of the old-time battles, and who were the rightful descendants of the hapū who had lived on the land many generations earlier. Ngai Tai hapū adopted a unified position at all times. Hapū claimants who all agreed that they affiliated to Whakatōhea as their iwi, however, were not at all consistent in the way that they presented their hapū-centric claims.

48. The report cites a statement about these hearings from Professor Richard Boast:

> A great deal of evidence was given on [correct boundaries] in the proceedings, but the Court said (and it made similar remarks in many cases) that the material was "as is usual in such cases, utterly contradictory" and was of little assistance. (It is just as likely that the clear and agreed-upon boundary that the Court was looking for had never existed at any time.)[12]

I suggested that Boast's final sentence in parentheses is hugely important. Despite the setting of boundaries being such a feature of Native Land Court hearings – and hence necessarily a focus of claimant evidence to that court – a very important question for consideration in this tribal landscape report is whether, in pre-1860 times, there ever were 'clear and agreed-upon' boundaries as to customary entitlements.

49. The evidence of ancestral connections to land may not have been of assistance for nineteenth century Native Land Court judges given the parameters of the tasks they set themselves to achieve. Yet, contradictory as indeed it was, there is a good deal of evidence in the minute books highly relevant to the tribal landscape of this inquiry district in the centuries prior to contact with Europeans and in the decades post-contact

[12] Boast, *Native Land Court*, vol 2, p 868.

up until 1860. It is also pertinent to point out at the beginning of this chapter that Ngai Tai evidence on physical sites within their claimed rohe was found distinctly wanting (both as to the location and the nature of sites) in both the Whitikau No 3 judgment in 1889394 and, again, in the Native Appellate Court's judgment on Tunapahore, Kapuarangi and Takaputahi in 1898. In this tribal landscape report the outcomes reached in judgments of the courts applying colonial jurisprudence thinking are not necessarily relevant. Yet the fact that Ngai Tai evidence on the location and nature of significant sites within areas they claimed was found wanting following site visits by the assessor must be highly relevant to assessing their ahikāroa evidence. The 1898 Native Appellate Court judgment of Judges Edger and Johnson commented that Ngai Tai had asserted continuous occupation of land for twenty six generations, and thus 'it is inconceivable to this Court that a tribe in continuous occupation of land from ancient times should be ignorant of the sites of the pas that formerly stood upon it.' On the other hand, that Whakatōhea hapū had their claims dismissed in the courts' final outcomes for both Whitikau No 3 and for Takaputahi because of the contradictory nature of some of the evidence certainly does not mean that their evidence is irrelevant or untruthful for the purposes of this report. That claimants from different hapū disagreed with each other as to who was the founding ancestor for the land did not mean that none of the hapū had a history of use and occupation of that land. Again, that they disagreed as to whether customary hunting and cultivation activities were evidence of shared customary entitlements, or of the exclusive entitlement of only one hapū, did not mean none of them should be accepted, nor that all of the Whakatōhea-affiliated hapū should have had their claims rejected outright.

50. To add to the large number of hapū of Whakatōhea that may have existed in this inquiry district at one time or another (as mentioned earlier), Ngai Tai also seems to have comprised more hapū than the iwi's 2013 definition of itself as 'Ngaitai te Hapū, Ngaitai te Iwi' with only Ngāti Ririwhenua and Ngā Pōtiki mentioned as historical hapū. In the Whitikau No 3 proceedings a witness identified four hapū whom he described as of Ngai Tai, namely Ngāti Hakiri, Ngāti Ririwhenua, Ngāpotiki, and Ngatitukeke who had gone into exile with Ngāti Maru. A Ngai Tai witness mentioned Ngāti Hakari and Ngāti Rongomai in addditon to Ngāti Ririwhenua and Ngā Pōtiki.

51. The evidence discussed in this chapter, like that in the previous chapters on hapū origins and rohe, provides many examples of diversity in the choice as to who might appropriately be named the founding ancestor(s) for the land in issue. The further back the ancestor a claimant relied upon the wider and more inclusive would be the communities of descendants. Identifying a more recent ancestor as the founding ancestor narrowed the potential members of the group to a specific hapū or sub-division of a hapū. The evidence provides widely differing perspectives on the importance of conquest as a source of title compared to other take – in particular the weight to be attached to occupation (permanent or seasonal). Disputes about boundaries, and doubts as to the relevance of boundaries, is to be found here too.

52. There is ample evidence also to support the points made by Ballara quoted earlier that 'before as well as after contact, Māori lives were moulded by multi-stranded whakapapa, hapū with more than one iwi affiliation, communities and settlements shared by multiple descent groups, and lands and resources claimed through an intersecting web of inherited, gifted or conquered rights'. The possibility of 'hapū with more than one iwi affiliation' is perhaps particularly pertinent to evidence in the

Whitikau No 3 rehearing that three claimants living in the Ōpape reserve and identifying for many purposes as being of Te Whakatōhea also relied upon ancestral connections with Whariu who was usually at the centre of Ngai Tai ancestral claims.

53. Descent from Muriwai is always seen as absolutely crucial for those highlighting their Mātaatua connections. However, claimants in the Native Land Court title investigations for the inland blocks generally identified themselves with a primary affiliation to one (or more) of the hapū Ngāti Ruatakenga, Ngāti Patumoana, Ngāti Ira, Ngāti Ngāhere and Ngāi Tamahaua who were herded into the Ōpape reserve after the post-1865 confiscations. Witnesses also mentioned more than twenty other named hapū of Te Whakatōhea in their evidence, but Ngāti Muriwai is very seldom mentioned. There is a Ngāti Muriwai hapū that often occurs in descriptions of the Tūhoe tribal landscape but that hapū was centred on Ōpouriao near Taneatua (but that is well outside the Wai 1750 district).

