Annex A: Tangonge – A Case Study

Tangonge encompassed a lake, wetlands and various elevated sections. It played an important role in the local Maori economy and figures prominently in the history of interaction between the Crown and Te Rarawa Maori. In 1835, local Maori transferred Tangonge to the Reverend Joseph Matthews as part of a larger pre-treaty transaction. Before the Old Land Claims Commission examined Tangonge in 1843, local Maori maintained that Matthews return the land to them. However, when Matthews requested that Tangonge be excised from his claim, the Commission instead treated it as 'waste land' or surplus and claimed the land for the Crown. The Crown's claim to 'surplus lands' has been comprehensively refuted by the Tribunal in the *Muriwhenua Land Report*. However, it is pertinent, as the Tribunal has stressed, to examine the drawn out process by which the Crown asserted its right to the land. The Crown's presumption of ownership began a process by which it would reinforce what was an already fundamentally flawed position, that the land was surplus, against the persistent and continual protests of its Maori owners.

Tangonge formed part of the Otararau block, which Matthews, under whom the Kaitaia Mission was first established, purchased in a pre-treaty transaction from Nopera Panakareao and four others in 1835. Matthews made a series of payments for the land between 1835 and 1840.[1] Even though it appears that Europeans preferred the raised parts of the surrounding area for farming, local Maori tended to gather at the edges of the Tangonge wetland, from which they obtained 'pipiwai, eels, fresh water mullet, ducks, swans, raupo, flax and other fish and birds.'[2] Local Maori did not dispute that Tangonge had originally formed part of the land transferred to Matthews. However, in what appears to be recognition of the importance of the site, they maintained that Matthews promised to return the land to them before Commissioner Godfrey inquired into the transaction 1843.[3]

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[1] *Muriwhenua Land Report*, p 161.
[2] ibid, p 258.
[3] Michael Nepia, 'Muriwhenua surplus Lands: Commissions of Inquiry in the Twentieth Century', October 1992, p 11.

When Otararau came before the Old Land Claims Commission, Godfrey examined it with the nearby Waiokai block. Matthews' deed claimed an area of 2000 acres for both blocks. Godfrey recommended 1400 acres and 306.5 acres respectively for the Waiokai and Otararau blocks and a grant to that effect was issued in 1844. Fourteen years later, in 1858, the Bell Commission subsequently called in the grant. The land was surveyed and the two blocks as outlined in the deed were found to have contained 3134.5 acres in total. Waiokai amounted to 1279 acres and Otararau 1855.5 acres. At Matthews' request and in what appears to be the fulfilment of his promise to return the land to local Maori, Bell excised 685 acres from the southern end of the Otararau block.[4] Though Matthews wrote to Bell noting Tangonge had been cut off as he had asked, he did not say why. Bell merely assumed that this section was the balance of the land or the 'surplus.'[5]

In the *Muriwhenua Land Report,* the Tribunal found that Bell should not have assumed the land was surplus.[6] Matthews had been close to Panakareao and had known of the condition that Maori would not affirm any land transactions if the Crown did not return the surplus.[7] If Matthews cut off a piece of land there was no reason to believe that it should revert to the Crown, rather than local Maori. Moreover, while the Crown had alienated Tangonge on paper, the most visible aspect of a land sale, the delivery of vacant possession, did not occur. Maori did not notify the Crown of their claim to the land in either of the Old Land Claim Commissions simply because they believed it was still theirs. It was not for some 40 years, until the 1890s, that the Crown gave local Maori cause to believe otherwise.

In addition to its importance as a resource for food, raupo and flax, Tangonge was also rich in Kauri gum.[8] It was only when gum-diggers moved into the area and local Maori

[4] ibid.
[5] *Muriwhenua Land Report,* p 260.
[6] ibid.
[7] ibid, p 260-1.
[8] Nepia, p 11.

attempted to claim royalties that the latter discovered the government claimed the land as its own.[9] In response, Timoti Te Ripi (or Timoti Puhipi) and 23 others petitioned parliament in 1893 to have their right to the land recognised.[10] One had visited the office of the Commissioner of Crown lands in Auckland to discover how the Crown alienated the land, but without result.[11] In a sign of his earlier intent, Matthews also signed the petition. Timoti's son, Riapo Puhipi, later recounted in a letter to the Native Minister in 1914 that:

> [the] Rev. J. Matthews himself advised my father to prosecute the matter whilst he was still living. He said that he would not only sign petitions but would give material evidence on behalf of my Father to the effect that he returned this land to my grandfather, Puhipi [Te Ripi]. If you refer to those early petitions of ours, you will there find the signature of the Rev J. Matthews... It is not at all clear how Government acquired any direct-interest in these lands which were so returned.[12]