54. A firm conclusion to be drawn from the inland block cases is that the coastal versus inland dichotomy was not a significant feature of the tribal landscape. On the contrary most claimants (except Ngai Tai) appearing in these proceedings treated the totality of the rohe as significant in one way or another. There were no 'waste lands' in this region of the country. Trees, rocks, hills, streams and other features of the landscape were known and named by those whose whakapapa and history bound them to this rohe. Witnesses spoke about their intimate associations with rocks, rivers, trees, snaring locations, pā (scarped or unscarped) and so on for days and weeks on end in the Native Land Court sittings at Ōpōtiki. Though that evidence often was blithely disregarded by the judges of the court, still it provides us with information that tells us a great deal about histories and traditions and help us in reaching an understanding the pre-1860 tribal landscape.

55. Contradictory as the evidence was in the Whitikau and Whakapaupākihi hearings of the Native Land Court, there are important pointers to the pre-1860 tribal landscape that should be useful for the Tribunal in the Wai 1750 hearings. The first, and most important perhaps, is that there can be no certainty about ancestral boundaries – certainly not fixed boundaries – between the hapū of Ngai Tai and the hapū of Whakatōhea. On the contrary, almost all witnesses addressed the fact that there had been a long succession of battles and disputes between those contending parties over a very long period, and often named the important warriors who had died in each of the battles. Depending on who had won the most recent fight, the area of the coast between Tirohanga and Tōrere might change hands from Ngai Tai to a hapū of Whakatōhea (usually Ngāti Rua, but often with others). Then another battle might alter the balance of power and have an impact on the respective areas now occupied and defended. Whatever the outcomes had been in pre-musket times, the pushing and shoving this way and that from Ōpōtiki to Tōrere on the eastern side (and also from Ōpōtiki to Ōhope on the western side) happened all over again as hapū returned in drips and drabs from Hauraki, Tauranga, Wharekahika, Tokomaru and Tūranga. Also, there was the impact of the return home of captives who had been held in Te Tai Tokerau – some of them bringing news of a new religion that might (and did) change the lives of their hapū. The inter-iwi and inter-hapū disputes continued into the early years of colonisation and efforts to fix boundaries did not convince the respective parties to give up on the oral history narratives that supported their respective positions. The conclusions reached in the judgments of the Native Land Court in the Whakapaupākihi and Whitikau title investigations did not

really try to assess the tikanga and customary evidence as such, but rather decided that both parties deserved some recognition in that inland area and divided the land accordingly.

56. The most significant issue in all of this, it seems, was that – _even if it was appropriate to make title determinations about fixed boundaries at all – then the totality of the lands from the coast to the deep interior should be viewed as a whole and not on a block-by-block basis. Ngai Tai claimants found it convenient to restrict their evidence to claims of a single successful defeat of Panenehu, or a series of defeats of Panenehu over a short time a long time ago somewhere in the Whakapaupākihi/Whitikau area. They insisted that that was the end of Panenehu whose identity had been submerged into that of Ngai Tai. The evidence offered for continuing Ngai Tai occupation of this part of the interior was sparse and sometimes it was asserted that no people had been in occupation there at all for a very long time. Presumably this was a claim that ahikāroa could not be proved and that the customary entitlements of Panenehu had gone cold long ago. On the other hand, the various hapū claimants with connections to Te Whakatōhea provided a rich narrative of information about fernroot diggings, catching kiore rats, kākāpo nests, bird snaring trees (sometimes named), pā or kainga sites, fruit berries, eel catching spots, and (in post-Cook times) pigs. For them Whitikau was not separate from coastal sites of occupation such as Awaawakino, Ōpape, Ōmarumutu and the rohe of Waiaua generally. Inland from Waiaua to Toatoa, to Whitikau and to Whakapaupākihi was one rohe.

57. Of course, if one accepts the idea of one rohe being the appropriate focus for assessing the tribal landscape (and not artificial lines in the later surveyed blocks), then access to and exercise of customary entitlements to the inland resources surely would depend on which iwi or hapū controlled which part of the coast at any particular point of time. Both sets of claimants recount histories in which at times Ngai Tai would be in occupation along the coast as far west as Tirohanga and at other times Ngāti Rua (and perhaps others) were in occupation as far east as Torere (especially when Ngai Tai were in exile seeking safety from raiding parties by re-locating to Hauraki and Turanga). Ngai Tai claimants insist that the defeat of Panenehu was final and was never avenged. Whakatōhea claimants point to a series of battles on the coast that were relevant as to whose authority prevailed inland of those battles thus ensuring continued access to the inland resources as well as safe havens in insecure times.

58. It seems reasonable to suggest, therefore, that seasonal occupation of the southern inland regions would change hands as the coastal regions changed hands. If Ngai Tai really was in control of the entire Waiaua area as far as Tirohanga then it would be likely that they supplemented their seaside resources with nearby bush resources at least on a seasonal basis in Takaputahi and Whitikau. On the other hand, if one or more hapū of Te Whakatōhea held authority over and maintained ahikāroa from Tirohanga to Awaawakino (and at times perhaps somewhat further east going towards Tōrere) then surely it would be members of those hapū who would be in the position to access the bush resources. As Warana Mokomoko of Ngāti Patu put it in answer to exactly that question by Heremia Hoera in 1895: 'Q Whitikau and Takaputahi lie inland of Waiaua, owing to the position of these, would not Whitikau and Takaputahi be the natural hunting grounds of the people living at Waiaua. A Yes for the industrious among them.'

Origins of hapū: Contemporary iterations of history and traditions

59. Chapter 11 paraphrases contemporary iterations of pūrākau, whakapapa, history and traditions provided to this Tribunal panel in Ngā Kōrero Tuku Ihi hearings and inquires how that evidence confirms or varies from the historical materials on those matters contained in the previous three chapters. Those chapters demonstrated that hapū of Whakatōhea and Ngai Tai put forward the names of a considerable number of tūpuna as the founding ancestor for claims to customary entitlements in various blocks of land, and to customary authority in the district as a whole. Within Whakatōhea in particular there were accounts in the past of a great number of hapū other than the seven named by Special Commissioner Wilson in Ōpape Reserve and the six recognised in the constitution of the Whakatōhea Māori Trust Board. It has been noted that Judge Wilson recognised hapū in his Ōamaru judgment that he had not recognised when he was the Special Commissioner for the Ōpape Reserve allocations. There is no evidence available to the Tribunal yet as to Ngai Tai contemporary viewpoints, but it appears likely that contentions as to the boundary of their customary interests will conflict with that of their neighbours.