The Native Affairs Committee referred the matter to Crown lands and in September 1893, the Departmental under-secretary responded with a short note. He stated that the area was surplus from Matthews' old land claim, that the land claim commissioners had investigated the claim, and that 'the Natives claim cannot be recognised.'[13] Nevertheless, the Native Affairs Committee recommended that Timoti's claim be referred to the Resident Magistrate for enquiry, but this recommendation was not followed on the advice of the Surveyor General, Stephenson Percy Smith. Smith argued that Tangonge was surplus land from within the boundaries of Matthews' old land claim; an assertion apparently confirmed through correspondence with the Auckland District Chief Surveyor Kensington in October 1893.[14] In Smith's opinion, Matthews had no power to convey what did not belong to him.

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[9] Claudia Geiringer, 'Historical Background to the Muriwhenua Land Claim 1865-1950', Waitangi Tribunal, 1992, p 219.
[10] Timoti Puhipi and 20 others, No 402, 'Reports of the Native Affairs Committee', *Appendices to the Journals of the House of Representatives* (AJHR), 1893, I-3.
[11] David Anderson Armstrong and Bruce Stirling, 'Surplus Lands. Policy and Practice: 1840-1950', Wai 45 doc #J2, p 120.
[12] Letter, Riapo Puhipi to W. H. Herries, 9 March 1914, MA 1, 38/18/5, Vol 1 Part 2, 1913-1946, National Archives Wellington.
[13] Armstrong and Stirling, pp 120-1
[14] ibid.

Yet, despite his conviction that Maori had no claim to Tangonge, Smith's stance also seemed shaded by a reluctance to bring the greater issue of surplus lands under scrutiny. Though in his view the decision that surplus lands should become Crown lands was made on the 'very best legal advice obtainable in the world' he considered an inquiry to be 'very risky business.'[15] Smith advised against an investigation by the Resident Magistrate lest Maori dispute the Crown's title to surplus land out of hand. He noted in a memorandum to the Minister of Lands in 1893 that:

> if this course is pursued it seems to me there is a great danger of the title of the Crown to the surplus land being disputed for the want of sufficient evidence of knowledge on the part of those who should make the enquiry. This raises a very serious question indeed, for many of the surplus lands have been disposed of by the Crown and are now settled on...It is therefore, I think, a question for your consideration whether this recommendation of the Parliamentary Committee should be acted on, and if so, in what manner? My own opinion is that it is likely to be a very risky proceeding.[16]

Smith did not want a minor local official, 'ignorant of the history of the claim' to recommend that a Maori claim to surplus be recognised, and set a dangerous precedent.[17] On Smith's recommendation, the Crown let the matter drop and deferred a further petition made by Timoti and five others in 1894, again apparently signed by Matthews, on the same grounds.[18]

In light of Smith's fears, and in fairness to local Maori, the possibility of insufficient evidence of the Crown's title to surplus land would seem to be even more reason to have an inquiry. If the Crown could not satisfactorily prove its right to such lands, it should not have the option of deferring or suspending any inquiry. The Crown's main concern was to protect its own interests; the rights of Maori were secondary.[19] The

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[15] Nepia, p 11.
[16] Armstrong and Stirling, p 121.
[17] ibid, p 122.
[18] Timoti Puhipi and 5 others, No 734, 1894, 'Reports of the Native Affairs Committee', AJHR, 1895, I-3; Nepia, p 12.
[19] Nepia, p 12.

petitioners, for their part, denied their claim should ever have been categorised as surplus, rather they claimed Matthews had given the land back. However, the Crown would not investigate Tangonge outside of the context of surplus lands.

3.3.1 Commissions and Petitions

It was only in 1906, after Timoti Puhipi and 29 others made a third petition, that the Native Affairs Committee moved the grievance past the referral stage. However, this was only done after the advent of a commission set up to investigate the question of surplus lands in the North Auckland area.[20] By this time, Matthews's death had removed one of the most crucial witnesses for local Maori.[21] In 1907, the Native affairs Committee appointed Robert Houston, Member of Parliament for the Bay of Islands, as commissioner to investigate Maori claims to surplus land in the north. Houston had formerly headed various Native Affairs Committees, which had recommended that a commission investigate several blocks of allegedly surplus land including Tangonge. The commission's role was to establish whether the blocks in question were indeed surplus land, how they became so, and to consider the Maori petitions relating to the blocks.[22]