60. It is abundantly clear that by this point in the twenty-first century the tribal landscape of Te Whakatōhea as an iwi has been confined largely to five, six or seven hapū (depending on one's viewpoint on the appropriate standing of Te Ūpokorehe and Ngāti Muriwai, but always including Ngāti Rua, Ngāti Ira, Ngāti Ngahere, Ngāi Tama and Ngāti Patu). Most of the many other hapū names mentioned in the late nineteenth century Native Land Court hearings no longer appear in Ngā Kōrero Tuku Iho evidence though Tracy Hillier referred to there having been 26 hapū. Consequently, the number of tīpuna upheld to be founding ancestors for a hapū is fewer. On the other hand, the absolutely crucial role of whakapapa and of identifying founding ancestors of relevance to the context at hand remains as powerful as ever. Contemporary holders of mātauranga-a-hapū and mātauranga-a-iwi information, presenting both orally and in written form, tell again the pūrākau of Tārawa, of Muriwai and other distant ancestors before they begin to narrate the history of grievances against the Crown that are being put before this Tribunal. The general thrust of evidence on whakapapa and hapū history that is discussed in this chapter, however, is very much in alignment with what was disclosed in the Native Land Court's minute books. Perhaps an exception to that proposition is that Ngāti Muriwai, and a singular focus on Muriwai as the founding ancestor for an iwi-centric view of Te Whakatōhea, appears in some of the Ngā Kōrero Tuku Iho evidence (particularly from Wai 87 and Wai 2160 witnesses). This approach was not at all prominent in the nineteenth century evidence on customary entitlements to the inland blocks discussed in previous chapters.

61. The fluidity of a person's identity depending on context is as obvious as it ever was. Thus, Dr Te Riaki Amoamo introduced himself as a direct descendant of two Te Tiriti o Waitangi signatories – Te Āporotanga, who signed on behalf of Ngāti Ruatakenga hapū; and through his paternal grandmother, Hera Puhi Lawrence, who comes off Rangihaerepō, a rangatira who signed Te Tiriti on behalf of Ngāi Tamahaua, but who also affiliated to Ngāti Patu and Ngāti Ruatakenga. His evidence included a screen shot of the Tiriti signatories and it is perhaps noteworthy that in 1840 one of his ancestors, Rangihaerepō, was a pikopo Christian and the other, Te Āporotanga, was a mihinare Christian. He referred to the Wai 1750, #C6 whakapapa chart which he said 'demonstrates (in simple terms) how all six hapū descend from Muriwai' but then

turned to recite his whakapapa affiliation to Ngāti Patu from Tārawa. The gist of that recitation is captured in slides attached to the evidence. Two slides provide the whakapapa from Tārawa to the speaker. Both of them highlight two major elements of the whakapapa in which **Tārawa=Manawakiatu** is coloured and bolded as the commencement of the Ngai Tū whakapapa; then **Ruamoko=Puritanga** are likewise coloured and bolded to commence the Ngāti Patu line of descent. Te Riaki Amoamo helpfully links this whakapapa to the Wai 1750, #C6 whakapapa chart by pointing out where the Tārawa descent line joins that chart's presentation. The Ngāi Tū line comes down to Kahopu. Then Kahopu=Tohiturua begat Te Hau o te Rangi from whom comes the Ngati Patu ancestors Ruamoko=Puritanga. Tohiturua in the #C6 chart comes from Muriwai then Rangikurukuru down lines that lead to both Ngāti Ngahere and Ngāti Patu.

62. The identification of precise boundaries for a hapū claimant group is undoubtedly a good deal more fixed now than was obvious in the clashing views in the nineteenth century as to whether there even were such things as fixed boundaries. The tribal boundaries as laid down by Te Hoeroa Horokai and Heremia Hoera in evidence to the Native Land Claims Commission in July 1920 is very much alive today and they are often relied on by being quoted in full in statements of claim and in evidence of claimants. The only matter of some contention, perhaps, is that they did not quite reach Maraetōtara as the westernmost coastal marker of the iwi rohe and of this inquiry district. Some claimants have set out traditional hapū boundaries within the wider rohe. Evidence on that appears in the next chapter on sites of significance and in some of the maps included in this report. Other claimants seem to assume that each hapū continues to have shared entitlements in all parts of the iwi rohe.

63. A difficulty for this pre-1860 tribal landscape report is that the compulsory allocation of all hapū into blocks in Ōpape Reserve has totally distorted the tribal landscape from its previous coverage of hapū over the entirety of the inquiry district. That there were once specific, but probably not entirely exclusive areas, for occupation and seasonal resource gathering activities by each hapū elsewhere cannot be sustained from the confinement of hapū since the 1870s into the straight-lined coastal and bush blocks in Ōpape. The inter-hapū and intra-hapū history, including the location of marae and urupā within Ōpape Reserve and its partitions now predominate, despite the fact that this was not the primary occupation area for any hapū except Ngāti Rua prior to 1860. Hence many of the pepeha recited by claimants to open their evidence relate to maunga, awa, wharehui and urupā where their hapū now gather within Ōpape Reserve, rather than to traditional markers in the territory where people of that hapū generally lived prior to 1860.

Significant sites, including wāhi tapu, pā sites, and taonga

64. Chapter 12 of the report attends to my commission's requirement to to report on 'How did iwi and hapū of the district use the land, waterways, and other resources, including traditional food sources? What were their significant sites, including wahi tapu, pa sites, and taonga?'. The information in this chapter is derived from the evidence of other researchers in the *Re Edwards* litigation and from evidence provided by witnesses in Ngā Kōrero Tuku Iho hearings. My report offers no significant reflections on the many hundreds of sites identified in the rohe other than to make the point that in the maps prepared for and reproduced in this report I would prefer not to include the confiscation

line for the district proclaimed pursuant to the New Zealand Settlements Act 1863. There are very good reasons, given the mamae and trauma for claimants associated with that raupatu, that the confiscation line features so starkly on most maps, including of course the Waitangi Tribunal's official map of the Wai 1750 inquiry district. Yet, of course, the New Zealand Settlements Act was passed in 1863. There had been no confiscations under that Act prior to 1860 and precious little contact between the Crown and hapū of the North-Eastern Bay of Plenty. This chapter is concerned with significant sites, including wāhi tapu, pā sites, and taonga in a period when tikanga was the law. It pays attention to the whole district pre-1860 in which, as much evidence quoted in earlier chapters has emphasised, there was no arbitrary distinction between the coast and the inland, in which tikanga was the operative legal order, and over which there was not as yet any ugly dotted line on maps to illustrate the division of this rohe by the colonial raupatu following 1865.

Māori responses to early contacts with Pākehā

65. Chapter 13 deals primarily with paragraph 3(d) of the research commission: 'What were the early contacts between iwi and hapū of the inquiry district and Europeans prior to the 1860s and what was the Māori response?' along with the further question posed in the paragraph (d) of the project brief: 'What was the understanding of those Māori of the district who signed the Treaty of Waitangi?' Of the new and potentially transformative European influences, in the period from the mid-1830s to 1860 interactions between tikanga and trade and tikanga and church were of significance. These interactions, especially the choice of a majority of hapū members to profess adherence to one or other of the two Christian missions, necessarily required adjustments in their thinking about belief systems and operating principles encapsulated in mātauranga-a-hapū – even if early conversions to Christianity did not entail the clean break from 'heathenism' that European missionaries so earnestly desired. On the other hand, the direct impacts of colonisation, and of Crown laws and policies, on tikanga-a-hapū and tikanga-a-iwi in the Wai 1750 inquiry district were extremely limited and tenuous until after 1860, and therefore are beyond the parameters of this report.

66. Before dealing with paragraph 3(d) matters the report addressed what I thought to be an inappropriate question in 3 (c) in the project brief: 'What was the nature of customary tenure in the inquiry district and who had the authority to alienate land and resources?' In considering the post-1840 situation in the district it is necessary to clarify whether transactions between Māori and Pākehā in the area should be thought of as alienations. This report prefers not to use terms of English law and British culture that cannot have had any meaning in a district within which tikanga was the only law system in place. In previous chapters frequently there are references to 'customary entitlements.' The use of that language involves a deliberate decision to not use the word 'ownership' (where possible) or the concept of 'native title' even though the colonial legislature passed many Acts that spoke of 'ownership according to native custom'. the word 'ownership', like the word 'alienate', carries cultural baggage that ill fits, or indeed does not fit at all, with tikanga conceptions, values and principles. Concepts of 'sale and purchase' might well have been in the minds of European missionaries and traders entering into transactions with local hapū between 1839 and 1860 to acquire possession of land for churches, homes and trading bases. But I have not sighted historical evidence to suggest that European 'purchasers' clearly and successfully explained to Māori with

whom they transacted the application of English law conceptions of ownership, of exclusive possession of land being in the 'owner' only, and of permanent alienation by a written deed with consideration paid in goods and money (without the need for further payments in the future beyond those specified in the written deed). The documentary record for European interactions with hapū in this Wai 1750 district is sparse compared with other historical inquiries. Still there is no plausible evidence that English law notions concerning the sale and purchase were well understood by rangatira in this takiwā. On the contrary, there is evidence pointing to the continuing effectiveness of tikanga as the law in force for hapū to manage their own policy, resources, and affairs. There is also evidence that successive colonial governments did not see that they needed to act proactively to apply the Queen's writ in this native district.

67. Given the minimal practical impact on everyday life of some rangatira adhering to TeTiriti in 1840, it is necessary to query Walker's suggestion that the twenty-year period of peace and prosperity in this district from 1840 to 1860 should be labelled 'Pax Britannica'. After the signings of the Treaty of Waitangi in 1840, tikanga-a-iwi and tikanga-a-hapū remained the law of the land in this rohe. Tikanga may have evolved to embrace the respective impacts of Christian missions and of shipping and trading opportunities. There is some evidence of the impacts of Pākehā cultural constructs on Māori social formations prior to 1860 following the establishment of the two Christian missions at Ōpōtiki in 1839 and 1840. If a label indicating the new-found peace of these two decades is to be used, then it might be Pax Christiana rather than Pax Britannica. The first Christian missionaries in the 1830s were Māori. From 1839 there were a couple of Church Missionary Society missionaries who came from Britain, but the CMS station was without any resident missionary for a substantial number of years, and it was a German ex-Lutheran who filled the vacancy. None of the Catholic missionaries, of whom there were a number residing in the district throughout the entire twenty-year period, were British. Most of them were French.

68. Neither does an alternative view put forward by Luiten fit the facts on the ground. In one of her reports for this inquiry she suggests that 'the population from at least 1840 concentrated instead on the coast to take part in trade-fuelled prosperity in a new era of Te Ture-inspired peace.' In another report she amplifies this suggestion: 'Ever widening whanaungatanga by the mid-1830s, accelerated by the unprecedented scale of intertribal warfare the decade before, coincided with burgeoning economic opportunities arising from expanding resource trade with Europe. The most profound development in this era was the transition towards the peaceable resolution of disputed mana through the rule of law – Christianity's foremost offering of 'Te Ture' – enabling further mobility, exchange and confederation.'

69. When writing of the period from 1840-1860 it is ahistorical to consider the 'rule of law' to be 'Christianity's foremost offering of 'Te Ture'.' Modern conceptions of 'the rule of law' are applauded by many, but they are not a set of norms that bear any relationship to the many edicts (some of them distinctly gruesome and barbaric) to be found in the first five books of the Old Testament known as the Torah (or Pentateuch). On account of the sexually explicit meaning of 'tora' in te reo, missionary translators in the nineteenth century chose 'ture' as a modified transliteration of 'torah' to signify law derived from holy scriptures. In recent decades the most common context for the use of the word 'ture' is not related at all to its biblical source. Rather, 'ture' is the word for 'law' (as in state law). 'Ture' is now primarily identified with law in the legal system

of the government / kāwanatanga. To answer the project brief's questions 'What was the nature of customary tenure in the inquiry district and who had the authority to alienate land and resources?', it is suggested that tikanga-a-hapū and/or tikanga-a-iwi (as modified to a small extent by interactions with a few Europeans) was the customary legal system in place. In the customary tenures of that legal order, there was no scope at all for any person or group permanently to alienate land and resources.