Houston's Commission sat at Kaitaia on May 10, 1907, where it took evidence relative to the Tangonge petitions of 1893 and 1894. Houston, in his judgement, found Matthews had given the land back to local Maori and that it was not included in the land brought before the Old Land Claims Commission. He argued that the block should still have been Maori land vested in the original owners.[23] Unfortunately, Houston left little evidence as to how he reached this decision. The published minutes contained three short statements from, Timoti Puhipi, Riapo Puhipi, and Herepete Rapihana, outlining the Maori position that: the land had been gifted back by Matthews; they had been unaware of the Government's claim; and Matthews himself had encouraged them to

[20] Timoti Puhipi and 29 others, No 207, 1906, 'Reports of the Native Affairs Committee', AJHR, 1895, I-3.
[21] Geiringer, p 220.
[22] Armstrong and Stirling, p 392.
[23] Geiringer, p 221.

petition government.[24] Houston's analysis of the evidence was of little help: his entire report on Tangonge only amounting to two sentences. In the end, this only served to weaken the case of local Maori for Tangonge and gave later investigations grounds to refute Houston's findings.

Moreover, while Houston acknowledged the problem of landlessness amongst Maori in the North, he did not challenge the legality of, and the right of the Crown to, surplus lands.[25] Instead, Houston found that portions of unused surplus lands still existed in the investigated areas and that it would be an 'act of grace' for the Crown to confer such portions on landless Maori.[26] The government did not act on Houston's recommendations over Tangonge. In addition, because the Commission singled Tangonge out, it did not receive the same attention as the other five blocks investigated by the commission. Local Maori would later point out the irony of this situation to the Sim Commission. While Houston reached a compromise for three of the blocks, in the case of Tangonge the commission achieved nothing. 'In spite of the case for Tangonge being stronger, indeed because of this, Tangonge had missed a remedy altogether'.[27]

Despite the lack of follow up by the Government in the years following the 1907 commission, Maori felt their claims over Tangonge were strengthened by Houston's decision and they persisted in their attempts to have Houston's recommendations upheld.[28] In a letter to the Native Minister in 1913, Riapo Puhipi entreated that Houstons 'finding be completed and confirmed by this Government.'[29] However, after the Houston Commission, the government prevaricated, and referred the matter to two further commissions of inquiry: the first in the Native Land Court under Judge MacCormack in 1925, seventeen years after the Houston Commission, and the second

[24] ibid
[25] ibid
[26] ibid
[27] ibid, p 223.
[28] ibid, p 224.
[29] Letter, Riapo Puhipi to W. H. Herries, 31 October 1913, MA 1, 38/18/5, Vol 1 Part 2, 1913-1946, National Archives Wellington.

under Justice Sim in 1927. In both of these instances, the commission dealt with Tangonge in the context of the surplus land issue generally.

In response to a petition from Herepete Rapihana in 1924, the Native Affairs Committee referred the matter of Tangonge to parliament for favourable consideration. It in turn passed legislation referring the issue to the Native Land Court. In 1925, Judge MacCormack heard the case at Ahipara and reversed Houston's decision.[30] He criticised Houston because the Lands Department were not represented in effect making the proceedings *'ex parte'*. He also stated that Houston was a nonprofessional and had no one to direct him to the legal position.[31] Local Maori gave no new evidence claiming they had given it all to Houston.[32] Even though MacCormack admitted that Matthews had probably promised to return part of the land sold to him, in an echo of Smith, he did not see what power Matthews had to return any land.[33] He concluded that 'on the passing of the Treaty of Waitangi in 1840 surplus lands became the property of the Crown...and that the surplus area remained the property of the Crown'.[34] MacCormack dismissed the contention that Matthews' claim was never meant to include Tangonge and, , cited Kensington's correspondence with Smith of 1893 as proof that there was definitely surplus in Matthews' claim: the 685 acres defined by the survey approved by Bell.[35]

MacCormack did note that the land was of little value and implied the Crown would lose little by gifting Tangonge back. However, he asserted that it would be unsuitable for him to tender an opinion on any concession the Crown might make, out of good conscience and equity, to local Maori.[36]

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[30] Geiringer, p 224.
[31] ibid, p 221.
[32] Armstrong and Stirling, p 399.
[33] ibid, p 400.
[34] Memo, Judge C. MacCormack to The Chief Judge, The Native Land Court, 25 March 1925, MA 1, 38/18/5, Vol 1 Part 2, 1913-1946, National Archives Wellington.
[35] Armstrong and Stirling, pp 120-1
[36] Geiringer, p 224.