Te Tiriti o Waitangi at Ōpōtiki and Tōrere, May-June 1840

70. The report sets out the few known facts about the signing of the Fedarb sheet of Te Tiriti and who the signatories were. There are two pieces of information that are usually mentioned about this sheet of Te Tiriti. The first is that none of the Crown officials who received the Fedarb copy commented on the fact that Hobson's signature on the copy was 'forged' by Stack when he made the copies at Tauranga. Stack wrote 'William Hobson' though Hobson's own signatures on Treaty sheets were always 'W Hobson'.

71. The second is that this is the only copy that has Christian crosses placed beside the names of some of the rangatira. At the request of rangatira connected to the Church Missionary Society, Fedarb identified the Ōpōtiki chiefs who were Roman Catholics by placing a cross beside each name. It is obvious that Fedarb was not well informed in matters ecclesiastical. What he wrote beside an asterisk at the bottom of the sheet, with reference to an * beside the name of the first signatory Tautoro [Tauātoro] was this: 'The chiefs at Opotiki expressed a wish to have it signified who were Pikopos (ie Roman Catholics & who were not, the which I did by placing a crucifix preceding the names of those who are, as above, & at which they seemed perfectly satisfied.' The marks on the sheet were plain crosses, however, not crucifix images. Indeed the plain crosses would be more likely to signify Protestant CMS leanings rather than an adherence to Catholicism! The term 'Pikopo' as a transliteration for 'Bishop' was common in Te Tai Tokerau at the time of the Treaty in relation to Bishop Pompallier (though, of course, the Anglicans had their own bishop – Bishop Selwyn – from 1842 onwards). In fact, though, local usage in this inquiry district by Catholics themselves, in letters provided to the Compensation Court in 1867, was 'Epikopo' which is closer to the Latin Episcopus: 'te Epikopo Katorika Romana' for the Roman Catholic Bishop, and the full name of Bishop Pompallier being written as 'te Epikopo Hoane Papita Werahiko Pomaparie'[the Bishop Jean-Baptiste François Pompallier].

Missing signatories?

72. For Te Whakatōhea hapū, what is striking on the face of the record (whilst acknowledging multiple whakapapa connections of the peoples of these hapū) is that none of the signatories appear to be primarily representative of Ngāti Patumoana or Ngāti Ira (or Ngāti Muriwai). My report only poses questions. Is there any evidence that these hapū of Te Whakatōhea, two of whom played such a big role in later Native Land Court title investigations, deliberately chose not to engage with the Treaty-signing events? Were they simply absent on the day, or were they present but happy to go along with the decision of rangatira relatives more closely linked to the other hapū in their engagement with Fedarb? Then there is the striking fact, for which I have seen no explanation, that Tītoko is not one of those who are named as being present and certainly he was not a signatory. The evidence given by many witnesses in the Native Land Court hearings discussed in previous chapters was that Tītoko undertook

important leadership and rangatiratanga roles not just for his Ngāi Tamahaua hapū but more generally in the restoration of dispersed hapū of Te Whakatōhea to their ancestral lands in the years immediately before 1840. A few months before the Treaty-signing events, at the beginning of 1840, Tītoko played a crucial role in advancing and agreeing to tuku land transactions between hapū and both the CMS and the Catholic missionaries often describe him as a leading or paramount chief. In the disputes that then arose between the missions and their adherents, again Tītoko played important roles. Again, I can only pose some questions. Where was Tītoko on 27th and 28th May in 1840? Was he present but refused to come forward, or was he somewhere else on those days? Is there any information at all about his perceptions of te Tiriti o Waitangi? Is there any substance to the possibility that Tītoko welcomed and played significant roles in interactions with missionaries, but deliberately chose not to adhere to te Tiriti o Waitangi – though two other Ngāi Tamahaua rangatira did do so?

73. Another striking fact, though in this case the reasons are not hard to surmise, is that no rangatira women came forward to adhere to the Treaty document. It is not that rangatira women did not play a large role in tribal life, including taking on public leadership roles. Indeed, as has been noted in chapters above, Mini Tamaipaoa was a leading witness for Ngāti Ira in Native Land Court hearings and Erina Uenuku was a witness for Ngāti Rua and indeed she was the chosen kaiwhakahaere to conduct all the Whakatōhea hapū claims in the Whakapaupākihi title investigation. There she identified herself as of the Whakatōhea tribe belonging to Ngāti Rua on her mother's side and Ngāti Ngahere on her father's side. So, in the 1880s and 1890s rangatira women took leading roles in contests affecting the rangatiratanga of their people within the institutions of the state. On this occasion in 1840, when the Crown first introduced itself to the peoples along the coast of Te Moana a Toi, were there no rangatira women who ought to have been identified as leaders of Ngāti Ira, Ngāti Rua or other hapū? Of course, the surmise is that most of the European agents of the Crown, including the young man Fedarb, did not think to inquire if there were rangatira women who might be invited to adhere to te Tiriti.

Continuing dominance of te ao Māori and tikanga 1840-1860

74. There is very little that this report adds to the small amount of information that is known about the local Treaty transactions. In fact, though, it is suggested that this is not a significant problem. It is a firm conclusion of this report that the signing of Te Tiriti appears to be largely immaterial to this tribal landscape report. The reason for this conclusion is that those ceremonies had no immediate practical significance for the way of life of either Māori or Pākehā residents in the district. There was no change to relevant laws in force. Tikanga remained the legal order. The Treaty had no impact on the patterns of the tribal landscape that had been re-established in the late 1830s. From 1840-1860 this was a rohe with a tiny Pākehā population, with no resident Crown officers or agents, and with but fleeting encounters with Crown officers based elsewhere. Whatever the Treaty might have guaranteed, and whatever authority rangatira might or might not have ceded, and whatever the standing was of tikanga immediately after the Treaty in the main areas of European settlement, are matters that have been extensively discussed in other Tribunal reports, notably in the Wai 1040 reports for Te Raki a Paparahi. In the Wai 1750 district these were moot matters that were not debated (at least, not until after 1865). There were very few instances of issues between the Crown and hapū that might have raised such questions. On the other hand,

there is some positive evidence from this district pointing to the conclusion that tikanga-sourced understandings of hapū autonomy continued to prevail after 1840 and English law concepts on ownership and possession of land gained no traction at all.

Hapū autonomy prevailed after 1840

75. The report notes several examples of Crown policies and English law notions that were ineffective in practice on the ground. The first was the attempt to identify boundary points that would create a buffer zone between Ngai Tai and Ngāti Rua (and other related hapū) with a view to ending the cycle of war and inter-iwi conflict of previous decades and centuries. The second is the fact that a number of land transactions, involving the Church Missionary Society and CMS personnel agreeing to written deeds of purported 'sales' with local hapū, made absolutely no difference to the continuing use and occupation of those blocks of land by local hapū. Also noted is an 1862 report from a Crown official highly critical of Whakatōhea for the way tribal affairs were being conducted in the district. The essence of his complaints was that Māori in this district continued to be autonomous in running their own affairs in their own way. The region was being run on tikanga lines as modified since 1840 by their own people (as for example in imposing monetary fines) but without any input from Crown personnel or policies.

76. As to the 1843 mediation, the aim was to obtain the agreement of Whakatōhea hapū that their eastern boundary should be set at Tarakeha rather than at Te Rangi, a little further to the west, where, according to ancient purākau, the waka Nukutere had made its landfall. In that Shortland did hold a government appointment, this exercise might be considered an attempt to establish law and order based on the role of the Crown in preventing breaches of the peace in the realm. However, though neither Ngai Tai nor any of the Whakatōhea hapū sought to relitigate their disputes by open warfare, neither side entirely gave up on their own versions of their ancestral domains. Some Ngāti Rua continued to seek sustenance from resources at Awaawakino and thus affirming Te Rangi point as within their rohe. Ngai Tai for its part continued (and continues) to identify Tirohanga (well to the west of Tarakeha) as within the Ngai Tai territory or area of interest. Indeed, Wiremu Kingi made a claim to the Compensation Court that insisted upon just that. Hence it was tikanga, and arguments drawn from purākau, whakapapa and history, that continued to be the operating parameters of the law in force. Neither English law nor Crown policy was a relevant factor in the 1840s.

77. As to the CMS land transactions, new people (few in number) were arriving in the district. They were seen to be an asset to those hapū wishing to engage with the new dispensations of Christianity and of trade, and it would be desirable to have them settled upon land in the district. Yet there is abundant evidence that deeds with the CMS in practice did not exclude hapū from ongoing access to and productive use of the land covered by deeds. Nor is there any sense that hapū use of land and resources was seen by them as somehow wrong and in breach of the relationship-building that hapū had sought when welcoming Europeans. On the contrary hapū members were going about their ordinary business of sustaining themselves on their own ancestral land in co-operation with the bringers of the good news of peace and prosperity. A missionary writing to the Governor in 1851 complained about the constant opposition and bad conduct of Māori on 'purchased' land. To turn a tikanga lens onto the exasperation expressed by Wilson Sr in this letter, 'the natives refuse possession' was an explicit

acknowledgement that the local hapū did not understand their arrangements with the missionary would have entitled him to exclude them from their ancestral lands. The ‘constant opposition and bad conduct’ was simply a stubborn refusal by Māori to allow the missionary to claim monopoly rights over land when their transaction with him was an invitation for he and his mission to join with them in the spiritual and economic development of the region. That ‘They have taken away at various intervals not less than eight different portions of the best land’ is clear evidence that the CMS’s large areas of land were seen as shared land interests on which the missionary and his family might live and also that local hapū and their whānau might live and undertake economic activities. That Māori have ‘cut down timber for building small vessels and canoes at their pleasure’ is the clearest possible indication that the welcome to missionaries, both Catholic and Protestant, to live on their land was not just for spiritual nourishment. Local hapū were very determined to participate in new economic activities and especially in shipping and trade. They needed to source timber materials to build ships and canoes for transportation purposes and so they helped themselves to timber available on their own land without feeling the need to seek the prior permission of the missionary. That ‘cattle have been injured and killed for grazing on cultivations planted without permission, on ground previously purchased’ is most obviously an assertion by hapū members with plantations on the land that stock owned by the sons of the missionary had trespassed on the hapū plantations. Utu was exacted to restore the balance.

78. The fact of ongoing Māori autonomy under a tikanga based legal order were the subject of stringent condemnation in 1862 by a Crown official C Hunter Brown. Brown’s criticisms of Whakatōhea and its leaders in 1862 are strong evidence that up until 1860 there was no impact of Te Tiriti o Waitangi (either positively or negatively) on relationships with a distant Crown. Nor were there any Crown laws and policies operating elsewhere in the colony that had yet achieved any purchase in the lives of hapū of Whakatōhea. Rather, the law of the land was administered by what Brown called ‘the purely Native Runanga.’

Concluding remarks in chapter 14

79. Research into Native Land Court minutes revealed that there were a very large number of hapū that have lived in this district at one time or another – at least thirty and probably rather more than that. As functioning units of people living and working together, and self-identifying themselves to those with whom they interacted, the number of hapū has reduced to five to seven hapū with affiliations to Te Whakatōhea and two hapū in Ngai Tai. The Native Land Court evidence quoted in previous chapters of course included frequent mentions of how hapū were named, who their founding ancestors were, and where they lived on the lands of this district. Hapū names might and did change, the most recent being the emergence of Ngāti Patumoana as a distinct hapū following the death of a rangatira in a pakanga round about 1831. However, there were only some ten hapū from Whakatōhea and Ngai Tai that were recognised by colonial courts as the basis for recognition of their customary entitlements in Native Land Court hearings.