3.3.2 The Sim Commission

In 1927, in response to a petition, which questioned the equity of the Crown's appropriation of surplus lands, the Crown appointed a three-man commission to investigate the issue of Confiscated Native Lands and Other Grievances. This commission, headed by Justice Sim and otherwise known as the Sim Commission, also had the power to inquire into a number of unrelated petitions including Tangonge. The commission heard evidence on Tangonge in Russell on April 11 of that year; however, by this time only one witness from the Houston commission was still alive, making it that much harder for local Maori to present their case.[37]

In the course of the commission the Crown's position on surplus lands was outlined: that such lands pass automatically to the Crown and Maori had no lawful claim to them. In addition, the commission produced the Old Land Claims file on Matthews' claim, which had not been available at previous hearings. The commission asserted that the file showed Tangonge had been part of the original Old Land Claims judgement and that Matthews did not return the land to local Maori.[38]

To compound the matter further, the legal counsel for the claimants made a very weak case for local Maori. They all but conceded that Matthews had not given the land back, but had instead promised to do his best. Counsel, in effect, agreed that the block was surplus land, and agreed with MacCormack's decision that, regardless if he had intended to give the land back, Matthews had no legal grounds to do so.[39] Claimant counsel supported the Crown: that the Crown rightfully claimed the block as surplus land. Counsel for local Maori only argued that Tangonge be returned on the grounds of good conscience and equity.[40]

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[37] ibid, p 225.
[38] ibid
[39] ibid, p 226.
[40] ibid.

Unsurprisingly, the commission accepted the Crown's version of events. The commission argued that Tangonge was included in the block brought before the Bell Commission, and was not gifted back to Maori.[41] Like MacCormack, the Sim Commission raised the issue of whether the Crown's retention of surplus lands was equitable, but did not consider the question was within their jurisdiction.[42]

3.3.3 Myers Commission

After the Sim Commission, the Native Affairs Committee referred a number of petitions relating to surplus lands to the Native Land Court for enquiry and report. However, the Chief Surveyor, R. G. MacMorran, noted in a memorandum to the Under Secretary for Lands in 1937 that, 'the Natives, on several occasions when the matters came up, asked that enquiry be adjourned as they were not ready to proceed'. While the Sim Commission had investigated Tangonge, it did not deal with the matter of the principle of surplus lands and Tangonge was included with the other petitions. By 1937, Maori had asked that their 'various petitions be heard before a special commission'.[43]

These petitions were again set down for enquiry and report in May 1938, but this time the Government requested an adjournment to 'enable the Government to give consideration to the whole matter in the light of the very important questions of law and policy involved'.[44] The Under-Secretary of Native Affairs, R.N. Jones stated in a memorandum to the Native Minister in 1940 that:

> On account of the magnitude and importance of the problem and the need for time to give proper consideration to it, it was felt that any public hearing or investigation would be premature and would unduly disturb the Natives interested. For those reasons it was arranged...to have the petitions temporarily withdrawn from the list of Native Land Court fixtures.[45]

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[41] ibid, p 227.
[42] ibid.
[43] Memo, R.G. MacMorran, to Under Secretary for Lands, 6 September 1937, Tangonge Block 1913-1946, MA 1, 38/18/5, Vol 1 Part 1, National Archives Wellington.
[44] Memo, R.N. Jones, to the Native Minister, 1 February 1940, Tangonge Block 1913-1946, MA 1, 38/18/5, Vol 1 Part 1, National Archives Wellington.
[45] ibid.

In 1946, the Crown appointed a three-man commission to deal specifically with the number of petitions to parliament on the surplus lands issue and to investigate the justice of Maori claims to surplus lands and if necessary recommend compensation.[46]

The commission consisted of Sir Michael Myers, Hanara Tangiawha Reedy and Albert Moeller Samuel. They sat in Auckland and Kaikohe but refused to sit in Mangonui or Kaitaia, closer to Te Rarawa. They gave two reports: a minority one from Myers and a Majority Report from his colleagues.[47]

In effect, the Myers Commission upheld the decision of MacCormack and Sim. In addition, the Myers Commission would not consider the legality of surplus lands in general, only whether if in good conscience and equity the land should revert to Maori. The type of compensation that resulted from the Myers Commission for surplus lands in the north has remained a source of dissatisfaction for Maori ever since.[48]

By 1940, the Crown had leased out the majority of Tangonge on temporary grazing licences. Approximately 325 acres was granted to a Mr Hanlon and a Mr Price and 247 acres was granted to J Clarke. 19 acres of Clarke's grant was later reallocated to the Mangonui Hospital Board, on a year-to-year license at a rental of £5 per year, which was added to an existing hospital site of 17 acres 2 roods and 20 perches.[49] It was noted at this time that a number of 'shacks' had been on Tangonge for some time when Clarke complained that local Maori were 'interfering with his enjoyment of the tenancy.'[50] The Commissioner of Crown Lands resolved that:

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[46] Geiringer, p 228.
[47] ibid.
[48] ibid.
[49] Memo, Commissioner of Crown Lands to Officer in Charge, Valuation Department, 6 September 1940, Tangonge Kauri Gum Reserve 1932 - 1955, BAAZ 1109, 596c Part 2, National Archives Auckland.
[50] Memo, Commissioner of Crown Lands to A C Smeaton, 10 July 1941, Tangonge Kauri Gum Reserve 1932 - 1955, BAAZ 1109, 596c Part 2, National Archives Auckland.

it is not desired to take any direct action just now to effect their removal, but the suggestion has been made that the same object might be achieved indirectly through the Health department if that Department is prepared to co-operate'.[51]

The commissioner believed that the continued occupation of the dwellings might readily lend itself to a spread of the 'meningitis trouble' of which Maori in the Kawakawa District had been afflicted, noting that, 'any action taken in this matter should be done with due discretion.'[52] That same month, at a meeting of the Mangonui Hospital Board, a decision was made to ask the health inspector to investigate 'native' housing conditions throughout the Mangonui County. Of particular concern was a small settlement just outside the Kaitaia town boundary - the dwellings at Tangonge. An inspection was made with the Health Officer at Kaitaia and 'it was agreed that if Maori standard of living was taken as a guide it would be difficult to condemn three of the cottages but with the balance there would be no trouble.'[53] However, the Health Department would not take any direct action in condemning the settlement at Tangonge as the legal proceedings were considered to be too involved. Action by the Health Department would have to be taken through local bodies by notice to the occupier to bring their buildings up to standard. Furthermore, Tangonge was not the only settlement in which 'Native' housing was 'intolerable'; the Health Department deemed the same conditions were extensive throughout the north. If the department had condemned the dwellings at Tangonge, they would have been forced to 'continue throughout different localities in North Auckland.'[54]

By the 1960s, seven families still clung to their homes, without titles. Though the families were large, it appears their homes were well cared for.[55] The last seven Maori

[51] ibid
[52] ibid
[53] Memo, A C Smeaton to Commissioner of Crown Lands, 24 July 1941, Tangonge Kauri Gum Reserve 1932 - 1955, BAAZ 1109, 596c Part 2, National Archives Auckland.
[54] Memo, A C Smeaton to Commissioner of Crown Lands, 28 July 1941, Tangonge Kauri Gum Reserve 1932 - 1955, BAAZ 1109, 596c Part 2, National Archives Auckland.
[55] *Muriwhenua Land Report,* p 262.

families, otherwise landless, were not removed from Tangonge until over a century after the transaction that the Crown believed justified their actions.[56]

Overall, local Maori sent at least five petitions to the government in a sustained effort to have their right to Tangonge recognised and three Crown commissions, as well as the Native Land Court, investigated their claims. Although it was true that Bell recorded no Maori objection at the time of his inquiry, Maori had no reason to object. If the plan showed a severance on the southern boundary, it was natural to assume that the plan had been arranged in fulfilment of Matthews' promise to return Tangonge to local Maori. It was never part of any contract that surplus lands should pass to the government. Bell should have inquired properly into the matter and obtained evidence from Maori on their position. Additionally, the case might have been resolved had it been dealt with while Matthews was still alive, but the government did not refer the petition or arrange for Matthews' statement to be taken during this lifetime.

The surplus lands issue has remained a major source of conflict between Te Rarawa and the Crown. Moreover, the inconsistencies and inaccuracies surrounding the Crown's appropriation of these lands further complicated and confounded the issue. This was particularly true in the case of Tangonge, the subject of a string of petitions throughout the late nineteenth and early twentieth centuries. Despite numerous inquiries, the Crown failed to deal with the grievances of the Tangonge people.

3.4 Conclusion

The bottom line of the Tribunal's report is that the pre-Treaty transactions were not sales. At best they conferred a right of conditional occupation upon acceptance of the norms and authority of the local Maori. The transactions imposed obligations upon the Pakeha involved of which they 'ought reasonably to have been aware but which they did not generally fulfil.'[57] On the Maori understanding of the transactions, Maori interests in the land had not been extinguished. In the Tribunal's view, the Crown was in breach of the treaty and the claimant hapu have been prejudicially affected by the inadequate

[56] ibid, p 161.
[57] ibid, p 392.

inquiries into pre-treaty transactions. The Crown did not actively protect Muriwhenua Maori and this failure was further compounded by the Crown not accounting for its own actions in regards to surplus and scrip lands.