80. There is plenty of evidence that hapū became widely separated in the 1820s and 1830s during the period of raids from Te Tai Tokerau and Hauraki iwi but they continued to retain their hapū identity in various places of exile. Most came back to their ancestral homeland after peace came in the late 1830s. There was some uncertainty about this in

one instance at least when Ngati Rua exiles went to Wharekahika (Hicks Bay) as Ngai Tamoko and yet still were, on one whakapapa lineage at least, a Ngāti Rua hapū.

81. It is not within the scope of this research to deduce exactly when 'great names' such as Mataatua or Te Whakatōhea, and Tainui or Ngai Tai, became foremost as the self-identification of Māori engaging with the Crown and state institutions, but it must be that Crown preferences to deal with 'large natural groupings' – a preference that continues to this day – had a large role to play in the transition from hapū as primary to iwi as primary. In this district, given the total absence of the Crown until after 1860, it is not obvious that 'great names' were ever regarded as ultimate sources of identity in the period covered by this report.

82. The extent to which, owing to multi-stranded whakapapa, a hapū might claim more than one iwi affiliation was not a significant feature of the evidence researched. However, given the historical narratives of enduring enmity between hapū of Te Whakatōhea and Ngai Tai, perhaps the most striking instance in this report of a hapū claim with more than one iwi affiliation is the position taken by Te Paku Eruera in the Whitikau 3 rehearing as a Ngāti Rua living on the Ōpape reserve and as a descendant of the Ngai Tai ancestor Whariu.

83. Although traditional histories of specific named migration waka are of crucial importance in the identification of hapū and their people, it is notable that histories and whakapapa from the earlier tangata whenua (for whom no specific waka was known or named) also feature frequently in traditions presented both in the nineteenth century and in the twenty-first century as well as ancestors arriving in the later canoes. The copious number of whakapapa lists presented to the Native Land Court traced many lines of descent from a considerable number of ancestors. Certainly, there was no sense that a rangatira or tohunga needed to settle upon just one hapū or iwi, and just one founding ancestor, to justify tikanga-based entitlements to a rohe. On many occasions the ancestors named were living in the district prior to the arrival of named voyaging waka. The purākau concerning Tārawa is a momentous example of a voyager who married into a hapū of prior tangata whenua and lived inland at Motohora. Indeed, frequently it was his tangata whenua wife, Manawakīaitū, from a nameless waka origin who was given pride of place as a founding tīpuna.

84. There appears to have been no major impact of contact with Europeans (including, after 1840, Crown representatives) for the emergence of larger hapū or iwi as primary identifiers for the peoples of the region. The arrival after December 1839 of a small number of missionaries and a few traders (many of whom married into local hapū) centred around one location at Pākōwhai/Ōpōtiki. Rather, the primary impact of contact was that the missions and trade centre became a magnet to draw members of hapū who would have sustained themselves in the past over a much larger proportion of the takiwā into this single location. Whilst access to inland bush regions did not cease, subsistence sustenance from inland occupation sites became much less important than participation in the life of church and trading activities in and around Ōpōtiki. This cannot be attributed to Crown representatives, as none were ever in residence and their very few fleeting visits made no visible impact at all on the tribal landscape of the peoples of the district prior to 1860.

Remarks on boundaries

85. This researcher is yet to be convinced that hapū in the North-Eastern Bay of Plenty were divided from one another by strictly defined and rigidly observed territorial boundaries, within which they had rights exclusive only to members of the one hapū. By the 1880s and 1890s the fact of surveys and of defined blocks of land being investigated in the Native Land Court put a huge premium on claimants being able to define precise areas over which they held their customary entitlements. The impact of that mind-set has carried on to the present as evidenced in many of the statements of claim filed for this Wai 1750 inquiry. Nevertheless, it is important to note that some witnesses refused to go along with notions of strictly defined and rigidly observed territorial boundaries, even though judges tended to be dismissive of their evidence as a result. Given the small population of each hapū living in a very large region (when one includes all the inland blocks), it is hard to imagine there ever could have rigidly observed boundaries for each of the many hapū – remembering that there were considerably more than the current six or seven hapū prior to 1860. One statement by Rewita Niwa in the abortive Takaputahi names hearing was quoted earlier in this report. It was a flat rejection of the notion of discrete hapū boundaries: 'I don't know of any particular portions of this land belonging to particular ancestors. This land I always heard was a hunting ground belonging to the ancestors there are no boundaries in it.' Yet that same Rewita Niwa for Ngāi Tama in the Ōamaru hearing spoke of his ancestor Warokino making the first division of the land among the different hapū.

86. Thus, there is not a large body of evidence to support my surmises. That can be put down to the fact that in Native Land Court title investigation hearings there were huge incentives for claimants to fix upon precise boundaries for the claims they were advancing. Nevertheless, it just seems improbable that only one hapū had exclusive entitlements to walk Te Kōwhai track, for example, to gain access to bush area food resources. It is improbable that each of the streams and rivers flowing from the mountains to the sea were the preserve of just one hapū if eels were being sought. There is copious evidence of named trees where birds would be snared, but would that location be protected by the members of just one hapū so that the arrival of any 'stranger' from kin in another hapū would be a precursor to forceful retaliation to retain exclusive access to that tree?

87. It is suggested that the most usual situation would be that each hapū would have exercised authority over a core territory that could be edged by zones of overlapping occupation by others. Again, the Native Land Court mode of decision-making put a premium on evidence of precise and emphatic claims to specific blocks of land without allowing for overlapping occupation by any other people. Yet taking an overview of the extent of the lands in the Wai 1750 district, and adding in adjoining blocks such as Tahora No 2, Waimana, Motu, Mangatū, and other lands leading to Turanga, and bearing in mind the small total population, it is difficult to conclude that there were no overlapping occupation zones.

88. There was, as it turned out, not a huge impact on the local tribal landscape in the pre-colonial period by conquering rampages from outsider hapū/iwi. Those taua came and they went. They did not settle. For sure, there is plenty of evidence of the negative impact of those taua in the deaths they caused and in the dispersal into exile of remnants

of hapū after some of the battles. One might add, perhaps, that a more positive impact of those events was that returning former captives brought new inspirations. People like Moka (and perhaps Piripi Taumatākura) who introduced people both to Christianity and to the opportunities to join in trade and commerce – even with those who had formerly attacked them and from they bought ships of their own. Nor, as it turned out, was there much impact on the local tribal landscape by the earliest interventions of missionaries and surveyors for Old Land Claim blocks. Until after 1860, purported 'sale' transactions and missionary claims to the Crown had such little practical impact on the ground in this district that it hardly matters. Tikanga continued to be the law of the land. The Queen's writ did not run. If, contrary to my assumptions, tikanga did indeed lay down fixed and exclusive tribal boundaries, then it must be for tikanga experts to bring that evidence to this Tribunal hearing.

Two broad conclusions

89. My report ended with two broad conclusions that may offer claimants, the Crown and the Tribunal a focus for comments and criticisms. The starting point for the two conclusions is that one should banish from the forefront of our minds the lines that are drawn all over the maps that have been inserted into the text. Imagine a world without a dotted line signalling the raupatu confiscations of the 1860s as it appears in the Wai 1750 district inquiry map. Raupatu by the Crown had yet to happen. Imagine a map without the inland hills and valleys being criss-crossed by lines of blocks of land surveyed for Native Land Court title investigation hearings. The Native Land Court had not yet been established. Until very late in the piece as 1860 approached, te ao o ngā hapū was the only world, mātauranga-a-hapū was the primary knowledge system and the source of one's world-view, te reo Māori was the only language, and ngā tikanga-a-hapū / tikanga-a-iwi was the only legal order. The landscape was governed by the actual features of the land – which way did the rivers and streams run, where were the flat lands and where were the hills, where were the whitebait and eels, where were the birds and ferns, where were the seafoods, where were the pā and the papakainga, where were the urupā? What were the names of all these features of the actual landscape and who gave them those names?

90. Having posed those questions, I inserted Figure 36 at page 378 entitled 'From coast to inland: Contested tribal landscapes.' It is Plate 11 in the CFRT map book (Wai 1750, #D9). It does still have the usual lines on it, so we can see what we usually see on maps of the district in this inquiry, but it has three different dotted lines. The topography of the terrain, the flow of most rivers and streams, the direction of tracks that people travelled along in the past, the location of pā and sites of significance identified by claimants – these all point to a region where people mostly lived on and walked over lands connecting sea resources, with cultivated flat lands, small hilltop pā sites, and then inland to hills and valleys on a seasonal basis. In Pākehā compass terms, the line of the landscape was generally from nor' west on the coast to sou'east in the hills. That is the direction of the dotted lines inserted on top of other features in Figure 36.

91. The suggestion is that if a hapū lived at any point along the coast and sought access to the hill country at any convenient point in the year, then sou'east would be the most obvious direction of travel. From Onekawa pā at Ōhiwa Ngāti Patu and other hapū in the westernmost portion of the inquiry district might go directly south up the Waiotahe valley. But moving inland at any point from Pākihi to Tirohanga (or from Pākihi to Te

Rangi) would most obviously be in a sou'east direction. The most expansive version of the Ngai Tai rohe in the past (and still to this day) extends along the coast from their core territory at Tōrere to as far as Tirohanga. If that claim was accepted, though the hapū of Whakatōhea would not accept it, even so occupation of the coastline from Tirohanga to Tōrere would not enable easy access to the inland blocks of Ōamaru, Whakapaupākihi and most of Whitikau or to the tracks to Motu and onwards to Turanga. Ngai Tai claims to a considerable portion of that region were based on an ancient conquest and then assertions that there had been no occupation of the area by anyone else. However, there was an overwhelming and convincing body of evidence (contradictory though it was in inter-hapū terms) of long term ahikāroa by many hapū of Whakatōhea in all the inland blocks. Whichever of the boundaries one might choose to separate Whakatōhea and Ngai Tai iwi from each other as was proposed in 1843 – at Tarakeha or at Te Rangi – in both cases Whakatōhea hapū would have had easy access to Ōamaru, Whakapaupākihi, Whitikau and to most of Takaputahi and onwards into Mangatū. Ngai Tai could have had no easy access to any of that whole area unless they risked running into members of hapū of Whakatōhea whom they had fought against so bitterly and for so long. I conclude on the basis of my own research, and the evidence of living claimants at Ngā Kōrero Tuku Iho hearings, that – contrary to the decisions of the Native Land Court – the entire area that includes coastal raupatu lands and all of the blocks sou'east of there – Ōamaru, Whakapaupākihi and Whitikau, and most of Takaputahi – were a single rohe over which the various hapū of Whakatōhea exercised their customary entitlements from times long past and up to 1860. That is the first of the broad conclusions reached in this chapter.

92. My second broad conclusion, somewhat more tentative that the first, is that this is a district in which overlapping hapū rohe were a necessary fact of life from times long past and right up to 1860. There are assertions in many statements of claim and in some of the evidence tendered, that a particular hapū has and had customary entitlements over the entire territory of Whakatōhea as an iwi, as well as its own core rohe as a hapū. An instance is the map of Ngāi Tamahaua's rohe map presented to the Tribunal in Ngā Kōrero Tuku Iho evidence at Ōpape marae. Of course, as has been noted in earlier chapters, traditional history about traditional rohe have been more than a little distorted by Crown actions confining hapū together within Ōpape Reserve for so long and denying them access to their ancestral lands and sites of significance especially in the raupatu district lands. My most likely second broad conclusion then is that overlapping and partly shared ancestral lands and resources were a major feature of the tribal landscape of the North-Eastern Bay of Plenty prior to 1860. It is suggested by this cultural-outsider researcher that this conclusion is a tikanga-appropriate conclusion. It may be that some claimants will wish to support, or to oppose, that conclusion by tendering evidence from their own cultural-insider knowledge holders as to the relevant tikanga and mātauranga on such matters.